

Service Provider Agreement

2018

Workers Compensation Nominal Insurer

icare Support Solutions Pty Ltd

Employers Mutual NSW Limited

Employers Mutual Management Pty Limited

2018 Service Provider Agreement

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SCHEDULES

Schedule 1 (*Code of Conduct and Customer Engagement*)

Schedule 2 (*Claims*)

Schedule 3 (*Banking and Financial Management*)

Schedule 5 (*Governance*)

Schedule 6 (*IP Deed and Confidentiality Deed*)

Schedule 7 (*Project Services Framework*)

Schedule 8 (*Service Provider Principal Statutory Declaration*)

Schedule 9 (*Director's Declaration*)

Schedule 10 (*Disengagement Plan*)

Schedule 11 (*Claims and Transfer*)

Schedule 12 (*Performance Guarantee*)

Schedule 13 (*Key Subcontractor Register*)

Schedule 14 (*Acceptance Certificate*)

Schedule 15 (*Service Provider Specific Obligations*)

Schedule 16 (*Instrument of Acceptance*)

Schedule 17 (*General Schedule*)

Schedule 18 (*Technology*)

2018 Service Provider Agreement

Parties

1. **The Workers Compensation Nominal Insurer ABN 83 564 379 108 (*Nominal Insurer*).**
2. **icare Support Solutions Pty Ltd ABN 77 620 395 306 (*IC 1*).**
3. **Employers Mutual NSW Limited ABN 52 003 201 885 (*Service Provider*).**
4. **Employers Mutual Management Pty Limited ABN 11001735191 (*Asset Owner*).**

Recitals

- A The Nominal Insurer is established by the 1987 Act. Insurance and Care NSW (icare) is established by the 2015 Act as a government agency.
- B Section 10 of the 2015 Act provides that icare acts for the Nominal Insurer and that in acting for the Nominal Insurer, icare has and may exercise all the functions of the Nominal Insurer under the 1987 Act, the 1998 Act or any other Law.
- C IC 1 is a wholly-owned subsidiary of the Nominal Insurer.
- D The 1987 Act provides for the Nominal Insurer to enter into arrangements with persons to act as Scheme Agents. The 1987 Act allows Scheme Agents to exercise any functions of the Nominal Insurer, subject always to the direction and control of the Nominal Insurer under any agency arrangement and any relevant legislation. The Nominal Insurer has appointed IC 1 as a Scheme Agent.
- E IC 1 has agreed to appoint the Service Provider as an agent to execute certain IC 1 functions and to provide the Services, subject to the terms of this Agreement, to assist IC 1 in carrying out its responsibilities as a Scheme Agent.
- F The Service Provider has represented and represents that it has the skills, qualifications and experience necessary to perform and manage the Services in an efficient and cost effective manner, with a high degree of quality and responsiveness. IC 1 has agreed to enter into this Agreement in reliance on the Service Provider's representations.

G	The Nominal Insurer has agreed to appoint the Service Provider as a Scheme Agent to exercise certain functions of the Nominal Insurer subject to the terms of this Agreement.
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SECTION A - DEFINITIONS AND INTERPRETATION

1. Interpretation within the Agreement

1.1 Definitions

The terms used in this Agreement have the meanings set out in the Glossary, unless the context, or this Agreement, requires otherwise.

1.2 Interpretation

In this Agreement except where the context otherwise requires:

- (a) a reference to this Agreement includes any Direction issued under this Agreement, and includes where the Agreement has been assigned, novated, or otherwise transferred, in accordance with this Agreement;
- (b) a reference to any Law will be deemed to extend to include a reference to all Laws amending, consolidating, replacing or overruling that Law from time to time;
- (c) a reference to any Applicable Standard will be deemed to extend to a reference to any amended or replacement Applicable Standard from time to time;
- (d) the singular includes the plural and vice versa;
- (e) a reference to one gender includes every other gender;
- (f) persons will be taken to include any natural or legal person;
- (g) 'include', 'includes' and 'including' means 'including without limitation';
- (h) "absolute" means absolute and unfettered;
- (i) the headings and index in this Agreement are for convenience only and do not affect the interpretation of this Agreement;
- (j) in the construction and interpretation of this Agreement, no rule of construction applies to the disadvantage of IC 1 on the basis that IC 1 initiated or drafted the Agreement or any part of it;
- (k) any Approval given by IC 1 does not release the Service Provider from performing its obligations in accordance with this Agreement;
- (l) a reference to a person which has ceased to exist or has been reconstituted, amalgamated or merged, or other functions of which have become exercisable any other person or body in its place, must be taken to refer to the person or body established or constituted in its place by which its said functions have become exercisable;
- (m) any time limit under this Agreement that falls on a non-Business Day then that time limit will be deemed to have expired on the next Business Day;
- (n) where a word or phrase is given a defined meaning in this Agreement, any other part of speech or other grammatical form in respect of such word or phrase will have a corresponding meaning;
- (o) where there is a reference to icare that reference is to icare acting in its capacity for the Nominal Insurer, unless expressly stated otherwise;

- (p) where a reference occurs to the doing of anything by IC 1 including giving any notice, Approval, Direction or waiver, this may be done by a duly authorised officer of IC 1;
- (q) where the Service Provider is comprised of more than one person, each obligation of the Service Provider will bind those persons jointly and severally and will be enforceable against them jointly and severally; and
- (r) a reference to a group of persons is a reference to all of them collectively and to any two or more of them collectively and to each of them individually; and
- (s) a reference to a party will not include the Asset Owner except for references in clauses 52.3 and 54.1.

1.3 Documents forming part of the Agreement

The following documents form part of the Agreement:

- (a) clauses 1 to 58;
- (b) the Glossary;
- (c) the Schedules;
- (d) Attachments and Appendices to a Schedule (including Manuals);
- (e) the General Manual;
- (f) Manuals which are not Attachments or appendices to a Schedule;
- (g) any Direction;
- (h) any Project Services Order; and
- (i) any document annexed to, or incorporated by reference into, the Agreement.

1.4 Order of Priority

- (a) If there is a conflict between any documents forming part of this Agreement, then those documents will be given the following order of priority such that the conflicting provision in the document lower in the order of priority will be read down or severed to the extent necessary to resolve the conflict:
 - (i) the Agreed Terms (as varied by Schedule 15 (*Service Provider Specific Obligations*) if applicable);
 - (ii) any Project Services Order entered into under this Agreement;
 - (iii) the Schedules to this Agreement; and

- (iv) the Manuals.
- (b) If there is a conflict between this Agreement (in accordance with subclause 1.3 and subject to subclause 57.6) and any right or obligation in the 1987 Act or other WH&S and Workers Compensation Legislation, then the following order of priority will apply such that the conflicting provision in the item lower in order of priority will be read down or severed to the extent necessary to resolve the conflict:
 - (i) the 1987 Act and other WH&S and Workers Compensation Legislation; and
 - (ii) this Agreement (in accordance with subclause 1.3 and subclause 57.6).

2. Scheme Principles, Conduct and Governance

2.1 Achievement of Scheme Principles

- (a) The Service Provider agrees that it must perform its obligations under this Agreement and act in all respects under this Agreement and in connection with the Scheme, in a way which is consistent with, and facilitates the achievement of, the Scheme Principles.
- (b) The Service Provider acknowledges and agrees that the Nominal Insurer, IC 1 and the Scheme are dependent on the Service Provider fulfilling, to the best of its ability, the Scheme Principles, and the achievement of the Scheme Principles is only one requirement of this Agreement.
- (c) The nature and extent of the Service Provider's obligations under this Agreement are not to be construed or interpreted solely by reference to the Scheme Principles or their achievement.

2.2 Definition of Scheme Principles

The Scheme Principles are:

- (a) to promote recovery at work and the health benefits of returning to work;
- (b) to provide a proactive, tailored and intensive Long Tail Claims management approach that effectively identifies and mitigates Return to Work barriers and risks;
- (c) to support injured Workers to recover and regain their financial independence;
- (d) to reduce the high regulatory burden and make it simple for injured Workers, Employers and service providers to navigate the systems and processes related to making claims; and
- (e) to strongly discourage payments, treatments and services that do not contribute to recovery and Return to Work.

2.3 Code of Conduct and Customer Service

The Service Provider will at all times during the Period of Services ensure it and its Personnel, and any Service Company (and its Personnel), involved in the delivery of the Services comply with Schedule 1 (*Code of Conduct and Customer Engagement*).

2.4 Governance and Board Structure

- (a) Subject to paragraph 2.4(b), the board of the Service Provider will at all times have two independent directors who are not executives of the Service Provider or any of the Service Provider's Related Bodies Corporate.
- (b) Paragraph 2.4(a) does not apply where the Service Provider's immediate parent company is authorised by APRA and complies with any prudential standard relating to governance determined by APRA.
- (c) A director is not independent if the director is not independent for the purposes of the ASX Corporate Governance Council's Corporate Governance Principles and Recommendations (3rd Edition).

2.5 IC 1 and the Nominal Insurer

The Service Provider acknowledges and agrees that:

- (a) any obligations which the Service Provider has to IC 1 under this Agreement shall be deemed to also be obligations to the Nominal Insurer; and
- (b) either IC 1 or the Nominal Insurer may issue Directions to the Service Provider.

3. Agency – Duties and Responsibilities

3.1 Scope of Agency

IC 1 appoints the Service Provider to provide the Services and to act as an agent of IC 1 in accordance with this Agreement for the Period of Services.

3.2 Scheme Agent Confirmation

The parties acknowledge and agree that pursuant to the Nominal Insurer's appointment of IC1 under the IC1 Scheme Agent Deed and the parties' entry into this Agreement, the Nominal Insurer and the Service Provider are entering into arrangements for the appointment of the Service Provider as a 'scheme agent' under the 1987 Act to act as agent

for the Nominal Insurer to exercise the functions of the Nominal Insurer in accordance with this Agreement for the purposes of performing the Services for the Period of Services.

3.3 Acknowledgement

The Service Provider acknowledges and agrees that:

- (a) it owes certain duties to IC 1 and the Nominal Insurer, including fiduciary duties, to provide the Services in good faith with due care and skill and within the scope of its authority to act and, subject to clause 3.3(d), that these duties are paramount;
- (b) the Service Provider will perform its obligations under this Agreement, and act in all respects in connection with the Scheme:
 - (i) in a manner which would not place the Service Provider in a position where there is conflict between the Service Provider's duties as a fiduciary and its own interest or a duty to any third party, or between the duty as a fiduciary to two or more persons in the same transaction or matter, without the prior Approval of IC 1 and the Nominal Insurer;
 - (ii) in a manner that does not conflict with the Scheme Principles;
 - (iii) in a manner that does not detract in any way from the economic viability of the Workers Compensation Insurance Fund;
 - (iv) without making any profit from any of IC 1's or the Nominal Insurer's property, including IC 1's and the Nominal Insurer's property in Confidential Information, IC 1 IP, Nominal Insurer IP, Foreground IP, Developed IP, Records and Insurance Records, unless permitted elsewhere in the Agreement, without the prior Approval of IC 1 or the Nominal Insurer (as applicable);
 - (v) without making any profit from knowingly using any knowledge gained as a result of its relationships with IC 1 and the Nominal Insurer, unless permitted elsewhere in the Agreement, without the prior Approval of IC 1 or the Nominal Insurer (as applicable);
 - (vi) in a manner that keeps IC 1 and the Nominal Insurer fully and promptly informed of all the matters that materially affect the Scheme Principles and the performance of the Agreement; and
 - (vii) in a manner that complies with Schedule 1 (*Code of Conduct and Customer Engagement*);

- (c) the Service Provider's rights as an agent under the law of agency are varied by this Agreement, including:
 - (i) the Service Provider does not have a lien over any of IC 1's or the Nominal Insurer's property, including the Workers Compensation Insurance Fund and IC 1's and the Nominal Insurer's property in Confidential Information, IC 1 IP, Nominal Insurer IP, Foreground IP or Developed IP, Created Data, Records, Insurance Records or moneys, cheques or any other form of payment that the Service Provider has received as agent for IC 1 or the Nominal Insurer;
 - (ii) the right to any payment for the performance of the obligations in this Agreement is limited to those set out in subclauses 26.1, 26.2, 26.3 and 52.3;
 - (iii) the right for indemnity for expenses is limited to those rights described in clause 27 and subclauses 48.12, 50.2 and 50.4;
 - (iv) any arrangements, written or otherwise, entered into by the Service Provider with any Employer, Policyholder, Third Party Service Provider or any other person, for which this Agreement does not provide authority for the Service Provider to enter into as agent for IC 1, are not arrangements made as agent for IC 1; and
 - (v) to avoid doubt, any arrangements, written or otherwise, entered into by the Service Provider with any Personnel, Subcontractor or Service Company for the purpose of delivering the Services are not arrangements made as agent for IC 1 or the Nominal Insurer; and
- (d) notwithstanding the fiduciary duties owed by the Service Provider to IC 1 and the Nominal Insurer, the Service Provider must at all times act in accordance with the Decision Rights and the duties under this Agreement are subject to the Decision Rights.

3.4 IC 1's Obligations

IC 1's and the Nominal Insurer's obligations or liabilities as a principal under the law of agency are varied as set out in this Agreement.

3.5 Restrictions on Service Provider's Authority

The Service Provider does not have any authority to:

- (a) perform any act, or make any omission, which is not necessary or not incidental to the performance of its obligations under this Agreement;
- (b) make any false, misleading or deceptive statement or representation;
- (c) not follow any Direction;
- (d) breach any Law;
- (e) make any representation or statement in a manner which a third party could reasonably believe was made:
 - (i) for or on behalf of icare in any role other than as acting on behalf of the Nominal Insurer;
 - (ii) for or on behalf of IC 1 or the Nominal Insurer in any role other than as acting for IC 1 or the Nominal Insurer;
 - (iii) in relation to any of IC 1's or the Nominal Insurer's functions that are described under Law, for which the Service Provider has not been given express authority under this Agreement, including:
 - (A) statements of current or future policy of IC 1, icare or the Nominal Insurer or any other person; or
 - (B) that the Service Provider is providing any services other than the Services or that the Service Provider is providing insurance;

- (f) appoint any Subcontractor, sub-agent or any person to perform a key or substantial part of any Services in relation to the Scheme, other than as a Key Subcontractor;
- (g) enter into contracts with Third Party Service Providers for services in relation to the Scheme other than as agent for IC 1 or the Nominal Insurer, except to the extent permitted by clause 9;
- (h) create any obligation of employment with any person on behalf of IC 1 or the Nominal Insurer;
- (i) conduct any Services in relation to Claims arising under the Service Provider's own Policies or those of its Related Bodies Corporate; or
- (j) subject to clause 50, conduct any litigation or arbitration proceedings as agent for IC 1 or the Nominal Insurer (including filing a statement of claim or filing a defence), except as expressly set out in this Agreement, including the Manuals, or with the prior Approval of IC 1 or the Nominal Insurer.

3.6 Service Provider to Represent Itself as Agent of IC 1 or the Nominal Insurer

Subject to clause 9, in performing its obligations under this Agreement, the Service Provider must represent itself as agent of IC 1 or the Nominal Insurer in all dealings with Workers, Employers, Third Party Service Providers and any other persons.

3.7 No Misconduct

- (a) The Service Provider must not use any information obtained by it in respect of Employers or Claims in performing its obligations under this Agreement for any purpose that does not relate to the provision of the Services or the performance of its obligations under this Agreement, except as Approved or otherwise Directed by IC 1 and, in particular, it must not use such information, and will procure that no Related Body Corporate will use any such information, in relation to the marketing, promotion or supply of any other product or service, other than in relation to a product or service that assists an Employer to achieve best practice in relation to work health and safety related risk management services and workers compensation claims management.
- (b) Unless otherwise prohibited by a Direction, the Service Provider may provide products, services, or benefits to an Employer that relate to work health and safety risk management services or workers compensation claims management services, where the provision of the product, service or benefit (as applicable) does not result in any costs to the Workers Compensation Insurance Fund and:
 - (i) the value of the benefit provided by the Service Provider relates directly to the value of the product or service provided or to be provided;
 - (ii) any payment made by the Service Provider in relation to the product, service or benefit is able to be fully substantiated; and
 - (iii) the Service Provider maintains Documentation, books, accounts and Records (or obtains access for IC 1 to Documentation, books, accounts and Records held by other persons) showing compliance with these requirements and which can be audited under clause 48.

- (c) The Service Provider acknowledges that a breach of this subclause 3.7 by the Service Provider, or a failure by any Related Body Corporate to conduct itself consistently with the obligations imposed on the Service Provider under this subclause 3.7, entitles IC 1 to treat that action as a breach of the obligations of the Service Provider under this Agreement and without limiting IC 1's rights under this Agreement, terminate this Agreement under subclause 52.2.
- (d) The Service Provider undertakes not to use the existence of this Agreement or the Insurance Records or Records to promote the distribution of any general insurance product to an Employer who is a client of IC1 or the Nominal Insurer without the consent of IC1 or the Nominal Insurer (as applicable) during the term of this Agreement.

3.8 Ratification of Acts Beyond Actual Authority

IC 1 and the Nominal Insurer will not be taken to have ratified any act or omission of the Service Provider which was outside the actual authority of the Service Provider, but which a third party claims was within the ostensible authority of the Service Provider, unless the ratification:

- (a) is Approved by the IC 1 Principal;
- (b) sets out the full facts and consequences on which the ratification is based; and
- (c) is provided to the Service Provider;
 - (i) of the date of the act or omission, or
 - (ii) such longer period as is reasonable for IC 1 to ratify in the circumstances.

3.9 IC 1's Rights and the Nominal Insurer's Rights

IC 1's rights and the Nominal Insurer's rights under this Agreement do not reduce, limit or restrict in any way any function, power, right or entitlement of IC 1 or the Nominal Insurer under Law, including any rights IC 1 or the Nominal Insurer have as principals under the law relating to agency.

4. Period of Services

4.1 Commencement of Agreement and Period of Services

This Agreement commences on the Commencement Date and continues for the duration of the Initial Agreement Period unless terminated earlier.

4.2 Extension of the Agreement

IC 1 may extend the Initial Agreement Period for:

- (a) a period of _____ by giving notice to the Service Provider to the expiry of the Initial Agreement Period; and
- (b) a further period of _____ by giving notice to the Service Provider to the expiry of the Initial Agreement Period as extended under clause 4.2(a),

(each an "**Extended Period**"), in which case the Service Provider will continue to perform the Services on the same terms and conditions as set out in this Agreement for the Extended Period with the exception of Remuneration,

SECTION B - PROVISION OF SERVICES

5. Transitional arrangements

5.1 Transition

- (a) The Service Provider must prepare and submit for Approval a Transition Plan that meets the requirements notified by IC 1, within the timeframe notified by IC 1, acting reasonably.
- (b) Each party must perform its transition obligations during the Transition Period in accordance with the Transition Plan, including that the Service Provider must:
 - (i) deliver all Deliverables described in the Transition Plan by the relevant Milestone;
 - (ii) provide Services in respect of any Claims in existence as at the Commencement Date; and
 - (iii) undertake all activities necessary to ensure that the Service Provider is ready to deliver Services from the date specified in the Transition Plan.
- (c) The Service Provider will not be permitted to receive Claims or manage Services as part of Transition unless and until the Service Provider has achieved the Acceptance Criteria for Transition.
- (d) For the avoidance of doubt, the Service Provider is not required to achieve the Acceptance Criteria for Transition before it commences performing the

Services from the Commencement Date. However, IC 1 can exercise all rights under this Agreement, including terminating this Agreement, should Transition be Delayed by the Service Provider.

5.2 Acceptance of Transition

- (a) The Service Provider must provide all assistance reasonably requested by IC 1 in connection with the Acceptance of Transition.
- (b) IC 1 will assess whether the Service Provider has achieved the Acceptance Criteria to determine if the Service Provider is fully able to provide the Services.
- (c) If IC 1's assessment reveals that the Acceptance Criteria:
 - (i) have been achieved, IC 1 will issue an Acceptance Certificate to that effect to the Service Provider; or
 - (ii) have not been achieved, the Service Provider must, at no cost to IC 1, do all things necessary to rectify any problems and IC 1 will repeat the assessment in accordance with the Transition Plan.
- (d) If:
 - (i) the Service Provider fails to comply with paragraph 5.2(c)(ii); or
 - (ii) the Service Provider fails to pass the repeat assessment referred to in paragraph 5.2(c)(ii),then IC 1 may, at its absolute discretion:
 - (iii) set a new date for repeating the assessment (in which case paragraph 5.2(c)(ii) applies);
 - (iv) conditionally Accept Transition in accordance with subclause 5.3; or
 - (v) reject the Transition and terminate the Agreement under subclause 5.2.2.

- (e) IC 1 is not liable to pay any amount conditional on Acceptance of Transition unless and until Acceptance of Transition has occurred in accordance with this subclause 5.2 and the Transition Plan.

5.3 Conditional Acceptance

- (a) IC 1 may, at any time, conditionally Accept Transition, notwithstanding that the Acceptance Criteria have not been achieved, by giving the Service Provider a notice that:
 - (i) includes a statement that IC 1 Accepts Transition, subject to certain conditions which the Service Provider must satisfy;
 - (ii) specifies the problems that prevent the Services from achieving the Acceptance Criteria;
 - (iii) specifies the remaining conditions which the Service Provider must satisfy to achieve Acceptance for Transition; and
 - (iv) specifies the rectification work to be performed by the Service Provider and the time period for performing such work.
- (b) If the Service Provider does not perform the rectification work or satisfy the conditions within the time frame specified in the notice, IC 1 may (at its absolute discretion):
 - (i) set a new date for the assessment; or
 - (ii) reject the Transition, and terminate the Agreement for cause under clause 52.2.

5.4 No deemed Acceptance

IC 1 will not be deemed to have Accepted Transition by any other act or omission other than the provision of an Acceptance Certificate.

5.5 Responsibility

On and from the date of issue by IC 1 of a signed Acceptance Certificate in accordance with the Transition Plan, the Service Provider must accept full responsibility for provision of that part of the Services related to the Acceptance Certificate in accordance with the requirements of this Agreement.

6. Delays

6.1 Monitoring and Managing Delays

The Service Provider must actively monitor and manage:

- (a) the Transition;
- (b) the performance of Project Services;
- (c) the performance of the Disengagement Services;
- (d) the transfer of Claims and Service Components; and
- (e) the implementation of Directions,

including:

- (f) anticipating and identifying potential failures to meet any relevant deadline or Milestone Date ("**Delay**"), whether those Delays are caused by the Service Provider (or Service Provider's Personnel), or a Service Company (or its Personnel), IC 1 or a third party; and
- (g) taking reasonable steps to avoid those potential Delays.

6.2 Responding to Actual or Potential Delays

If there is any actual or potential Delay:

- (a) the Service Provider must immediately notify IC 1;
- (b) the Service Provider must immediately prepare and submit to IC 1 a report identifying the nature and consequences of the Delay;
- (c) the Service Provider must inform IC 1 whether:
 - (i) the Service Provider (or Service Provider's Personnel) will be able to temporarily work around the problem in order to prevent or rectify the Delay; or
 - (ii) any other person can provide the Services, or part of the Services, in order to prevent, limit or rectify the Delay;

- (d) the IC 1 Principal and Service Provider Principal (or their nominated representatives) must, if requested to do so by IC 1, meet within
after receiving notification of the actual or potential Delay, to discuss how to prevent, limit or rectify the Delay;
- (e) the Service Provider must:
 - (i) prepare and submit regular update reports (as required by IC 1) in relation to the Delay; and
 - (ii) take all steps required by IC 1, including compliance with a Direction, to prevent, limit or rectify the Delay, including working cooperatively with Other Service Providers;
- (f) if required by IC 1, the parties must negotiate in good faith to attempt to agree on a temporary workaround plan by the time notified by IC 1 (having regard to the overall time frame and the extent of the Delay) which must set out as a minimum:
 - (i) the cost implications of the Delay;
 - (ii) the interdependencies; and
 - (iii) the expected time impact of the tasks required to rectify the Delay,and, if agreed, must be signed and dated by the parties; and
- (g) the Service Provider must implement and comply with any temporary workaround plans agreed in accordance with paragraph 6.2(f).

6.3 Status of Workaround Plan

If the parties agree on a temporary workaround plan in accordance with paragraph 6.2(f), that workaround plan will:

- (a) be used by the parties to assist to document that workaround;
- (b) only operate as a variation of the Agreement to the extent that it relates to, and for the duration of, the Delay and does not operate as a waiver of the other obligations that the Service Provider may have under this Agreement; and
- (c) not limit IC 1's rights or remedies it may have against the Service Provider in connection with the Delay (for example, to claim Damages).

6.4 Consequences of Delay

To the extent a Delay is caused by:

- (a) a Force Majeure Event, then the provisions of clause 55 will apply;
- (b) the Service Provider (or Service Provider's Personnel, or Service Company or their Personnel), then any costs and expenses incurred by the Service Provider to implement an agreed workaround plan will be borne by the Service Provider, and IC 1 may, at its election and in addition to requiring the performance of the workaround plan, do one or more of the following:
 - (iii) specify a revised date for the relevant deadline or Milestone to be met; and
 - (iv) if a Delay cannot be remedied within a timeframe acceptable to IC 1 (acting reasonably), IC 1 may terminate this Agreement under subclause 52.2; or
- (c) IC 1 or any third party (excluding the Service Provider and the Service Provider's Personnel or Service Company or its Personnel), then:
 - (i) any reasonable costs and expenses incurred by the Service Provider to implement an agreed workaround plan will be borne by IC 1; and
 - (ii) the Service Provider is relieved from its obligations to meet a Milestone affected by the Delay for the duration of the Delay and will be granted an extension of time to perform subsequent obligations impacted by the Delay commensurate with the extent of the Delay. The Service Provider must continue to perform the Services (including Transition activities) that are unaffected by the Delay.

7. General Provisions Relating to Services

7.1 Services to be Provided in Accordance with this Agreement

The Service Provider must provide the Services to the Highest Standard in accordance with this Agreement.

7.2 Services to be Provided in Accordance with Law and Policies

The Service Provider must, at all times, in carrying out the Services, comply with:

- (a) all Laws, including the WH&S and Workers Compensation Legislation;
- (b) any policies of IC 1 and the Nominal Insurer, that are relevant to the provision of the Services and notified by IC 1 or the Nominal Insurer to the Service Provider in writing; and
- (c) New South Wales government policies that are relevant to the provision of the Services, including:
 - (i) NSW Procurement Board Goods and Services Policy Framework; and

(ii) NSW Government Procurement: Small and Medium Enterprises Policy Framework.

(a) The Service Provider must ensure that the Services are conducted to achieve a _____ for each of the _____ for each _____ during the Period of Services.

(b) The Service Provider must ensure that the Services are conducted to achieve an _____ for each _____ for each _____ during the Period of Services.

(c) The Service Provider acknowledges that IC 1 may regularly monitor the Service Provider's performance against the _____ and _____

(d) The Service Provider must meet with IC 1 to report on its performance against the _____ in accordance with Schedule 5 (*Governance*).

(e) Without limiting IC 1's rights under clauses 51 and 52, if IC 1 considers that the Service Provider has:

(i) failed to achieve a _____ for any _____ during _____ the Period of _____ Services; or

(ii) failed to achieve an _____ for any _____ in _____ during the Period of _____ Services,

IC 1 may:

(iii) issue a Remediation Plan Direction in relation to the Services that are relevant to the _____ in _____ accordance with paragraph 51.2(a); or

(iv) withhold payment in accordance with subclause 26.3.

(f) Without limiting IC 1's rights under clauses 51 and 52, if, during any Reporting Period, IC 1 considers, acting reasonably, that the Service Provider will not:

(i) achieve a _____ for each _____ for _____ that _____ ; or

- (ii) achieve an _____ for each _____
_____ for that

IC 1 may issue a Remediation Plan Direction in accordance with paragraph 51.2(a).

7.4 Documentation

The Service Provider must ensure that all of the Service Provider's systems and processes used to provide the Services are accurately and completely documented and this Documentation is kept up to date.

7.5 No Restrictions on Rights and Functions of IC 1, the Nominal Insurer or icare

Nothing in this Agreement restricts, hinders or prevents IC 1, the Nominal Insurer, icare, or their Personnel from performing their respective rights or functions under Law.

7.6 Non-exclusive Relationship with IC 1

The Service Provider agrees that its relationship with IC 1 is not exclusive and as such, at any time during the Period of Services:

- (a) IC 1 may perform any part of the Services itself;
- (b) icare may perform any part of the Services on behalf of the Nominal Insurer pursuant to section 154C of the 1987 Act; or
- (c) the Nominal Insurer or IC 1 may enter into any arrangements including agency arrangements with any third party or Other Service Providers to perform all or any part of the Services or similar services.

7.7 No Guarantee of Volume

- (a) IC 1 does not guarantee any volume of Services or allocation of any particular Claims.
- (b) Any information relating to the volume of Services or Claims provided to the Service Provider (whether prior to this Agreement or during the Period of Services) is indicative only and not binding on IC 1 or its Personnel.

7.8 Adherence to Manuals

- (a) The Service Provider must ensure that in performing the Services:
 - (i) it complies with any requirement, obligation or specification; and
 - (ii) its systems reflect the instructions, file structure and data definitions, specified in the Manuals;
 - (iii) it complies with the Decision Rights or Knowledge Articles

- (b) IC 1 may, from time to time issue:
 - (i) new Manuals relating to the performance of the Services;
 - (ii) updates to the Manuals, Decision Rights or Knowledge Articles,and the Service Provider must implement the new Manuals, or updates to the Manuals, Decision Rights or Knowledge Articles at no additional cost to IC 1, within the timeframes specified by IC 1.

7.9 Co-operation and Continuous Improvement

The Service Provider must use every effort to work cooperatively and collectively with Other Service Providers, IC 1 and the Nominal Insurer to achieve:

- (a) the Scheme Principles; and
- (b) continuous improvement in the Scheme and in Scheme Outcomes.

7.10 Compliance with Direction to Provide Information to IC 1

The Service Provider must comply with any Direction of IC 1 to provide information to enable IC 1 to comply with its obligations at Law and will provide such information within any reasonable timeframes set by IC 1.

7.11 Directions

- (a) IC 1 or the Nominal Insurer may issue Directions at any time as to the manner in which the Service Provider is to perform the Services or any other obligation under this Agreement.
- (b) Subject to paragraph 7.11(c), the Service Provider must perform the Services (or any other obligations under this Agreement) in accordance with and within any timeframe specified in any Direction given from time to time.
- (c) The Service Provider must immediately comply with any Direction which is specified to be an Urgent Direction.
- (d) Other than Directions given in accordance with this clause 7.11, the Service Provider will not act on directions or requirements given by IC1 or the Nominal Insurer other than where such directions or requirements are provided by a person authorised by IC1 or the Nominal Insurer under the Governance Forums to issue directions or requirements.

7.12 Measurement Systems and Reporting

The Service Provider must ensure that its measurement and monitoring systems will permit accurate and consistent reporting at a level of detail that is reasonably necessary to monitor and report on the Service Provider's requirements under this Agreement and as otherwise determined by IC 1.

7.13 Required Reports

The Service Provider must provide:

- (a) reports in accordance with this Agreement, the Schedules, the Manuals and any Project Services Order, and such other reports (including any reports requested by IC 1 or the Nominal Insurer to be provided to Parliament, any Parliamentary Committee, any Minister, or any Agency that has the right or need to request information from IC 1 or the Nominal Insurer) as may be specified by IC 1 or the Nominal Insurer from time to time, in accordance with the timeframe for reporting set out in this Agreement, the Schedules, Manuals, a Project Service Order or as otherwise reasonably requested by IC 1 or the Nominal Insurer;
- (b) any reports in such a form that they are readily understandable by IC 1 or the Nominal Insurer and can be readily communicated to IC 1 or the Nominal Insurer and their Personnel; and
- (c) detailed supporting information for each report as reasonably specified or requested by IC 1 or the Nominal Insurer from time to time.

7.14 Service Provider Responsibilities

The Service Provider is responsible for providing any accommodation, facilities, Equipment, furnishings, fixtures, Personnel and support it needs to supply the Services, as agreed with IC 1 in accordance with the requirements of this Agreement.

8. Services

8.1 Performance of Services

The Service Provider must perform the Services during the Period of Services in accordance with the requirements under this Agreement.

8.2 Acknowledgement in Relation to Transfer of Claims and Service Components

The Service Provider acknowledges that:

- (a) it is a requirement of Transition that the Service Provider cooperate in the transfer of Claims and Service Components between IC 1 and Other Service Providers; and
- (b) IC 1 wishes to advance the Scheme Principles and that in exercising its opinion as to how that is achieved, it may involve the movement of certain Claims and/or Service Components arising during the Period of Services to IC 1 (or icare acting on IC 1's behalf), or to other persons, including movements under subclause 8.3.

8.3 IC 1 May Transfer Claims and/or Service Components

IC 1 may in its absolute discretion, on one or more occasions during the Period of Services, issue a Direction for the Service Provider to transfer some or all Claims and/or Service Components to or from IC 1 or any other person, including in the following circumstances:

- (a) as part of Transition;
- (b) where paragraph 52.2(b)(i) applies;
- (c) in respect of a class of Claims and/or Service Components that IC 1 wishes to be handled by IC 1, Other Service Providers or other persons;
- (d) where the Service Provider or a Designated Key Subcontractor, or either of their businesses, is acquired by, merged with or controlled by any Other Service Provider and without limiting the foregoing, including where the Service Provider or any Designated Key Subcontractor of the Service Provider becomes a related entity of any Other Service Provider. For this purpose, related entity includes any Related Body Corporate or any entity which is an associated entity of the Other Service Provider or Designated Key Subcontractor for the purposes of section 50AAA of the Corporations Act or which becomes a partner or joint venturer of an Other Service Provider;
- (e) where IC 1 or the Nominal Insurer considers that, as a result of any legislative change or change in the Scheme Principles or government policy, a transfer under this subclause 8.3 is appropriate;
- (f) pursuant to a Remediation Plan at any time; and
- (g) where the Service Provider is required to provide Disengagement Services pursuant to subclause 53.1.

8.4 Obligation to Accept Claims and Service Components Transferred Under subclause 8.3

Where IC 1 requires the Service Provider to provide Services in respect of Claims that are proposed to be transferred from IC 1 or an Other Service Provider pursuant to subclause 8.3, the Service Provider must accept and give effect to the transfer of the Claims and Service Components and will carry out such transfer in accordance with Directions given by IC 1 to the Service Provider.

8.5 Co-operation in Relation to Transferred Claims and/or Service Components

- (a) The Service Provider must cooperate with IC 1, the Nominal Insurer, any Other Service Provider and Employers where a Claim or Service Component has been transferred to or from Other Service Providers (or to or from IC 1), including allowing IC 1, the Nominal Insurer, the Receiving Service Provider and the Employer access to any Records and Insurance Records or other information concerning decision making relating to any of the Employer's Claims that remain with IC 1 or an Exiting Service Provider.
- (b) An Exiting Scheme Agent, Exiting Service Provider, Receiving Service Provider or a Scheme Agent receiving a Claim may request IC 1 to issue Directions where disputes arise in relation to this subclause 8.5 and on such a request IC 1 may issue Directions specifying how a dispute under this subclause 8.5 is to be resolved. Nothing in this subclause 8.5 requires the Service Provider to provide an Employer with any information which the Employer is not lawfully entitled to receive.

8.6 Procedures to be Followed for Transfers

If the Service Provider is either losing or receiving Claims and/or Service Components then it must follow the procedures for those transfers set out in Schedule 11 (*Claims and Services Transfer*) and any Direction given by IC 1.

8.7 Participation in Outsourcing

If IC 1, the Nominal Insurer or icare enters into a general arrangement for the payment or processing of any Provider Payment then the Service Provider will participate in that arrangement as Directed by IC 1.

9. Third Party Service Providers

9.1 Appointment

- (a) Third Party Service Providers may be appointed by:
 - (i) icare;
 - (ii) the Nominal Insurer;
 - (iii) IC 1; or
 - (iv) the Service Provider,on an individual basis or to a Panel.

- (b) Where a Worker's right to appoint a Third Party Service Provider exists at law nothing in this Agreement will hinder, vary or reduce this right.
- (c) A Subcontractor or Service Company or their Related Bodies Corporate cannot be a Third Party Service Provider without the prior written Approval of IC 1.

9.4 Management of Third Party Service Providers by Service Provider

The Service Provider is responsible for managing the performance of a Third Party Service Provider. At a minimum, the Service Provider must monitor, evaluate and manage the performance of a Third Party Service Provider in relation to quality, cost, effectiveness, alignment with Scheme Objectives and any other requirements established by IC 1.

9.5 Arrangements with Third Party Service Providers by Service Provider

Unless Directed otherwise, the Service Provider must ensure that any arrangement that is entered into by the Service Provider with a Third Party Service Provider:

- (a) is entered into by the Service Provider acting on behalf of IC 1, so that an agreement is formed between the Service Provider as agent of IC 1 and the Third Party Service Provider;
- (b) is for a period which does not exceed the Period of Services; and
- (c) includes any required terms as set out in this clause 9.

9.6 Required Terms in Written Third Party Service Provider Agreements

Where the Service Provider enters into a written agreement with a Third Party Service Provider, it must ensure that it includes terms and conditions that:

- (a) the Service Provider acts on behalf of IC 1, so that an agreement is formed between IC 1 and the Third Party Service Provider;
- (b) require the Third Party Service Provider to assign, transfer or novate the agreement to IC 1 in its own right or its nominee on the same terms and

conditions promptly upon notice being given to the Third Party Service Provider;

- (c) require the Third Party Service Provider to execute such documents as are reasonably required by IC 1 for the purposes of paragraph (b);
- (d) require the Third Party Service Provider to hold all necessary licences, permits, provider numbers, approvals and qualifications;
- (e) any payment arrangements are consistent with the Scheme Principles and the Law;
- (f) require the Third Party Service Provider to comply with the operational conditions and management and decision processes set out under the Manuals and Schedules and establish a performance management agreement with the Third Party Service Provider. At a minimum, this must specify reasonable levels of performance for the delivery of specified service functions, an effective performance assessment method which must be commercially reasonable in terms of reporting requirements and a process to address and rectify under-performance;
- (g) require the Third Party Service Providers to provide reports as requested by IC 1;
- (h) ownership of all Records vests in and remains with the Nominal Insurer;
- (i) IC 1 or its nominee has a right of prompt and unhindered access to the Records at reasonable times;
- (j) a representative from IC 1 may intervene in any disputes between the Service Provider and the Third Party Service Provider;
- (k) Third Party Service Providers which provide legal services owe contractual and professional obligations to IC 1 and not the Service Provider;
- (l) permit either or both of the Service Provider and IC 1 to enforce any contractual rights, including the right to sue for damages for breach of contract, against the Third Party Service Provider;
- (m) allow Directions to be given effect without any breach of contract or the entitlement to compensation or damages arising by reason of the giving of, or the implementation of, the Direction;
- (n) require the Third Party Service Provider to comply with requirements of Schedule 1 (*Code of Conduct and Customer Engagement*);

- (o) require the Third Party Service Provider to provide a written confirmation at least once every Year (and at such other time as Directed by IC 1) stating that the Third Party Service Provider:
 - (i) has paid or will pay all payroll tax;
 - (ii) has paid all applicable workers compensation and any other applicable insurance; and
 - (iii) has paid all other remuneration,

due and payable in accordance with the Law to its employees and contractors that have provided the Services; and
- (p) require the Third Party Service Provider not to provide, and require the Service Provider not to accept, gifts, benefits or favours, including any gifts, benefits or favours referred to in Schedule 1 (*Code of Code and Customer Engagement*), that may relate or may reasonably be perceived as relating to the Third Party Service Provider's delivery of Services or the Service Provider's engagement of the Third Party Service Provider, unless expressly Approved by IC 1.

9.7 Prohibited Terms in Agreements with Third Party Service Providers

The Service Provider must not provide or agree to provide any commitment to any Third Party Service Provider in relation to any of the following matters:

- (a) volume of service;
- (b) exclusivity;
- (c) payment terms of _____ from receipt of Tax Invoice; or
- (d) provisions which could create an entitlement of a Third Party Service Provider to compensation or damages as a result of any Direction.

9.8 Procurement Process

The Service Provider must:

- (a) use fair, transparent and commercially sound decision making, and obtain best value for money, where goods and services are valued up to _____ n Provider Payments intended to be procured; and
- (b) conduct an open competitive tender process where:
 - (i) the procured goods and services are valued over _____ in Provider Payments; or

- (ii) the Service Provider intends to engage a Related Body Corporate of the Service Provider or a Designated Key Subcontractor.

9.9 Open Tender Process

- (a) The open tender process required by clause 9.8(b) must:
 - (i) be competitive;
 - (ii) be fair and transparent;
 - (iii) obtain best value for money;
 - (iv) ensure probity is maintained in all procurement activities; and
 - (v) comply with any requirements as determined by IC 1.
- (b) The Service Provider must promptly on appointment of a Third Party Service Provider provide to IC 1 evidence of the qualifications, competencies, permits and training completed by Third Party Service Providers who are appointed by the Service Provider acting as agent of IC 1 following any open tender process.
- (c) The Service Provider does not need to undertake a procurement process or competitive tender process if it is Directed to acquire the relevant Third Party Service Provider's services whether through a panel established by IC 1 or otherwise.

9.10 Notification following Tender Process

The Service Provider must provide IC 1 with details of the Third Party Service Providers that have been engaged as a result of any procurement process.

9.11 Enforcement of Agreements

The Service Provider must promptly and fully:

- (a) enforce its rights (unless a breach is minor and has no significant impact on the delivery of the Services to IC 1); and
- (b) meet all its obligations,

under any agreements with Third Party Service Providers.

9.12 Appointment of Third Party Service Providers by IC 1, the Nominal Insurer or icare

- (a) IC 1, the Nominal Insurer or icare may appoint a Third Party Service Provider or a panel of one or more types of Third Party Service Providers and may Direct the Service Provider to use those Third Party Service Providers.
- (b) Where IC 1 or the Nominal Insurer has Directed the Service Provider that a particular type of Third Party Service Provider, or Third Party Service Provider panel, has been appointed:
 - (i) the Service Provider must only appoint a Third Party Service Provider of that type or from that panel; and
 - (ii) IC 1 or the Nominal Insurer may Direct the Service Provider as to how services are to be acquired from the Third Party Service Provider.
- (c) A Direction may Direct the Service Provider to use Third Party Service Providers which are not appointed to the panel. Such a Direction may direct the manner and the times in which Third Party Service Providers are to cease providing services to the Service Provider.

9.13 Legal Services

The Service Provider must not obtain legal services in relation to the Scheme, except as permitted in accordance with any requirements set out in the Manuals and Schedules.

9.14 Use of Third Party Service Providers for Debt Collection

Unless otherwise Approved by IC 1, the Service Provider may only appoint a Third Party Service Provider to collect debts or amounts outstanding where the debt or amount outstanding has remained uncollected for .

10. Subcontracting

10.1 Prohibition on Use of Related and Associated Entities

The Service Provider must not use any related entity (other than a Service Company) or the Personnel of a related entity (other than the Personnel of a Service Company) to provide any of the Services without the prior Approval of IC 1, and for this purpose a related entity includes any Related Body Corporate or any entity which is an associated entity of the Service Provider for the purposes of section 50AAA of the Corporations Act or any partner or joint venturer of the Service Provider.

10.2 Qualifications and Competence of Subcontractors

The Service Provider must ensure that any Subcontractors are qualified and competent to perform their responsibilities.

10.3 Confidentiality Deed and IP Deed

The Service Provider must:

- (a) prior to entering into any contract with a Subcontractor, obtain a signed Confidentiality Deed, and, if requested by IC 1 under clause 24.8 a signed IP Deed, from the relevant Subcontractor, and such of its Personnel or agents as requested by IC 1; and
- (b) promptly comply with IC 1 or the Nominal Insurer's Directions, in respect of any action required to enforce such Confidentiality Deed and IP Deed, at the Service Provider's own expense.

10.4 Service Provider Point of Contact for all Subcontractors

The Service Provider, and not IC 1 or the Nominal Insurer, will be the sole point of contact for all Subcontractors, including in regard to payment.

10.5 Service Provider Not Relieved of Obligations by Subcontract

The Service Provider is fully responsible for the performance of the Services even if the Service Provider subcontracts any aspect of the provision of the Services and the Service Provider will be liable to IC 1 for the acts, defaults, and omissions of any Subcontractors as if they were the acts, defaults, or omissions of the Service Provider. IC 1's Approval to allow the Service Provider to subcontract any part of the Services will not relieve the Service Provider from any of its liabilities or obligations under this Agreement.

10.6 Requirements of Subcontracts

The Service Provider must ensure that each subcontract entered into with a Subcontractor contains clauses requiring the Subcontractor, on receipt of a Direction from IC 1, to immediately:

- (a) assign, transfer or novate the subcontract to IC 1 or its nominee on the same terms and conditions;
- (b) execute such Documents and do such things as are required by IC 1 for the purposes of this subclause 10.6; and
- (c) return any Documents, assets and property owned by IC 1 to the Service Provider or IC 1 or its nominee.

10.7 Subcontractors Obligated to Comply with Laws

The Service Provider must ensure each subcontract entered into with a Subcontractor includes an obligation to comply with Laws.

10.8 IC 1 not Bound to Pay any Subcontractor

IC 1 will not be under any obligation to make payment for any monies due by the Service Provider to any Subcontractor.

11. Key Subcontractors / Designated Key Subcontractors

11.1 Approval of Subcontracts with Key Subcontractors

- (a) The Service Provider must not enter into any subcontract with a Key Subcontractor for any part of the Services except with the prior Approval of IC 1, which will not be unreasonably withheld.
- (b) Without limiting paragraph 11.1(a), IC 1 may, in its absolute discretion, having regard to the extent or sensitivity of the work to be performed by a proposed Key Subcontractor, designate certain proposed Key Subcontractors ("**Designated Key Subcontractors**") and impose terms and conditions on the Approval of any Designated Key Subcontractor, including requiring that the Designated Key Subcontractor execute an agreement in terms satisfactory to IC 1 which, among other things, will include an acknowledgement and agreement by the Designated Key Subcontractor that:
 - (i) to the extent that it performs any duty or obligation of the Service Provider (including any Services), it owes the same duties and obligations to IC 1 and the Nominal Insurer as owed by the Service Provider and it will comply with the terms and conditions of this Agreement as if it was the Service Provider; and
 - (ii) it has no entitlement to any Remuneration under this Agreement or otherwise from IC 1 and its sole entitlement for any consideration for the provision of Services or any obligations under this Agreement on behalf of the Service Provider by it is as against the Service Provider and that consideration is not recoverable from IC 1.
- (c) If the Designated Key Subcontractor is Approved by IC 1, the Service Provider acknowledges and agrees that:
 - (i) any act, default or omission of the Designated Key Subcontractor will be taken to be an act, default or omission of the Service Provider whether or not that act, default or omission is authorised by the Service Provider and if such an act, default or omission is a breach of or a failure to perform any provision of this Agreement, then the Service Provider will be taken to have breached that provision or failed to perform;
 - (ii) the Service Provider and the Designated Key Subcontractor will be jointly and severally liable to IC 1 and the Nominal Insurer in respect of the performance of any obligation under this Agreement, any moneys that may become owing to IC 1 or the Nominal Insurer by reason of this Agreement or a failure to perform this Agreement and in respect of any

loss or damage occasioned to IC 1 or the Nominal Insurer by reason of any act, default or omission by either the Service Provider or the Designated Key Subcontractor;

- (iii) any Direction given to the Designated Key Subcontractor by IC 1 will be taken to be a Direction given to the Service Provider; and
- (iv) the Service Provider and the Designated Key Subcontractor will not vary the terms and conditions of any Approved agreement between the Service Provider and the Designated Key Subcontractor without the prior written Approval of IC 1.

11.2 Information as to Key Subcontractors

The Service Provider must provide to IC 1 information and details pertaining to any proposed Key Subcontractor, including:

- (a) the Key Subcontractor's:
 - (i) name, address, and ABN;
 - (ii) scope of work to be performed;
 - (iii) identity of its directors and key personnel; and
 - (iv) qualifications to perform the work;
- (b) the proposed contract between the Service Provider and the Key Subcontractor; and
- (c) any other information reasonably requested by IC 1.

11.3 Confirmations on Key Subcontractor Invoicing

If any Key Subcontractor is used to perform part of the Services, then the Service Provider must procure that, at the time of submission of each invoice to the Service Provider, the Key Subcontractor must confirm in writing that the Key Subcontractor has met all its obligations to the Key Subcontractor's employees and contractors to pay all:

- (a) payroll tax;
- (b) applicable workers compensation insurance; and
- (c) remuneration,

and otherwise complied with the Law in respect of those employees and contractors.

11.4 Key Subcontractor Register to be Maintained by Service Provider

- (a) The Service Provider must record details of each Key Subcontractor on the Key Subcontractor Register.
- (b) The Key Subcontractor Register that applies from the Commencement Date is the Key Subcontractor Register set out in Schedule 13 (*Key Subcontractor Register*).
- (c) The Service Provider must ensure that:
 - (i) the Key Subcontractor Register is kept up-to-date and includes all relevant details for each Key Subcontractor whether current or expired, in connection with the delivery of Services; and
 - (ii) an updated Key Subcontractor Register is provided to IC 1 after each anniversary of the Commencement Date.

11.5 Application of this Agreement to contracts with Key Subcontractors

The Service Provider must make all the terms and conditions of this Agreement (as far as they are capable of application) a part of the terms and conditions of any subcontract with a Key Subcontractor. The Service Provider may include in the subcontract a limitation of liability and lower levels of insurance coverage with the Approval of IC 1, however this will not limit the liability of the Service Provider to IC 1 or the Nominal Insurer.

11.6 Key Subcontractors to be Aware of Terms and Conditions of Agreement

The Service Provider must ensure that a Key Subcontractor is aware of all the terms and conditions of this Agreement relevant to the Key Subcontractor's part in the performance of this Agreement.

12. Arrangements with Service Companies

12.1 Arrangements with Service Companies

The Service Provider must:

- (a) obtain prior Approval (which Approval will not be unreasonably withheld) for:
 - (i) the appointment of a Service Company whose Personnel are used by the Service Provider in the performance of the Services or other obligations under this Agreement; and
 - (ii) any contract entered into with the Service Company for the purposes of the arrangement; and

- (b) promptly and fully:
 - (i) enforce its rights (unless a breach is minor and has no significant impact on the delivery of the Services to IC 1); and
 - (ii) meet all its obligations,

under the contract with the Service Company.

13. Advising Employees of Designated Key Subcontractor and Service Company

13.1 Service Provider to Advise Employees of Designated Key Subcontractor and Service Company

The Service Provider will advise all employees of any Designated Key Subcontractors or any Service Company engaged in performing any of the Service Provider's obligations under this Agreement:

- (a) of the Service Provider's obligations as an agent of IC 1; and
- (b) that the acts, defaults or omissions of any Designated Key Subcontractor's or Service Company's employees will make the Service Provider liable as if they were acts, defaults or omissions of the employees of the Service Provider.

14. System and Process

14.1 System Requirements

The Service Provider must take all reasonable steps to ensure that any Equipment, interfaces, and processes used to perform the Services interface and integrate with IC 1's and the Nominal Insurer's equipment, systems, interfaces and processes as set out in the Schedules. The Service Provider must ensure that in providing the Services it does not knowingly (whether by act or omission) adversely affect or alter the operation, functionality or technical environment of IC 1's and the Nominals Insurer's Equipment, interfaces or processes without IC 1's prior Approval.

14.2 Virus Control by Service Provider

- (a) The Service Provider must use its best endeavours to detect and prevent any Virus from being introduced directly or indirectly by the Service Provider or its Personnel, into (or sent from) any Deliverables or IC 1's or the Nominal Insurer's systems, including by:
 - (i) use of the most appropriate and up-to-date virus detection software for preventing and detecting Viruses;

- (ii) implementing practices and procedures that are consistent with industry best practice;
 - (iii) pro-actively monitoring known threats of Viruses; and
 - (iv) informing IC 1 and the Nominal Insurer of any Viruses and the steps necessary to avoid the introduction of Viruses.
- (b) If the Service Provider becomes aware that any Virus is found to have been introduced into any Deliverables or IC 1's or the Nominal Insurer's systems, Service Provider must:
 - (i) notify IC 1 and the Nominal Insurer immediately;
 - (ii) provide all information reasonably requested by IC 1 or the Nominal Insurer in relation to the Virus, its manner of introduction and the effect the Virus has had or is likely to have;
 - (iii) take all necessary remedial action within the power or control of the Service Provider to eliminate the Virus and prevent re-occurrence and rectify any consequences (to the extent that they are capable of rectification);
 - (iv) if the Virus causes a loss of data or loss of operational efficiency, assist IC 1 and/or the Nominal Insurer to mitigate the losses and restore the efficiency and/or data;
 - (v) retain evidence and logs regarding the incident to help in determining the cause, damage and likely source; and
 - (vi) ensure that sufficient Service Provider resources and technology are available to meet its obligations under this subclause 14.2.
- (c) If the Virus was introduced:
 - (i) by the Service Provider; or
 - (ii) as a result of the Service Provider's negligence or the Service Provider failing to meet its obligations under this subclause 14.2,

the Service Provider must pay the costs and expenses incurred by IC 1 and the Nominal Insurer in connection with the restoration activities contemplated by this subclause 14.2.

14.3 Equipment Must be of Highest Quality

Unless IC 1 Directs otherwise, the Service Provider must use every effort to ensure that the Equipment is at all times:

- (a) the highest in quality and functionality in comparison to that used for comparable services which the Service Provider or any member of the Service Provider Group offers to any of its customers anywhere else in Australia, taking into account the requirements of this Agreement in relation to security, privacy and protection of data; and
- (b) comparable in quality, functionality and performance to that used by other providers (including Other Service Providers) that provide services similar in nature to the Services.

14.4 System Access

- (a) If requested by IC 1, the Service Provider must provide any interface resource (including software, hardware or equipment) necessary to enable the Service Provider's Equipment to interface with IC 1's or the Nominal Insurer's equipment or systems.
- (b) Any information provided under paragraph 14.4(a) is deemed to be the Service Provider's Confidential Information.

14.5 Changes to Equipment

- (a) The Service Provider must provide _____' notice to IC 1 of any proposed material change to the Service Provider's Equipment that is used to perform the Services, including a change of location or provider.
- (b) The notice given under paragraph 14.5(a) must identify how the Service Provider intends to manage the proposed change having regard to its obligations under this Agreement.
- (c) In proposing any material change to the Service Provider's Equipment the Service Provider must give consideration to the protection of IC 1's and the Nominal Insurer's interests under this Agreement.

14.6 Initiatives in Relation to a Centralised IT System

- (a) The Service Provider acknowledges that IC 1 and the Nominal Insurer intend to introduce a centralised IT system
- (b) The Service Provider agrees to:
 - (i) upon request by IC 1, move its functions and operations on the centralised IT system introduced by IC 1 and the Nominal Insurer at a date and time to be agreed between the parties;

- (ii) co-operate with IC 1 and the Nominal Insurer to implement or assist in the implementation of any initiatives proposed by IC 1 and/or the Nominal Insurer in relation to or in connection with the implementation of a centralised IT system; and

15. Project Services

15.1 Interpretation

For the purpose of this clause 15:

- (a) **"Direct Costs"** include the reasonable direct costs (including Shared Services costs that are directly attributable to the Project Services, subject to the Service Provider providing evidence of such costs as requested by IC 1 or the Nominal Insurer) over and above the Service Provider's costs of performing the Services at the date of the Project Service Request that are necessary to be incurred in order to implement the Project Service or Urgent Project Service, including any additional direct management expenses in supervising and managing the Project Service or Urgent Project Service and after making allowance for any benefit that may flow to the Service Provider or any of its Related Bodies Corporate in respect of any other part of their businesses arising out of the implementation of the Project Service or Urgent Project Service. The Direct Cost will be calculated on the basis that the operations and systems of the Service Provider at the date of the Project Service Request are operating at the Highest Standard and must, where applicable, be in accordance with the hourly rates specified in Attachment 7.01 (*Project Plan Approved Maximum Rates*) of Schedule 7 (*Project Services Framework*); and
- (b) **"Highest Standard"** means that the Service Provider is generally operating at what would generally be regarded as the 'highest Australian insurance industry standard', and for this purpose it will be assumed that:
 - (i) the Service Provider has in place all Equipment and Personnel to enable the performance of the Services and the obligations under this Agreement as required by the Agreement and by Law;
 - (ii) the Service Provider has the capability to meet the Targets and achieve all Service Standards in each Reporting Period; and

- (iii) the Service Provider has the capability to perform the Services in a cost efficient, effective and competitive manner.

15.2 General

- (a) The parties acknowledge that IC 1 may, from time to time, require that the Service Provider undertake Project Services. The parties also acknowledge that the Service Provider may, from time to time propose Project Services.
- (b) In undertaking a Project Service, the Service Provider must use a project management methodology which complies with the principles of best practice project management and which:
 - (i) ensures IC 1 has visibility of the Service Provider's planning, strategy and management; and
 - (ii) monitors the progress and the financial management of implementing Project Services.
- (c) The Service Provider will undertake Project Services, including Urgent Project Services, in accordance with the applicable Project Service Order and the Project Plan for the Project Service.

15.3 Project Service Request

- (a) If IC 1 wants to establish a Project Service:
 - (i) IC 1 must make a request to the Service Provider in writing ("**Project Services Request**") setting out:
 - (A) the proposed requirements of the Project Service;
 - (B) any performance measures applicable to the Project Service;
 - (C) whether IC 1 proposes to:
 - (I) pay the Direct Costs of implementing the Project Service;
or
 - (II)
 - (D) the level of detailed required for the Project Service Response to be prepared by the Service Provider;
 - (ii) within after receiving the Project Service Request, or within another period agreed by the parties, the Service Provider must respond in writing ("**Project Service Response**") to IC 1 specifying:

(A) if the Project Service Request specifies that IC 1 proposes to pay the Direct Costs of implementing the Project Service, the Direct Costs of the Service Provider of implementing the proposed Project Service;

(B)

(C) what impact the Service Provider's delivery of the Project Service will have on:

(I) the Services or Deliverables;

(II) the Scheme Principles;

(III) the Manuals;

(IV) the Service Provider's ability to perform its obligations under this Agreement (including its ability to meet the Service Standards); and

(V) this Agreement,

and the Project Service Response must be accompanied by a Project Plan; and

(iii) within _____ after receiving the Service Provider's Project Service Response and Project Plan, or such longer period as IC 1 requires, IC 1 should give the Service Provider a written notice accepting or rejecting, in principle, the Project Service Response. A rejection notice may provide comments on the changes required in order for IC 1 to accept the proposed changes.

(b) The parties acknowledge that it is the intent of this clause 15 (unless specified otherwise by IC 1 in the Project Service Request) that a common Project Services Order is intended to be entered into by IC 1 with each Other Service Provider, and as a consequence:

(i) IC 1 and the Service Provider will seek to negotiate a Project Services Order in good faith under subclause 15.4 to ensure that a Project Services Order on similar terms can be entered into with all Other Service Providers; and

- (ii) IC 1 may at any time withdraw or vary the Project Services Request in order to achieve this objective.

15.4 Project Services Order

- (a) If IC 1 accepts the Service Provider's Project Service Response in accordance with paragraph 15.3(a)(iii), IC 1 will issue a draft Project Services Order to the Service Provider, and:
 - (i) the Service Provider Principal and IC 1 Account Manager must, within of IC 1 issuing the draft Project Services Order, use their best endeavours (acting reasonably) to agree a Project Services Order (including any consequential variations to the Manuals);
 - (ii) where agreement is not reached in accordance with paragraph 15.4(a)(i), IC 1 will issue a final Project Services Order to the Service Provider, which is then binding on the Service Provider as a Project Services Order unless the Service Provider initiates a Contract Dispute within of receipt of the Project Services Order.
- (b) If a Contract Dispute is initiated by the Service Provider under paragraph 15.4(a)(ii):
 - (i)
 - (ii) IC 1 may withdraw a Project Services Order, and the parties will continue to comply with the obligations under the Agreement; and
 - (iii) if the Contract Dispute is resolved, the parties will execute a Project Services Order for the provision of the Project Services.
- (c) Where a Project Services Order is binding on the Service Provider in accordance with paragraph 15.4(a), or has been executed by the parties, then:
 - (i) the Project Services Order forms part of this Agreement; and
 - (ii) the Service Provider will provide the Project Services on the terms of this Agreement.

15.5 Urgent Project Services

- (a) The Service Provider:
- (i) acknowledges that special circumstances may give rise to Project Services being required from the Service Provider on an urgent basis and within a timeframe which does not allow IC 1 and the Service Provider to comply with the processes described in subclauses 15.3 and 15.4 ("**Urgent Project Services**"); and
 - (ii) agrees to perform its obligations in relation to Urgent Project Services with the utmost speed and efficiency.
- (b) If IC 1 requires the Service Provider to perform Urgent Project Services:
- (i) IC 1 should provide the Service Provider with a draft Project Service Order which identifies the draft Project Service Order as relating to an Urgent Project Service and sets out the proposed Urgent Project Services, including any performance measures applicable to the Urgent Project Service;
 - (ii) the Service Provider must immediately commence providing the Urgent Project Services in accordance with:
 - (A) the draft Project Services Order; and
 - (B) otherwise on the terms and conditions of this Agreement;
 - (iii) as soon as reasonably practicable after the issuing of an Project Services Order for Urgent Project Services:
 - (A) the Service Provider Principal and IC 1 Account Manager must use their best endeavours (acting reasonably) to agree a final Project Services Order for the Urgent Project Services (including any consequential variations to the Manuals), in which case the Service Provider must provide to IC 1 a Project Plan for the Urgent Project Service; and
 - (B) where agreement is not reached, IC 1 will issue a final Project Service Order for the Urgent Project Services to the Service Provider, which is then binding on the Service Provider as a Project Services Order unless the Service Provider initiates a Contract Dispute within _____ of receipt of the Project Services Order.

- (c) If a Contract Dispute is initiated by the Service Provider under paragraph 15.5(b)(iii)(B):
 - (i) the Project Services Order will continue to be binding on the parties and the Service Provider must continue to provide the Urgent Project Services; and
 - (ii) the parties will resolve the dispute in accordance with paragraph 15.4(b).

15.6 Verification of Costs for Project Services

Notwithstanding any other provision of this Agreement:

- (a) the parties agree that the amount payable for the performance of a Project Service or Urgent Project Service will not exceed the lesser of:
 - (i) the amount IC 1 reasonably believes would be the Direct Cost of an Other Service Provider that was operating at the Highest Standard; and
 - (ii) the actual Direct Cost provided by the Service Provider to perform the Project Service;
- (b) IC 1 will not pay any amount for any cost of performing a Project Service where the Direct Costs for performing the Project Services are determined in accordance with paragraph 15.6(a) the parties agree that those costs are deemed to be included in the Remuneration;
- (c) the Service Provider must demonstrate to IC 1's reasonable satisfaction how the Direct Cost of performing a Project Service or Urgent Project Service is calculated;
- (d) IC 1 may require that the actual Direct Cost to the Service Provider of performing a Project Service be determined by an independent auditor appointed or Approved by IC 1 having regard to Australian industry standards and the matters outlined in subclause 15.6(f);
- (e) the hourly rates charged by the Service Provider for Project Services must be in accordance with the hourly rates specified in Attachment 7.01 (*Project Plan Approved Maximum Rates*) of Schedule 7 (*Project Services Framework*); and
- (f) in calculating the Highest Standard for the purpose of subclause 15.6, the Service Provider agrees that:
 - (i) IC 1 may take into account the amounts that Other Service Providers state are their direct costs of performing the Project Services; and

- (ii) IC 1 may, but is not bound to, determine that the average of the direct costs of all Other Service Providers to which the Project Services apply (and if there are more than four Other Service Providers after removing the highest and lowest amounts) is one method of determining the direct costs of the Service Provider operating at the Highest Standard.

15.7 Cost of preparation

The Service Provider will not be entitled to charge for the cost of responding to a Project Service Request or a draft Project Services Order for an Urgent Project Service.

17. Changes to Manuals and Schedules

- (a) IC 1 or the Nominal Insurer may from time to time and at its absolute discretion:
 - (i) **("Update Notice"); or**

(ii)

("Notice of Change"),

which the Service Provider acknowledges and agrees will be binding on the Service Provider from the time of receipt.

(b) In no circumstances will IC 1 be required to pay any fee or compensation to the Service Provider in relation to the implementation of any Update Notice or Notice of Change.

(c) If the Service Provider disputes either:

(i) a Notice of Change; or

(ii) that an Update Notice should be a Notice of Change;

the Service Provider Principal must notify IC 1 in writing of a Contract Dispute within Update Notice or Notice of Change.

(d) The Service Provider must comply with the requirements of the relevant Update Notice or Notice of Change pending resolution of the Contract Dispute.

18. Changes to

(a) IC 1 may , by notice to the
Service Provider ("**Notice of Change**"), update the by:

(i) changing an existing ;

(ii) introducing a new ; or

(iii) withdrawing a ,

where, in IC 1's opinion, an update to the _____ is desirable in order to achieve or further any of the Scheme Principles.

- (b) The Notice of Change will be given to the Service Provider in writing _____, unless a shorter period is agreed between the parties.
- (c) The Service Provider acknowledges and agrees that it will be bound by the provisions or changes to any _____ from the implementation date specified in the Notice of Change.
- (d) Subject to paragraph 18(f), if the Service Provider disputes a Notice of Change, the Service Provider Principal must notify IC 1 in writing of a Contract Dispute within _____ the Notice of Change.
- (e) The Service Provider must comply with the requirements of the updated _____ specified in the Notice of Change pending resolution of the Contract Dispute.
- (f) The Service Provider acknowledges and agrees that it is not permitted to initiate a Contract Dispute in respect of Notice of Change which relates to:
 - (i) a withdrawal of a _____ ;
 - (ii) the creation of a _____ which measures, or makes the Service Provider more accountable for, obligations which the Service Provider owes pursuant to this Agreement; or
 - (iii) the method of measuring the performance of the Service Provider in providing the Services or performing its obligations under this Agreement.

19. Changes to Workers Compensation Guidelines

under no circumstances will IC 1 be required to pay any fee or compensation to the Service Provider in relation to the implementation of any new or updated Workers Compensation Guidelines issued during the Period of Services.

SECTION C - PERSONNEL

20. Personnel

20.1 Service Provider Responsible for its Personnel

The Service Provider is responsible for all the planning, scheduling, supervision, training, and safety of its Personnel that are engaged in providing the Services.

20.2 Compliance by Service Provider Personnel

The Service Provider must ensure that its Personnel must comply with:

- (a) any Direction;
- (b) the requirements of Schedule 1 (Code of Conduct and Customer Engagement);
- (c) any Decision Rights or Knowledge Articles;
- (d) any policy of IC 1, icare, the Nominal Insurer or SIRA which is relevant to the provision of the Services; and
- (e) the Law.

20.3 Removal of Personnel

If the IC 1 Principal reasonably requires the removal of any individual who is an employee or contractor of:

- (a) the Service Provider or its Personnel; or
- (b) any Service Company or its Personnel,

from the provision of Services, the Service Provider must immediately (unless otherwise Directed), remove or procure the removal of that individual from the provision of the Services.

20.4 Re-instatement Only with IC 1 Approval

If an individual has been removed at the request of IC 1 under subclause 20.3, such individual can only return to the provision of Services with Approval of the IC 1 Principal, which it may withhold in its absolute discretion.

20.5 No Obligation to Give Reasons or Compensation

IC 1 is not required to give any reasons, nor is it required to pay any compensation for any act or omission under subclauses 20.3 or 20.4.

21. Key Personnel

21.1 Requirements for Key Personnel

- (a) The Service Provider's Key Personnel must:
 - (i) be Approved by IC 1, with such Approval not to be unreasonably withheld;
 - (ii) have completed a police/criminal history check prior to commencing work in respect of the Services, evidence of which will be provided to IC 1 and
 - (iii) be available to attend, or participate in, meetings at a location, or by such technological means, as reasonably required by IC 1 from time to time.
- (b) In determining whether to Approve the appointment of Key Personnel, IC 1 may have regard to the disqualification register maintained by APRA and the banned and disqualified persons register maintained by ASIC, or any similar register maintained by these or any successor regulators, among other matters.

21.2 Availability of Key Personnel

Each party must ensure that its Key Personnel are available to the other in connection with the performance of the relevant Services promptly after any request.

21.3 No Unreasonable Diversion of Key Personnel

The Service Provider must ensure that its Key Personnel are not unreasonably diverted by the Service Provider or Service Company to attend to any other clients or to the Service Provider's or Service Company's internal requirements.

21.4 Absence of Key Personnel

The Service Provider must obtain the prior Approval of IC 1 if any of its Key Personnel will be absent from providing the Services IC 1 will not refuse Approval unreasonably.

21.5 Replacement of Absent Key Personnel

Where any of the Service Provider's Key Personnel are absent from providing the Services for more than then the Service Provider must, at its own cost,

provide a replacement (who is substantively of equivalent or more senior status than the absent Key Personnel) that is acceptable to IC 1.

21.6 Replacement of Key Personnel at Meetings

Where any of the Service Provider's Key Personnel who are required or expected to attend or participate in meetings with IC 1 are unavailable to attend or participate in such a meeting, the Service Provider must, at its own cost, procure that the meeting is attended by a replacement person who:

- (a) is substantively of equivalent or more senior status than;
- (b) holds substantively equivalent delegations from the Service Provider to; and
- (c) holds substantively equivalent qualifications, experience and, where relevant, licences, to,

the unavailable Key Personnel.

21.7 Replacement of Service Provider Key Personnel

The Service Provider must not remove or replace any of its Key Personnel without IC 1's prior Approval unless:

- (a) the relevant Key Personnel has resigned, is injured, is permanently disabled or subject to maternity or paternity leave;
- (b) there is evidence which the Service Provider certifies that it believes is sufficient at Law to demonstrate gross misbehaviour of the Key Personnel;
- (c) the Service Provider certifies that it has proper grounds to terminate the contract of employment of the Key Personnel; or
- (d) the Service Provider has notified IC 1 of a suitable replacement for the Key Personnel (such notice to be given at least
and IC 1 has Approved the replacement. IC 1 will not
refuse Approval unreasonably, except during the Disengagement Period,
when subclause 53.4 will prevail.

21.8 Information Regarding Proposed Replacement of Key Personnel

If IC 1 requests, the Service Provider must provide IC 1 with such information as IC 1 reasonably requires concerning any proposed replacement of any Key Personnel.

21.9 Efforts to Retain Key Personnel as Employees

- (a) The Service Provider must use every reasonable effort to retain its Key Personnel as employees.
- (b) If Key Personnel are employees of a Service Company, then the Service Provider must ensure that the Service Company uses every reasonable effort to retain the employment of such employees.

21.10 Designation of Key Personnel

Where IC 1 reasonably requires a particular individual to perform particular tasks or roles, IC 1 may issue a Direction to designate any of the Service Provider's other Personnel engaged in performing the Services as Key Personnel.

21.11 Evidence of Qualifications

Within _____ the Service Provider must provide to the IC 1 Principal evidence of the qualifications, competencies and permits held, and training completed, by any of the Key Personnel providing the Services.

22. Principals

22.2 Requirements for Service Provider Principal

- (a) The Service Provider Principal must:
 - (i) be Approved by IC 1, with such Approval not to be unreasonably withheld; and
 - (ii) be available to attend or participate in meetings at a location, or by such technological means, as reasonably required by IC 1 from time to time.

- (b) In determining whether to Approve the appointment of a Principal, IC 1 may have regard to the disqualification register maintained by APRA and the banned and disqualified persons register maintained by ASIC, or any similar register maintained by these or any successor regulators, among other matters.

22.3 Authority of Service Provider Principal

The Service Provider Principal is authorised and empowered to act on behalf of and bind the Service Provider in all matters arising between the parties and for the purposes of any act, matter or thing to be done by the Service Provider arising out of or in connection with this Agreement.

22.4 Availability of Service Provider Principal

The Service Provider Principal must be available at all reasonable times for consultation with IC 1 in connection with any matter arising out of or in connection with this Agreement.

22.5 Service Provider Deemed to Have Knowledge of Principal

Matters within the knowledge of the Service Provider Principal will be deemed to be within the knowledge of the Service Provider.

22.6 IC 1 Principal

IC 1 must ensure there is an IC 1 Principal appointed at all times. IC 1 must notify the Service Provider of a change to its Principal, in accordance with clause 56.

22.7 IC 1 Principal Agent of IC 1

The IC 1 Principal is the agent of IC 1, for the purposes of any act, matter or thing to be done by IC 1 arising out of or in connection with this Agreement.

22.8 Delegation by the IC 1 Principal

The IC 1 Principal may delegate any powers, duties and functions under this Agreement to other employees or agents of IC 1. IC 1 must keep the Service Provider advised of the identities and delegated authorities of such persons. The Service Provider acknowledges that there may be more than one delegation by the IC 1 Principal.

22.9 Compliance with Requirements or Instructions of Delegates

The Service Provider must comply with any requirements, instructions or the like, given to it by any of the IC 1 Principal's delegates, in accordance with their delegated authorities, as if there were requirements or instructions given to it by the IC 1 Principal.

23. Service Provider Principal, IC 1 Account Manager and Governance Forums

23.3 Service Provider Principal

The Service Provider Principal will manage the operation of this Agreement for the Service Provider and to represent the Service Provider in all day to day dealings with IC 1.

23.4 Role of Service Provider Principal

The Service Provider Principal will:

- (a) be the primary point of contact for IC 1 for the purposes of this Agreement;
- (b)
- (c) be a full time employee of the Service Provider or Service Company of the Service Provider; and
- (d) have a strong working knowledge of the Service Provider's business operations and the Scheme Principles and how they interrelate.

23.5 Meetings of Service Provider Principal and IC 1 Account Manager

The Service Provider Principal and IC 1 Account Manager will meet at the times and locations agreed by the parties, unless otherwise Directed by IC 1.

SECTION D - INTELLECTUAL PROPERTY AND DATA PROTECTION

24. Intellectual Property Rights

24.1 Records and Insurance Records

- (a) The parties acknowledge and agree that the Records and Insurance Records are the property of the Nominal Insurer, and will, on creation, vest in the Nominal Insurer.
- (b) To the extent that the Service Provider needs to use any of the Records or Insurance Records for the purpose of performing its obligations under this Agreement, the Nominal Insurer grants to the Service Provider, subject to any Direction by the Nominal Insurer and the terms of this Agreement, a world-wide, royalty-free and licence fee-free, non-exclusive, non-transferable licence (including the right to sublicense) to use, copy, modify, reproduce, adapt and communicate the Records and Insurance Records solely for the purpose of providing the Services for the Period of Services.

24.2 IC 1 ownership of Foreground IP and IC 1 IP

- (a) Nothing in this Agreement affects the ownership of IC 1 IP or Nominal Insurer IP.
- (b) All Intellectual Property Rights in Foreground IP will, on creation, vest in IC 1.

24.3 Intellectual Property Licences to Service Provider

- (a) Unless otherwise agreed in a Project Services Order and subject to paragraph 24.3(c), to the extent that the Service Provider needs to use any of the:
 - (i) IC 1 IP; or
 - (ii) Foreground IP,

for the purpose of performing its obligations under this Agreement, IC 1 grants to the Service Provider, subject to any Direction by IC 1 and the terms of this Agreement, a world-wide, royalty-free and licence fee-free, non-exclusive, non-transferable licence (including the right to sublicense) to use, copy, modify and, subject to the Service Provider complying with clauses 45 and 46, communicate IC 1 IP and/or Foreground IP solely for the purpose of providing the Services for the Period of Services.

- (b) Unless otherwise agreed in a Project Services Order and subject to paragraph 24.3(c), to the extent that the Service Provider needs to use any of the Nominal Insurer IP for the purpose of performing its obligations under this Agreement, the Nominal Insurer grants to the Service Provider, subject to any Direction by IC 1 or the Nominal Insurer and the terms of this Agreement, a world-wide, royalty-free and licence fee-free, non-exclusive, non-transferable licence (including the right to sublicense) to use, copy, modify and, subject to the Service Provider complying with clauses 45 and 46, communicate Nominal Insurer IP solely for the purpose of providing the Services for the Period of Services.
- (c) Unless otherwise agreed by the parties under a Project Services Order, where Developed IP is created by the Service Provider under a Project Service in circumstances where it is a condition of the Project Service that the Service Provider does not receive payment for that Project Service, IC 1 grants to the Service Provider a perpetual, royalty-free and licence fee-free, non-exclusive, non-transferable licence to use, copy, reproduce, adapt and develop the Developed IP for the Internal Business Purposes.

24.4 Service Provider Licence to IC 1 and the Nominal Insurer

- (a) The Service Provider grants to, or must obtain for, icare, IC 1, the Nominal Insurer and any nominee of IC 1 (including any other person who exercises of any of the functions of IC 1), an irrevocable, perpetual, world-wide, royalty-free and licence fee-free, non-exclusive licence (including the right to sublicense) to use, reproduce, adapt, modify and communicate the Service Provider IP and Third Party IP to the extent necessary for IC 1 and the Nominal Insurer to receive the full benefit of its rights under this Agreement during the term of this Agreement.
- (b) The Service Provider must give IC 1 and the Nominal Insurer written notice of all Service Provider IP and Third Party IP that is to be used in connection with the performance of the Service Provider's obligations under this Agreement, prior to using it to perform the Services.
- (c) The Service Provider must obtain all necessary copyright and other Intellectual Property Rights permissions before including any Service Provider IP or Third Party IP in the Foreground IP or using Third Party IP as part of the Service.
- (d) If the Service Provider cannot obtain the Third Party IP licences as described in paragraphs 24.4(a) or 24.4(c) the Service Provider must:

- (i) notify IC 1 of the best alternative licence terms for that Third Party IP and not use that Third Party IP unless IC 1 provides written consent to those terms; and
- (ii) if IC 1 does not consent under paragraph 24.4(d)(i), notify IC 1 of any comparable Third Party IP and comply with its obligations under this subclause 24.4 in respect of comparable Third Party IP.
- (e) Except as specifically provided in this Agreement, nothing in this Agreement transfers to IC 1 any ownership rights in the Service Provider IP or Third Party IP.

24.5 Intellectual Property Register

IC 1 will, during the Period of Services, maintain an Intellectual Property Rights register for all Developed IP.

24.6 Moral Rights

- (a) To the extent permitted by Law, and for the benefit of IC 1, the Nominal Insurer and any of their Related Bodies Corporate, the Service Provider warrants that:
 - (i) the author (including each of the Service Provider's Personnel) of any Foreground IP or Created Data, has given or will give a written consent in a form acceptable to IC 1 to the Specified Acts which is given directly or indirectly for the benefit of IC 1, the Nominal Insurer and any of their Related Bodies Corporate;
 - (ii) the author of any Service Provider IP or Created Data has given or will give a written consent to the Specified Acts (whether occurring before or after the consent is given) which is given directly or indirectly for the benefit of IC 1, the Nominal Insurer and any of their Related Bodies Corporate in relation to such Service Provider IP being used, reproduced, adapted and exploited in conjunction with the other Foreground IP; and
 - (iii) it has or will use its best endeavours to obtain a genuine written consent from the holder of the Moral Rights in the Third Party IP, even if its use would otherwise be an infringement of their Moral Rights.
- (b) In this clause, Specified Acts means:
 - (i) failure to identify the authorship of any Foreground IP or any content in the Foreground IP or Created Data (including without limitation literary,

dramatic, artistic works and cinematograph films within the meaning of the *Copyright Act 1968* (Cth));

- (ii) materially altering the style, format, colours, content or layout of the Foreground IP or Created Data and dealing in any way with the altered Foreground IP or Created Data;
- (iii) reproducing, communicating, adapting, publishing or exhibiting any Foreground IP or Created Data without attributing the authorship; and
- (iv) adding any additional content or information to the Foreground IP or Created Data.

24.7 Trademarks

- (a) From the Commencement Date, IC 1 grants to the Service Provider, a non-exclusive, non-transferable and royalty free licence (including the right to sub-license) to use IC 1's logo for the Period of Services and for such further period as IC 1 may Approve, solely for the purposes of performing the Services.
- (b) From the Commencement Date, the Nominal Insurer and icare grant to the Service Provider, a non-exclusive, non-transferable and royalty free licence (including the right to sub-license) to use the Nominal Insurer's and icare's logo for the Period of Services and for such further period as the Nominal Insurer or icare may Approve, solely for the purposes of performing the Services.

24.8 IP Deed

The Service Provider must:

- (a) if requested by IC 1, obtain a signed IP Deed from:
 - (i) a Subcontractor; or
 - (ii) a Service Company; and
- (b) promptly comply with IC 1's Directions in respect of any action required to enforce such IP Deed, at the Service Provider's own expense.

24.9 Approval of Format of Documents

The Service Provider will seek individual Approval of IC 1 for the format of any letterhead, cheques, forms and standard Documentation used in relation to the Services, unless the format is described in the Manuals.

24.10 Service Provider Warranty

- (a) The Service Provider warrants that:
 - (i) the Service Provider IP, Foreground IP, Created Data and IC 1's and the Nominal Insurer's use of the Service Provider IP, Foreground IP and Created Data will not infringe the Intellectual Property Rights of any person;
 - (ii) it has the necessary rights to vest the Intellectual Property Rights and grant the licences as provided for in this clause 24; and
 - (iii) anything done by the Service Provider in the course of the provision of the Services (other than in respect of IC 1 IP and Nominal Insurer IP) will not infringe the Intellectual Property Rights of any person.
- (b) In relation to Third Party IP, the Service Provider must ensure that IC 1 and the Nominal Insurer each receive the benefit of all third party warranties, including a warranty that the use of that third party's Third Party IP will not infringe the Intellectual Property Rights of any person.
- (c) If the Service Provider is unable to obtain for, or pass through to, IC 1 or the Nominal Insurer the third party warranty referred to in paragraph 24.10(b), the Service Provider must:
 - (i) promptly submit evidence to IC 1 demonstrating that it was unable to obtain for, or pass through to, IC 1 or the Nominal Insurer the third party warranty from that third party; and
 - (ii) not use the Third Party IP unless IC 1 provides written consent permitting it to do so.

24.11 No Lien over IC 1's or the Nominal Insurer's Property

The Service Provider does not have, and must not permit, the creation of any general or particular security interest or other form of encumbrance over:

- (a) IC 1's property, including IC 1's Confidential Information, IC 1 IP or Foreground IP; or
- (b) the Nominal Insurer's property, including the Nominal Insurer's Confidential Information, Nominal Insurer IP or the Records or Insurance Records,

whether for the Service Provider's benefit or for the benefit of any third party.

24.12 Report to be Issued to Third Parties

The Service Provider acknowledges and agrees that IC 1 will, from time to time, issue to third parties (including Other Service Providers and the public), reports consisting of

Records, Insurance Records and any other information, including comparative performance data relating to (and identifying) the Service Provider, Scheme Outcomes and/or the Scheme Principles. IC 1 may designate the Service Provider as being the source of such items, where IC 1, acting reasonably, considers it appropriate.

24.13 Delivery of Foreground IP and IC 1 IP

On the expiration or earlier termination of this Agreement or on such earlier date as may be specified by IC 1, the Service Provider must deliver to the Nominal Insurer a complete copy of:

- (a) all Foreground IP, Records, Insurance Records, IC 1 IP and Nominal Insurer IP;
and
- (b) all Service Provider IP and Third Party IP licensed to IC 1 under this Agreement,

or deal with it as otherwise Directed by IC 1 or the Nominal Insurer.

25. Data Protection Obligations

25.1 Use of Records and Insurance Records

The Service Provider must not (and must ensure that its Personnel do not):

- (a) use Records or Insurance Records held by the Service Provider, or which the Service Provider has access to, other than for the purposes of fulfilling its obligations under this Agreement;
- (b) allow any person, unless authorised by IC 1 or by this Agreement, to access or use Records or Insurance Records;
- (c) purport to sell, let for hire, assign rights in or otherwise dispose of Records or Insurance Records;
- (d) purport to commercially exploit Records or Insurance Records (or allow any Subcontractor or Subcontractor Personnel to do so); or
- (e) alter Records or Insurance Records in any way, other than in providing the Services as required under this Agreement.

25.2 Safeguarding data

The Service Provider must:

- (a) establish and maintain safeguards against the destruction, unauthorised disclosure, loss or alteration of any information, Records or Insurance Records in the possession or control of the Service Provider that:
 - (i) are no less rigorous than those referred to in the General Manual, or as otherwise Directed by IC 1 from time to time;
 - (ii) are no less rigorous than the safeguards that can be reasonably expected in well run projects; and
 - (iii) comply with all Laws applicable to the Service Provider's use and custody of such items; and
- (b) implement and operate appropriate backup procedures, to ensure that IC 1 has unhindered, immediate and independent access to the items set out in paragraph 25.2(a) above at all times during the Period of Services.

25.3 Removal of Records and Insurance Records

The Service Provider must not, and must ensure that the Service Provider's Personnel do not, take, transfer or transmit Records and Insurance Records or allow Records and Insurance Records to be taken, transferred, transmitted or accessed outside of Australia, without IC 1's prior written consent.

25.4 Audit

Without prejudice to clause 48, the Service Provider agrees that IC 1 or IC 1's nominee may, at any time, with reasonable notice, conduct a security audit of the Service Provider's compliance with this clause 25.

25.5 Subcontracts

The Service Provider must ensure that any contract it enters with a Subcontractor or Service Company under this Agreement contains provisions to ensure that the Subcontractor or Service Company has the same awareness and obligations as the Service Provider has under clauses 25.1 to 25.5, including this requirement in relation to subcontracts.

SECTION E - FINANCIAL ARRANGEMENTS

26. Financial Arrangements

26.1 Payment of Services

Subject to subclause 26.3 and clause 52, for each Year (or part of a Year) in the Period of Services, IC 1 must pay to the Service Provider the following Remuneration in accordance with the provisions in this Agreement:

- (a) the fee of the Services, including:
 - (i) the Annual Operating Fee;
 - (ii) the Annual Service Fee;
 - (iii) the Annual Outcome Fee;
- (b) any amounts payable for a Project Service in accordance with clause 15; and
- (c) any other amount payable as set out in the Manuals.

26.2 Payment for Services in any Extended Period

If IC 1 extends the Period of Services under subclause 4.2, Remuneration will be agreed between the parties.

26.3 Withholding Payment for Services

If IC 1 disputes, acting reasonably, that the Services have been fully performed so as to meet the requirements of this Agreement, it will pay for the part of the Services that have been fully performed and withhold the payments that relate to the disputed performance. Either party may refer the matter to be resolved under the dispute resolution procedure in clause 49.

26.4 Only Amounts Payable as Remuneration

The amounts payable under subclause 26.1 are the only amounts payable to the Service Provider as Remuneration for the Service Provider performing all of the obligations under this Agreement in respect of the Services during the Period of Services.

26.5 Manage Cash Forecasting

The Service Provider must assist IC 1 as requested to determine the impact of the cash inflows and payments for the Scheme.

26.6 Undertake Financial Management Reporting

The Service Provider must, at a minimum, ensure that it has a financial management system that completely, accurately and in a timely manner records transactions, assets and liabilities managed on behalf of IC 1, and where required, interfaces with the Service Provider's Claims system, and meets or exceeds the requirements set out in Schedule 3 (*Banking and Financial Management*).

26.7 Interest

- (a) Interest will be payable by IC 1 in respect of a delay in the assessment or payment of any amounts due to the Service Provider, including expenses, Remuneration or other amount payable under this Agreement, where the delay results from:
 - (i) a delay in receiving data from an Other Service Provider; or
 - (ii) a delay in calculating the data by IC 1.
- (b) Interest will be payable at the reference lending rate as expressed as a percentage per annum charged by Westpac Banking Corporation from time to time as published in the Financial Review failing which it will be a similar rate selected by IC 1 from a major Australian trading bank.

26.8 Remuneration May be Recalculated

IC 1 reserves the right to have any payment of Remuneration recalculated at any time prior to the sixth anniversary of the termination or expiry of this Agreement if there are errors in the data on which the calculation is based, if those errors were caused or contributed to by the Service Provider.

26.9 Payments by EFT

All payments made by IC 1 under this Agreement will be made by electronic funds transfer into an Australian bank account nominated by the Service Provider.

26.11 IC 1 Payments

- (a) The Service Provider acknowledges that any payment obligations of IC 1 under this Agreement may be satisfied by IC 1 procuring payment by another party (including by the Nominal Insurer).
- (b) IC 1 may require any payments required to be made by the Service Provider to IC 1 (including any payment obligations arising under clause 26.10(c)) to be made to the Nominal Insurer or its nominee.

27. Provider Payments

27.1 Provider Payments to be Paid by Service Provider

The Service Provider will pay, on behalf of IC 1, all Provider Payments for which there is a Qualifying Invoice in accordance with this Agreement.

27.2 Qualifying invoice

- (a) A Qualifying Invoice means a Tax Invoice for any of the following services provided by a Third Party Service Provider, where that invoice meets the requirements set out in paragraph 27.2(b):
 - (i) services that were acquired by the Service Provider acting as agent for IC 1;
 - (ii) services that were acquired by the Service Provider within the scope of its authority under this Agreement; or
 - (iii) services that were acquired by a Worker exercising his or her rights at Law.

- (b) In all cases, a Qualifying Invoice must meet all of the following requirements:
- (i) it is for services that have been completed in accordance with the obligations placed on the Third Party Service Provider;
 - (ii) if it is for a Benefit or entitlement, then that amount must be properly claimable;
 - (iii) it is for an amount that is due;
 - (iv) it is not a payment for services completed by a Third Party Service Provider that has already been paid for;
 - (v) it is properly calculated in accordance with any Law;
 - (vi) it is supported by a Tax Invoice (unless Law does not require a Tax Invoice in order to be reimbursed) addressed to the Service Provider in its capacity as agent for IC 1, which includes:
 - (A) the Nominal Insurer's ABN; and
 - (B) the 3 digit extension to indicate the GST branch of IC 1 managed by the Service Provider;
 - (vii) it is supported by any Documentation required by and otherwise meets all requirements set out in the Manuals; and
 - (viii) it does not include any amount that is in excess of an amount originally quoted by the Third Party Service Provider for the service, or is for default interest or other cost associated with late or non-payment of the invoice.

27.3 Payment of Qualifying Invoices

The Service Provider will pay Qualifying Invoices by drawing on the Payment Account within the timeframes set out in the Schedules and the Manuals.

27.4 Reimbursement of Payments for Non Qualifying Invoices

Following a Demand from IC 1, the Service Provider must reimburse IC 1 for any payment made by IC 1 for which there was not a Qualifying Invoice.

28. Payments of Benefits and Entitlements

28.1 Payment to Employers, Workers and Third Party Service Providers

The Service Provider will pay to the relevant Employer, Worker or Third Party Service Provider their Benefits and entitlements on behalf of IC 1, in accordance with this Agreement and the Law.

28.2 Reimbursements of Benefits Not Properly Paid

Following a Demand from IC 1, the Service Provider must immediately reimburse IC 1 for any payment of any Benefit which was not paid in accordance with the requirements of the Agreement or the relevant Law, even if the Service Provider is unable to immediately obtain repayment of the Benefit from the relevant Employer, Worker or Third Party Service Provider.

28.3 Adjustment of Reimbursements

If the Service Provider has reimbursed IC 1 under subclause 28.2, and subsequently obtains the correct payment as agent for IC 1, then, by providing written notice to IC 1, it may reconcile the amounts paid and remitted and require IC 1 to pay any overpayment back to the Service Provider.

28.4 Reasonable Diligence

Nothing in this clause 28 is included to make the Service Provider liable for errors in information provided to the Service Provider which the Service Provider could not detect using reasonable diligence.

29. Collection of Moneys Due to IC 1

The Service Provider will promptly collect any moneys from Employers and any other person from whom moneys are due to the Nominal Insurer or IC 1 as a result of the provision of the Services, including:

- (a) any amount repaid by an Employer under section 160 of the 1987 Act;
- (b) any money authorised to be paid into the WCIF under the 1987 Act, or regulation, as Directed by IC 1;
- (c) any money recovered under section 151Z of the 1987 Act; and
- (d) any applicable GST.

30. Basis for Holding Moneys

30.1 Moneys Held as Bailee

The Service Provider holds any moneys, including cheque, negotiable instruments or other form of payment, received from Workers, Employers, Third Party Service Providers, any Agency or any other person as bailee only and any such moneys paid into or received into an account including a bank account which is not the Revenue Account are held on trust by the Service Provider for the benefit of IC 1.

30.2 No Security Interests or Encumbrances

The Service Provider does not have, and must not permit the creation of, any general or particular security interest or other form of encumbrance or any trust or other interest over any moneys, including cheques or other form of payment, that the Service Provider received as agent for IC 1.

30.3 Obligations Under the 1987 Act

The Service Provider acknowledges and agrees that the Nominal Insurer's obligation to pay any moneys to the Service Provider or any other person is subject to:

- (a) section 154B (5) of the 1987 Act; and
- (b) section 154E (2) of the 1987 Act,

and any other Law.

30.4 Remission of Moneys

The Service Provider must remit any moneys received, including cheques or other forms of payment to the Revenue Account and in accordance with Schedule 3 (*Banking and Financial Management*), unless otherwise stated in the Agreement.

30.5 Procedures in Respect of handling Moneys

The Service Provider must follow the procedures in the Agreement in respect of all payments, the handling of moneys, including cheques and other forms of payment, and internal controls in respect of moneys and its systems that account for or process payments.

31. Banking Arrangements

31.1 Use of Approved Banking Facilities

The Service Provider must only use the banking facilities Approved by IC 1 or as set out in the Manuals.

32. GST

32.1 Amounts in this Agreement are GST Exclusive

The amounts set out in this Agreement are exclusive of GST, unless specifically stated to be inclusive of GST.

32.2 Service Provider to Comply with GST Requirements

The Service Provider must perform its obligations relating to GST and any other tax, duty or charge that are set out in this Agreement, (including in Schedule 3 (*Banking and Financial Management*) and the Manuals), including those obligations in respect of payment of Third Party Service Providers. In performing its obligations under this Agreement in relation to GST and any other tax, duty or charge the Service Provider must comply with the requirements and timeframes prescribed by Law.

32.3 GST and other Taxes Referenced in this Agreement

For the purposes of this Agreement:

- (a) “**GST**” and any other terms used in GST Law that are capitalised in this Agreement have the meaning given to those terms by the GST Law, unless the context provides otherwise;
- (b) any reference in this subclause 32.3 to GST payable by a party includes any GST payable by the representative member of any GST group of which that party is a member;
- (c) if the GST Law treats part of a supply as a separate supply for the purpose of determining whether GST is payable on that part of the supply or for the purpose of determining the period to which that part of the supply will be attributable, such part of the supply will be treated as a separate supply for the purpose of this subclause 32.3, and this Agreement;
- (d) “**Payment Summary**” has the same meaning as given to this term in section 16-170(1) of Schedule 1 of the *Taxation Administration Act 1953* (Cth);
- (e) Subject to subclause 33.5, If GST is or becomes payable by the supplier on a supply made under or in connection with this Agreement, an additional amount (“**Additional Amount**”) is payable by the party providing consideration for the supply (“**Recipient**”) equal to the amount of GST payable on that supply; and
- (f) the Additional Amount payable under paragraph 32.3(e) is payable at the same time, to the same extent and in the same manner as the consideration for the supply, and the supplier must provide the Recipient with a Tax Invoice as a precondition of payment of the Additional Amount.

32.4 GST Refunds and Credits

Unless specifically provided for in this Agreement, if for any reason (including the occurrence of an Adjustment Event) the amount of GST payable on a supply (taking into account any decreasing or increasing Adjustments in relation to the supply) varies from the Additional Amount payable by the Recipient under paragraph 32.3(e):

- (a) the supplier must provide a refund or credit to the Recipient, or the Recipient must pay a further amount to the supplier, as appropriate;
- (b) the refund, credit or further amount (as the case may be) will be calculated by the supplier in accordance with the GST Law; and
- (c) the supplier must notify the Recipient of the refund, credit or further amount after becoming aware of the variation to the amount of GST payable. If there is an Adjustment Event in relation to the supply, the requirement for the supplier to notify the Recipient will be satisfied by the supplier issuing to the Recipient an Adjustment Note after becoming aware of the occurrence of the Adjustment Event.

32.5 Allowance for Input Tax Credits

Notwithstanding any other provision in this Agreement, if an amount payable under or in connection with this Agreement (whether by way of reimbursement, indemnity or otherwise) is calculated by reference to an amount incurred by a party, whether by way of cost, expense, outlay, disbursement or otherwise ("**Amount Incurred**"), the amount payable must be reduced by the amount of any input tax credit to which that party is entitled in respect of that Amount Incurred.

32.6 Service Provider to Comply with Tax Obligations of IC 1

The Service Provider will comply with any and all tax obligations of IC 1, on behalf of IC 1, in respect of the Service Provider's files, including as set out in Schedule 3 (*Banking and Financial Management*) and the Manuals.

32.7 Particular Tax Obligations of IC 1

Without limiting subclause 32.6, the tax obligations referred to in that Subclause include:

- (a) obtaining, issuing and retaining proper and correct Tax Invoices in respect of all relevant transactions;
- (b) deducting Pay As You Go ("**PAYG**") tax from payments to Workers and others (where appropriate);
- (c) reporting these deductions to the Australian Taxation Office, as required by taxation laws;
- (d) drawing on the Payment Account of the amount of PAYG tax due and remitting that amount to the Australian Tax Office;
- (e) providing Payment Summaries, as required by taxation laws;
- (f) such other obligations as IC 1 may Direct the Service Provider to carry out on its behalf during the Period of Services; and
- (g) providing other information relating to taxation matters as IC 1 may reasonably require.

32.8 Pass-through of Additional Taxes, Duties or Levies

Notwithstanding subclause 57.14, where there are any changes to any relevant taxation laws during the Period of Services, the Service Provider may pass-through any additional taxes, duties or levies to IC 1.

33. Invoices

33.1 Tax Invoices to be Issued by Service Provider

IC 1 will calculate any amount due to the Service Provider under subclause 26.1. IC 1 will use every effort to provide such calculations in which the payment became due. The Service Provider will then promptly provide a Tax Invoice for those amounts. The Service Provider will provide a Tax Invoice for any other amount payable to the Service Provider within

All Tax Invoices must be itemised to the level of detail set out in the Manuals.

33.2 Payment of Tax Invoice

- (a) IC 1 will, subject to subclause 30.3, pay the Tax Invoice within 10 Business Days of receipt of a correctly rendered Tax Invoice that sets out:
 - (i) the amount to be paid by IC 1, together with any substantiating material required; and
 - (ii) such other information as IC 1 reasonably requires.

- (b) Invoices should be submitted to the email address for IC 1 set out in subclause 56.2.

33.4 Recipient created tax invoices

- (a) This clause applies in respect of Specified Supplies made by the Service Provider.
- (b) IC 1 can issue recipient created tax invoices in respect of the Specified Supplies.
- (c) The Service Provider must not issue tax invoices in respect of the Specified Supplies.
- (d) The Service Provider acknowledges that it is registered for GST and that it will notify IC 1 if it ceases to be registered.
- (e) IC 1 acknowledges that it is registered for GST and that it will notify the Service Provider if it ceases to be registered for GST or if it ceases to satisfy any of the requirements of Classes of Recipient Created Tax Invoice Determination (No 1) 2000 under the GST Act.

33.5 Tax Invoices for Penalty Repayments

A penalty referred to in subclause 38.3, if imposed, must be invoiced by IC 1 on a separate Tax Invoice and is payable by the Service Provider of the Tax Invoice.

34. Set-Off

34.1 Amounts which May Be Deducted as a Set off

IC 1 may deduct from the Financial Security, the Remuneration and/or any amount payable by IC 1 to the Service Provider any amount which:

- (a) the Service Provider must reimburse IC 1 or against which it indemnifies IC 1;
- (b) the Service Provider must reimburse the Nominal Insurer or against which it indemnifies the Nominal Insurer (including any indemnity arising under clause 38.3);
- (c) the Service Provider owes to IC 1;
- (d) IC 1 has paid (or has procured to be paid) on the Service Provider's behalf; or
- (e) is a liability that IC 1 believes is payable by the Service Provider to IC 1,

whether under this Agreement or otherwise.

34.2 Recovery after Set off

Nothing in this clause 34 will affect the right of IC 1 to recover from the Service Provider the whole of the debt of any balance that remains owing after any deduction or offset including the right to recover such debt from the Financial Security.

34.3 Expenditure of Moneys Due to Service Provider to Rectify Breach of Agreement

IC 1 will be entitled to expend any moneys due to the Service Provider to make good any breach by the Service Provider of any provision of this Agreement and deduct such amounts from either any amount that may be payable to the Service Provider under this Agreement, or the Financial Security, provided that:

- (a) IC 1 will not be entitled to expend any moneys unless IC 1 has first given the Service Provider (unless otherwise provided in this Agreement) notice of the breach and of its intention to make the expenditure; and
- (b) the Service Provider has not remedied the breach within that period.

SECTION F - RISK MANAGEMENT

35. Operational Risk Management

35.1 Business Continuity and Disaster Recovery Planning

- (a) The Service Provider must implement, comply with, maintain, test and execute the Business Continuity Plan throughout the Period of Services.
- (b) The Service Provider must conduct annual business continuity and disaster recovery testing and report to IC 1 on the results of those tests.
- (c) The Service Provider must support any IC 1 business continuity and disaster recovery plans that IC 1 provides to the Service Provider, and execute those plans.
- (d) The Service Provider Business Continuity Plan must be updated by the Service Provider at least annually.
- (e) The Service Provider must, a request by IC 1, provide to IC 1 those parts of the Business Continuity Plan that are relevant to the Services.
- (f) The Service Provider will be responsible for the following matters:
 - (i) any fees charged by third party business continuity or disaster recovery suppliers in relation to the Business Continuity Plan; and
 - (ii) any other costs, charges, fees or expenses relating to business continuity and disaster recovery including due to the requirements for any upgrade, supplement, modification or replacement in relation to

any Equipment, systems, data or processes used by the Service Provider to provide the Services.

35.2 Risk Management, Fraud Identification and Information Security

- (a) The Service Provider must prepare, implement, test and execute risk management policies, the Fraud Identification and Management Model and information security management in a form and manner which is effective and must comply with the requirements of this Agreement.
- (b) The Service Provider must conduct annual testing of risk management policies, the Fraud Identification and Management Model and information security management and report to IC 1 on the results of those tests.
- (c) Without limiting the Service Provider's obligations to prevent Fraud against the Scheme, the Service Provider must support and implement any plans that IC 1 provides to the Service Provider that relate to risk management, Fraud identification or information security from time to time.
- (d) The Service Provider will be responsible for the following matters:
 - (i) any fees charged by third party suppliers in relation to the preparation, implementation, maintenance or testing of risk management policies, the Fraud Identification and Management Model and information security management; and
 - (ii) any other costs, charges, fees or expenses relating to risk management and Fraud identification and information security including, due to the requirement for any upgrade, supplement, modification or replacement in relation to any Equipment, systems, data or processes used by the Service Provider to provide the Services.

35.3 Requirement to Comply

The Service Provider must at all times comply with and be responsible for:

- (a) the Business Continuity Plan;
- (b) risk management policies;
- (c) the Fraud Identification and Management Model; and
- (d) information security policies,

and ensure such policies and models are current and effective at all times throughout the Period of Services.

35.4 Rectification

- (a) As soon as the Service Provider becomes aware, or is notified by IC 1, of an error, defect, problem or failure with the Services ("**Fault**"), the Service Provider must:
 - (i) if IC 1 is not already aware of the details of the Fault, notify IC 1 of the nature and likely impact of the Fault;
 - (ii) commence rectification and resolve the Fault in accordance with the Business Continuity Plan; and
 - (iii) regularly report to IC 1 on the status of the diagnosis and rectification of the Fault in accordance with the Business Continuity Plan.
- (b) Notwithstanding any other provision of this Agreement, the Service Provider must ensure that:
 - (i) payments to Workers recommence and
 - (ii) the Services are resumed
- (c) If the Service Provider does not meet the requirements of either paragraphs 35.4(b)(i) or 35.4(b)(ii), IC 1 may immediately terminate this Agreement for cause under clause 52.2 and pursue all remedies available to it under this Agreement or at Law for the Service Provider's material breach of this Agreement.

35.5 Board Declarations

On or before _____ in each Year, the Service Provider must provide to IC 1 a declaration executed by two directors of the Service Provider, in the form of Schedule 9 (*Director's Declaration*), being evidence of a resolution of the board of the Service Provider as to its terms.

35.6 Principal Declarations

On or before _____ in each Year, the Service Provider must provide to IC 1 a declaration, in the form of Schedule 8 (*Service Provider Principal Statutory Declaration*), signed by the Principal of the Service Provider.

36. Service Provider Warranties

36.1 General Warranties

The Service Provider represents and warrants that:

- (a) it has the power to enter into and observe its obligations under this Agreement;
- (b) it has in full force and effect the licences, consents and authorisations necessary to enter into and perform its obligations under this Agreement. The Service Provider will provide IC 1 with copies of Documents relating to the relevant licences, consents and authorisations on request;
- (c) it is registered under the GST Act;
- (d) the signing of, or performance of its obligations under, this Agreement will not violate any judgement, order or decree, nor be a material default under any material contract by which its assets are bound;
- (e) it has entered into this Agreement solely on the basis of its own investigations and determination as to the liability assumed or to be assumed by the Service Provider and the risk involved in entering into this Agreement;
- (f) it is not relying on any statement or representation as to any level of profitability, or estimated or expected mark-up costs, that will be provided by the Remuneration;
- (g) it has examined and acquired actual knowledge of this Agreement, all information provided to the Service Provider prior to signing this Agreement in connection with the Agreement, the Services and any other information made available to the Service Provider whether by IC 1, the IC 1 Principal, the Nominal Insurer, icare (when acting for the Nominal Insurer) or from any other source;
- (h) it has examined and taken into consideration all information which is relevant to the risks, contingencies and other circumstances which could in any way affect the Service Provider's decision to offer to enter into or accept this Agreement;
- (i) it has informed itself of the nature of the Services; and
- (j) it did not rely on any express or implied statement, warranty or representation, whether oral or written, made by or on behalf of IC 1, the Nominal Insurer or icare that is not expressly contained in this Agreement.

36.2 Warranties Regarding Services

The Service Provider represents and warrants that the Services:

- (a) will be provided in an efficient and cost effective manner;

- (b) will be provided in accordance with the degree of skill and care that is of the Highest Standard;
- (c) will meet or exceed the timing requirements in this Agreement or if no timing requirements are set out, the Service Provider must perform the obligations promptly;
- (d) are fit for the purposes for which they are supplied, including achieving the Scheme Principles;
- (e) will ensure its Personnel (and the Personnel of any Service Company involved in providing the Services) have adequate and continuous relevant training; and
- (f) will be provided in accordance with all Laws and this Agreement.

36.3 Further Warranties

Throughout the Period of Services the Service Provider represents and warrants that:

- (a) the Service Provider and its Personnel (and the Personnel of any Service Company involved in providing the Services) have the relevant time, resources, capacity, expertise, capability, licences, qualifications, and ability to provide the Services to meet their obligations under the Agreement.
- (b) it and any Service Company will promptly pay all:
 - (i) payroll tax;
 - (ii) applicable workers compensation insurance; and
 - (iii) remuneration,that is due in accordance with Law to its employees and contractors.

- (c) its Equipment and processes that are used to calculate the payment or collection (as appropriate) of amounts of Benefits, or payment to Third Party Service Providers will, in the absence of ad hoc error in data input, correctly calculate the amounts due or payable;
- (d) in making any payment or collection (as applicable) of Benefits or payments to Third Party Service Providers the Service Provider will comply with all obligations in the Agreement, including in Schedule 2 (*Claims*), and in the Manuals, relating to internal controls in respect of the payment, collection or handling of money; and
- (e) any Documentation given by the Service Provider to IC 1 or the Nominal Insurer (and/or an auditor appointed by IC 1 or the Nominal Insurer), including under subclause 48.2 is true, correct and not misleading.

36.4 Warranties as to Systems and Equipment

Throughout the Period of Services the Service Provider represents and warrants that:

- (a) the information that it provides to IC 1 or the Nominal Insurer is consistent, complete, accurate and not misleading;
- (b) it will use every effort to ensure that the Service Provider or Service Company involved in providing the Services and their respective Personnel or their systems will not introduce any Virus to IC 1's, the Nominal Insurer's, or any other person's software or systems;
- (c) it will build and maintain interfaces with IC 1 and the Nominal Insurer's systems in accordance with the requirements of Schedule 18 (*Technology*);
- (d) it will maintain and comply with all licensing arrangements, as necessary, to ensure that Equipment can be used in connection with the Services;
- (e) Equipment held by, and all reporting and invoicing carried out by, the Service Provider will be compatible and integrate with IC 1's and the Nominal Insurer's systems and data exchanging requirements that are set out in the Manuals;
- (f) the Service Provider and any Service Company involved in providing the Services or their respective Personnel's use in accordance with the Agreement of the Services or any item provided by or on behalf of the Service Provider will not infringe the Intellectual Property Rights or Moral Rights of any person; and
- (g) it will actively monitor the use of its Equipment, processes and systems and those of any Service Company involved in providing the Services to prevent their use for any illegal activity or unauthorised transactions.

36.5 Requirements and Condition of Disclosure

The Service Provider must disclose in writing to IC 1 prior to the Commencement Date:

- (a) any litigation or proceeding whatsoever, actual or threatened, against the Service Provider or Service Company involved in providing the Services and/or their respective Personnel (including its Key Personnel);
- (b) the existence of any breach or default or alleged breach or default of any agreement, order or award binding on the Service Provider or any Service Company involved in providing the Services and their respective Personnel (including its Key Personnel); or
- (c) matters relating to the commercial, technical or financial capacity of the Service Provider or any Service Company involved in providing the Services and their respective Personnel (including its Key Personnel) that are proposed to be engaged in respect of this Agreement,

which could materially adversely affect the Service Provider's, or the Service Provider Principal's, ability to perform any of its obligations under this Agreement.

36.6 Duty to Notify

Throughout the Period of Services the Service Provider must notify and fully disclose to IC 1 in writing of the occurrence of the following matters:

- (a) any matter or event that a reasonable person in the position of the Service Provider would believe has resulted in or may result in a breach of any of the warranties given by the Service Provider pursuant to subclauses 36.1, 36.2, 36.3 or 36.4;
- (b) any matter or event that a reasonable person in the position of the Service Provider would believe has resulted in or may result in the occurrence of one or more of the matters described in subclause 36.5;
- (c) any matter or event that a reasonable person in the position of the Service Provider would believe has resulted in or may result in the occurrence of one or more of the matters described in paragraphs 52.2(b)(i), 52.2(b)(ii), 52.2(b)(iii), 52.2(b)(iv), 52.2(b)(v), 52.2(b)(vi), or 52.2(i);
- (d) any notice, report or other correspondence that the Service Provider, the Guarantor or Service Company involved in providing the Services provides to, or receives from, any securities exchange, ASIC, APRA or any other regulatory body in Australia, where that notice, report or correspondence relates to any of the following:
 - (i) a material breach or likely material breach of any applicable legislation or prudential standard; or
 - (ii) the authority of the entity to conduct its business; and
- (e) any matter or event that a reasonable person in the position of the Service Provider would believe has had or could have a material adverse effect on:
 - (i) the ability of the Service Provider (or any Service Company involved in providing the Services) to perform its obligations under the Agreement, including the provisions of the Services; or
 - (ii) the reputation of the Service Provider or any Service Company involved in providing the Services, the Guarantor or any of their respective Related Bodies Corporate.

36.7 No Liability on Service Provider where Error Not Detected by Due Diligence

Nothing in this clause 36 is intended to make the Service Provider liable for errors in information provided by the Service Provider which the Service Provider could not detect using reasonable diligence.

37. IC 1 Warranties / Disclaimer

37.1 Representations and Warranties

IC 1 represents and warrants to the Service Provider that:

- (a) IC 1 has the requisite power and authority to enter into this Agreement; and
- (b) IC 1 is registered under the GST Act and will remain registered throughout the Period of Services.

37.2 Information, Facilities and Resources on 'as is' Basis

To the extent that IC 1 licences, provides or otherwise makes available any information, facilities or resources to the Service Provider under this Agreement (collectively "**IC 1 Resources**") they are provided to the Service Provider on an 'as is' basis, and the Service Provider acknowledges and accepts that, to the extent permitted by Law, no representation has been made and no warranty is or has been expressly or impliedly given by or on behalf of IC 1 or its Personnel in respect of:

- (a) the condition, state of repair, quality, fitness for purpose or merchantability of any IC 1 Resources; and
- (b) the accuracy, completeness, currency, suitability or efficacy of any IC 1 Resources.

37.3 Disclaimer

IC 1 and the Nominal Insurer disclaim all responsibility for any information given to the Service Provider before or after the Commencement Date which disclaimer is acknowledged by the Service Provider. Any information given by IC 1 or the Nominal Insurer to the Service Provider is not guaranteed as to accuracy, sufficiency or otherwise.

40.1 Types of Insurance

- (a) public and product liability insurance;
- (b) professional indemnity insurance;
- (c) fidelity insurance; and
- (d) workers compensation insurance.

The Service Provider must ensure that each of the insurances that are required are maintained throughout the Period of Services, or for such longer period as is either:

- (a) specified below; or
- (b) required by Law.

The Service Provider must maintain and must procure that any Designated Key Subcontractor maintain professional indemnity insurance for _____, such policy to continue to cover those matters covered by the policy that arise in respect of events or conduct occurring on or prior

to the date of the provision of the last of the Services, subject to the insurance market offering such cover.

40.4 Cover Required – General

Unless otherwise Approved by IC 1, all insurances required to be effected and maintained or required to be procured and maintained by any Designated Key Subcontractor by this clause 40 must, to the extent possible or permitted by Law:

- (a) cover each insured party individually for their respective rights, interests or liabilities to other parties (as the case may be), including liabilities to any other insured party;
- (b) be maintained with an insurer or insurers Approved by IC 1. Such Approval will be given provided that:
 - (i) the insurer is independent of any member of the Service Provider Group;
 - (ii) the insurer is not a captive insurer company of any member of the Service Provider Group; and
 - (iii) the insurer has the credit rating specified in paragraph 40.4(c); and
- (c) be underwritten by an insurer with “A minus” (or higher), or equivalent, credit rating awarded by a recognised industry rating organisation such as: Standard and Poors or Moody’s Investor Services.

40.5 Cover Required – Public and Product Liability

Unless otherwise Approved by IC 1, the public and product liability insurance required to be effected and maintained under this clause 40 must:

- (a) cover each insured party for that party’s liability to any other person for:
 - (i) loss or damage to property; and
 - (ii) death or injury to any person;
- arising out of or in any way connected with the performance of this Agreement or of the functions the subject of this Agreement; and

- (b) provide insurance cover for an amount in respect of any one occurrence of not less than with a deductible/excess of no more than

40.6 Cover Required – Professional Indemnity

- (a) Unless otherwise Approved by IC 1, the professional indemnity insurance effected and maintained under this clause 40 must:
 - (i) cover each insured party:
 - (A) for any claim against that party for breach or alleged breach of professional duty, including any such duty arising or alleged to arise in the law of contract;
 - (B) for any claim against that party for breach or alleged breach of any statutory prohibition against misleading or deceptive conduct; and
 - (C) for its costs of investigating, settling or defending any claim made against that insured party of a kind referred to in this subclause 40.6; and
 - (ii) provide an annual limit of indemnity of not less than with a deductible/excess of not more than
- (b) Unless otherwise Approved by IC 1, the Service Provider must immediately advise IC 1 if the insurer's estimate of the aggregate cost of claims exceeds

40.7 Cover Required – Fidelity Insurance

- (a) Unless otherwise Approved by IC 1, the fidelity insurance effected and maintained pursuant to this clause 40 must:
 - (i) cover each insured party for loss occasioned by the fraudulent, dishonest or criminal misappropriation of funds by or on behalf of any employee, agent or contractor of the insured party; and
 - (ii) provide insurance cover for an amount in respect of any one claim of not less than per claim with a deductible/excess of no more than .

- (b) Unless otherwise Approved by IC 1, the Service Provider must immediately advise IC 1 if the insurer's estimate of the aggregate cost of claims exceeds

40.8 Cover Required – Workers Compensation

The workers compensation insurance effected and maintained by the Service Provider under this clause 40 must insure each insured party, to the extent required by Law, against statutory and common law liability for death of or injury to persons employed by each such insured party.

40.9 Cover Required – General Requirements

On or before the Commencement Date, and within 20 Business Days of a request in writing by IC 1, the Service Provider must provide to IC 1 satisfactory evidence of the currency of the insurance policies specified in this clause 40, including:

- (a) the amount of the cover;
- (b) the identity of the insurer issuing the insurance;
- (c) the currency or expiry date of the insurance; and
- (d) evidence that the premiums have been paid.

40.10 Service Provider Must Not Jeopardise Cover

The Service Provider must not do or omit to do, and must ensure that any Personnel of the Service Provider or any Designated Key Subcontractor do not do or omit to do, anything that results in any insurance referred to in this clause 40 being void or voidable, or results in any liability for payment under that policy being reduced.

40.11 Service Provider Responsible for Any Deductible of Excess

All deductibles/excess payable under the policies of insurance maintained under this Agreement must be paid by the Service Provider.

40.12 Service Provider to Give Notice

The Service Provider must immediately notify the IC 1 Principal if:

- (a) any of the insurance policies required under this clause 40 are cancelled; or
- (b) any matter or event occurs that adversely affects the amount or availability of the Service Provider's cover under the policy.

41. Performance Guarantee

If requested by IC 1, the Service Provider must provide a Performance Guarantee duly executed by the Guarantor . IC 1 will only release the Guarantor in accordance with the terms of the Performance Guarantee.

42. Financial Security

42.1 Service Provider must provide and maintain a Financial Security

The Service Provider must provide and maintain a Financial Security, in accordance with this clause 42.

42.2 Amount of Financial Security to be Provided by the Service Provider

On or prior to the Commencement Date (or such later date as IC 1 may Approve), the Service Provider must provide a Financial Security

42.3 Basis on Which Financial Security Held

IC 1 will hold the Financial Security as security for the due and proper performance and completion of the obligations of the Service Provider under the Agreement.

42.4 Inadequacy of Financial Security

If the Financial Security is not sufficient to meet payment of all the loss or damage suffered by IC 1, the balance remaining will be a debt due and owing from the Service Provider to IC 1, and may be recovered by IC 1 in any appropriate Court.

42.5 Type of Financial Security Required

Unless otherwise Approved, the Financial Security must be issued by a bank, independent insurance company or other financial institution, located in Australia, acceptable to IC 1 in its absolute discretion.

42.6 No Liability for Exercise of Financial Security in Good Faith

IC 1 will have no liability to the Service Provider (whether in negligence or otherwise) for any loss or damage suffered or incurred by the Service Provider where IC 1 exercises its rights under this clause 42 in good faith.

42.7 No Action Against Exercise of Financial Security

The Service Provider must not take any action to injunct or otherwise prevent IC 1 from making a claim or receiving a payment under the Financial Security. This subclause 42.7 does not prevent the Service Provider from subsequently taking action to recover from IC 1, any amount invalidly received by IC 1 under the Financial Security.

42.8 Reinstatement of Financial Security

If IC 1 deducts moneys from the Financial Security and the Agreement has not been terminated by IC 1 for cause, then the Service Provider must reinstate the Financial Security to the full amount required, pursuant to subclause 42.2,

42.9 Withholding of Payment if No Reinstatement

IC 1 may withhold payment or amount determined in accordance with subclauses 26.1 and 26.2, if the Service Provider has not complied with subclause 42.8.

42.11 Costs of Financial Security to be Provided by the Service Provider

The Service Provider will meet all costs associated with obtaining, maintain and renewing the Financial Security.

42.12 Contract Dispute

If IC 1 makes a deduction from the Financial Security, then either party may, raise a Contract Dispute, and the parties will follow the process for Contract Disputes, set out in clause 49.

43. Ability of IC 1 to Step-In

43.1 Right to Step-In

At its absolute discretion acting in good faith, and at any time, IC 1 may itself (or through the Nominal Insurer acting on its behalf) appoint another person or persons as its nominee, to either:

- (a) assist the Service Provider in the discharge of its obligations in respect of so much of the Services as is required by IC 1; or
- (b) suspend, take over and manage a particular Claim or the performance of any of the Services.

43.2 IC 1's Right to Obtain Services

IC 1 may obtain services similar to the Services elsewhere or may make any other arrangements considered necessary by IC 1 to maintain the Services.

43.3 IC 1 to Act Reasonably

IC 1 must act reasonably, insofar as the circumstances permit, in appointing any nominee to provide the Services under subclause 43.1 and in agreeing a fee for those Services.

43.4 Notice of Exercise of Rights

IC 1 will give notice to the Service Provider as soon as practicable of its intention to exercise its rights under this clause 43. This notice must include:

- (a) the reason for exercising these rights including whether the step-in is under clauses 43.1(a) or 43.1(b) and whether the step-in is a result of a breach of this Agreement by the Service Provider; and
- (b) details of the intended nominee.

43.5 Service Provider to Assist in Exercise of Step-In Rights

The Service Provider must assist IC 1 and its nominee, in the exercise of its step-in rights including:

- (a) facilitating access to the file and systems of the Service Provider and any Service Company involved in providing the Services;
- (b) providing access to or use of its Confidential Information, Service Provider Operational Data, Records, Insurance Records, any Intellectual Property Rights which IC 1 owns or licenses or is entitled to access or use under clause 24;
- (c) making the Personnel of the Service Provider and any Service Company available to provide information and assistance; and
- (d) informing and securing the co-operation of Subcontractors and Third Party Service Provider,

as required by IC 1 or its nominee.

43.6 No liability to Service Provider

Neither IC 1, nor its nominee, nor any third party supplier, is liable to the Service Provider for any act or omission caused during the period of an appointment in accordance with subclause 43.1 unless the act or omission is caused by the wilful or negligent act, omission or misconduct of IC 1, its nominee or a third party supplier.

43.7 Recovery of Costs of Step-In

IC 1 will be entitled to recover from the Service Provider any amounts paid to a nominee in the performance of its Services where the step-in is as a result of a breach of this Agreement by the Service Provider.

43.8 Cessation of Nominee's Appointment

- (a) The appointment of the IC 1's nominee under subclause 43.1 will cease when:
 - (iii) this Agreement expires by the passing of time,
whichever occurs earliest.
- (b) On the cessation of the nominee's appointment, the Service Provider must as soon as reasonably practicable recommence performance of those of the Service Provider's obligations under the Agreement which were suspended pursuant to subclause 43.1.
- (c) For the avoidance of doubt, the Service Provider is not liable for any action taken by IC 1's nominee during the period of an appointment in accordance with subclause 43.1 and, subject to the Service Provider complying with its obligations under this clause 43, if IC 1 has exercised its step-in rights under subclause 43.1, to the extent IC 1 has taken actions or failed to take actions that impede the performance of the Service Provider under the Agreement, the Service Provider will not be held responsible for that failure to perform.

43.9 Rights of Termination Not Affected

Nothing in this clause 43 prevents IC 1 from being entitled to give notice for termination for cause, nor for terminating without cause under clause 52.

SECTION G - COMPLIANCE

44. Service Provider's General Obligations

44.1 Service Provider to be a Body Corporate

The Service Provider must be, and remain throughout the Period of Services, a body corporate incorporated under, or registered as a foreign company under, the Corporations Act.

44.2 Must Notify Corporate Changes

The Service Provider must notify IC 1 _____ of any of the following occurring to the Service Provider, any of its holding companies or the Guarantor:

- (a) any change to the composition of the board of directors;
- (b) any single or series of connected transactions resulting in a change of the voting shares; or
- (c) any change of control (as defined by section 50AA of the Corporations Act).

44.3 Conflict of Interest

- (a) The Service Provider warrants that, to the best of its knowledge after making diligent inquiries, at the date of signing this Agreement, no Conflict exists or is likely to arise in the performance of its obligations under this Agreement by itself or any of its Personnel or a Service Company.
- (b) The Service Provider represents and warrants that throughout the Period of Services it will use every effort to ensure that:
 - (i) none of its Related Bodies Corporate will have; and
 - (ii) neither the Guarantor nor any of the Guarantor's Related Bodies Corporate will have,

any direct or indirect control over, or any arrangement which directly or indirectly provides any of them control over more than 5% of the voting shares in, any other body corporate which is an Other Service Provider or Third Party Service Provider, without prior confidential notification to IC 1.

- (c) If, during the Period of Services, a Conflict arises, or appears likely to arise, the Service Provider must:
 - (i) notify IC 1 immediately in writing;
 - (ii) make full disclosure of all relevant information relating to the Conflict and setting out the steps the Service Provider proposes to take to resolve or otherwise deal with the Conflict; and
 - (iii) take such steps as have been proposed by the Service Provider, or at the discretion of IC 1, IC 1 requires to resolve or otherwise deal with the Conflict.

- (d) If the Service Provider fails to notify IC 1 under this subclause 44.3, or is unable or unwilling to resolve or deal with the Conflict as required by IC 1, IC 1 may immediately terminate this Agreement for cause under subclause 52.2 and pursue all remedies available to it under this Agreement and at Law for the Service Provider's material breach of this Agreement.

44.4 Service Provider Restrictions

Subject to subclause 3.7, the Service Provider must not:

- (a) enter into any contract, understanding or arrangement in respect of insurance, or insurance brokerage, policy or Claims Management or similar services with any Employer for which it, or a Related Body Corporate, provides any Services: or
- (b) provide, directly or through Related Body Corporate, any service which is to be paid for by IC 1 as a Provider Payment,

without prior Approval, which will not be unreasonably withheld.

44.5 Compliance with Laws

The Service Provider must:

- (a) comply with all Laws applicable to the Services and the performance of its obligation under this Agreement; and
- (b) obtain and maintain any licences, authorisations, consents, Approvals and permits required by applicable Laws, to provide the Services and to perform its obligations under this Agreement.

45. Protection of Personal Information

45.1 Compliance with Australian Privacy Principles

In addition to any statutory requirements which apply to the Service Provider, when performing its obligations under this Agreement, the Service Provider and its Personnel must:

- (a) collect, use and disclose Personal Information obtained during the course of performing this Agreement only for the purposes of fulfilling its obligations under this Agreement;
- (b) take all reasonable measures to ensure that Personal Information in its possession or control in connection with this Agreement is protected against misuse, interference, loss, unauthorised access, modification or disclosure;
- (c) comply with, and at all times act in a manner that is consistent with, the Australian Privacy Principles which apply to organisations including:
 - (i) developing and implementing practices, procedures and systems:
 - (A) to ensure the Service Provider complies with the Australian Privacy Principles;
 - (B) that will enable IC 1 to comply with the Australian Privacy Principles;
 - (C) that will enable the Service Provider to deal with inquiries or complaints from individuals about the Service Provider's or the Services' compliance with the Australian Privacy Principles or any registered APP code binding on the Service Provider; and
 - (ii) maintaining records of the Personal Information held by the Service Provider in relation to this Agreement;

- (d) by itself or any other person (including its Personnel) not undertake any act or engage in any practice that would be in breach of the Australian Privacy Principles;
- (e) not use or disclose Personal Information for the purpose of direct marketing unless the Service Provider collected the information for the purpose of meeting (directly or indirectly) an obligation under this Agreement and the use or disclosure is necessary to meet (directly or indirectly) such an obligation;
- (f) to the extent required by law and in performing this Agreement, comply with the Australian Privacy Principles and in particular Principle 12 relating to access to records;
- (g) immediately notify IC 1 if the Service Provider becomes aware of a breach or possible breach by the Service Provider or a subcontractor of any of the obligations contained in, or referred to in this clause 45;
- (h) not disclose any Personal Information held in relation to this Agreement to an overseas recipient, without the written prior consent of IC 1; and
- (i) ensure that any person who has an access level which would enable that person to obtain access to any Personal Information is made aware of, and undertakes in writing to observe, the Australian Privacy Principles and other obligations referred to in this clause 45.

45.2 Compliance with State and Territory Privacy Obligations

The Service Provider must observe any applicable State or Territory legislation, Cabinet Administrative Instructions or State Government Standards relating to Personal Information and health records, in performing the Services, including the *Privacy and Personal Information Protection Act 1998* (NSW) and the *Health Records and Information Privacy Act 2002* (NSW).

45.3 Handling of Privacy Complaints

The Service Provider must:

- (a) notify IC 1 immediately of any Complaint or allegation to or in respect of the Service Provider, its Personnel, or a Service Company or their respective Personnel, that an act or practice has been engaged in which has breached, breaches, may breach, or is alleged to breach, an Australian Privacy Principle or any other privacy obligation; and
- (b) implement the Complaints handling process, set out in Schedule 1 (*Code of Conduct and Customer Engagement*) and the Manuals; and
- (c) immediately report to IC 1 the outcomes of any investigation of a Complaint referred to in this subclause 45.3.

45.4 Directions Relating to Privacy

The Service Provider must:

- (a) cooperate with any reasonable demands or inquiries made by IC 1 in relation to the exercise by the Commonwealth Information Commissioner or the New South Wales Privacy Commissioner of its functions including, a request from IC 1 to comply with all guidelines concerning the handling of Personal Information issued by the Commonwealth Information Commissioner and the New South Wales Privacy Commissioner;
- (b) comply as far as practicable with any policy guidelines issued by IC 1 from time to time relating to privacy and personal information;
- (c) comply with any directions, guidelines, determinations or recommendations of the Commonwealth Information Commissioner or the New South Wales Privacy Commissioner to the extent that they are consistent with the requirements of this clause 45; and
- (d) comply as far as practicable with any reasonable direction of IC 1 to observe any recommendation or determination of the Commonwealth Information Commissioner or the New South Wales Privacy Commissioner relating to any acts or practices of the Service Provider that the Commonwealth Information Commissioner or the New South Wales Privacy Commissioner considers breaches or may breach the obligations in this clause 45.

45.5 No Restrictions on Privacy Obligations

The Service Provider's obligations under this clause 45 are in addition to, and do not restrict, any obligations it may have under the Privacy Act, any registered APP code binding on the Service Provider, and any State or Territory privacy law, to the extent that such obligations:

- (a) are consistent with the provisions of this Agreement; or
- (b) have no corresponding provision in this Agreement.

45.6 Subcontracts

The Service Provider must ensure that any contract it enters with a Subcontractor or Service Company under this Agreement contains provisions to ensure that the Subcontractor or Service Company has the same awareness and obligations as the Service Provider has under subclauses 45.1 to 45.6, including this requirement in relation to subcontracts.

45.7 Confidentiality Deed

The Service Provider must:

- (a) prior to disclosing Personal Information obtain a signed Confidentiality Deed from the intended recipient, and such of the recipient's Personnel or agents, as requested by IC 1; and
- (b) promptly comply with IC 1's Directions, in respect of any action required to enforce such Confidentiality Deed, at the Service Provider's own expense.

46. Confidentiality

46.1 Duty of Confidentiality

Each party must:

- (a) hold the other party's Confidential Information in strict confidence;
- (b) not allow any persons to have unauthorised access to the other party's Confidential Information; and
- (c) not disclose any of the other party's Confidential Information to any person, except:
 - (i) in accordance with this clause 46; or
 - (ii) after receiving the written consent or Approval of the other party.

46.2 Use of IC 1's Confidential Information

- (a) The Service Provider must not make any use of IC 1's Confidential Information or any part of it, except for performing its obligations or exercising its rights under this Agreement.
- (b) Subject to subclause 46.5, prior to disclosing any of IC 1's Confidential Information to any third party, including a Subcontractor or its Personnel or a Service Company or their Personnel, the Service Provider must provide written notice to IC 1 and obtain its Approval for the disclosure and use of the Confidential Information, which may be denied or granted, in IC 1's absolute discretion.

46.3 Obligations on Disclosure

- (a) Prior to disclosure of IC 1's Confidential Information (except where the disclosure is made in accordance with paragraph 46.4(a), the Service Provider must require the party to which the Confidential Information is to be disclosed, to sign and execute the Confidentiality Deed.
- (b) The Service Provider must ensure that any person to whom it is authorised to disclose IC 1's Confidential Information:
 - (i) is aware of, and ensure that, its employees and professional advisers, are aware of the confidential nature of IC 1's Confidential Information; and
 - (ii) holds IC 1's Confidential Information in confidence, on no less onerous terms than those set out in this Agreement.

46.4 Permitted Disclosure

A party is permitted to disclose the other's Confidential Information in the following circumstances:

- (a) a party may disclose Confidential Information to its legal, financial or other professional advisers, and only to the extent reasonably necessary, for the sole purpose of seeking advice from such advisers;
- (b) IC 1 may disclose any information provided by the Service Provider to:
 - (i) the Nominal Insurer and icare;
 - (ii) SIRA (in its role as regulator), and its Personnel; or
 - (iii) any other Agency, and its Personnel,

provided that if the information is Confidential Information, IC 1 must take all reasonable steps to ensure that such information is treated as confidential by SIRA and other such Agencies;

- (c) IC 1 may disclose the Service Provider's Confidential Information:
 - (i) to any Minister, Parliamentary Committee or, Parliament; and
 - (ii) to any Agency, to carry out any of its functions, powers or discretions;
- (d) where Confidential Information also comprises Intellectual Property Rights of a party, then the receiving party may disclose that Confidential Information only to the extent permitted by the licences granted under clause 24;
- (e) a party may disclose any Confidential Information to an auditor for the purposes or conducting an audit, inspection or test, in accordance with clause 48; and
- (f) where required by Law.

46.5 Disclosures Relating to Claims

The Service Provider may disclose IC 1's Confidential Information relating to Claims to Workers, Employers or Third Party Service Providers, only to the extent necessary to ensure the efficient provision of the Services. Such disclosure does not require the Service Provider to obtain an executed Confidentiality Deed, from the Worker, Employer or Third Party Service Provider (as applicable).

46.6 Public Access to Government Information

- (a) The Service Provider acknowledges that IC 1 and the Nominal Insurer intend to comply with Part 3, Division 5 of the GIPA Act, and may at any time, during or after the Period of Services, publish or otherwise make available, parts of this Agreement, except for the parts of the Agreement that comprise Confidential Information, pursuant to the definition of Confidential Information. Without limiting the foregoing, the relevant parts of this Agreement may be published on the website <https://tenders.nsw.gov.au> or such other websites as may be authorised for the purposes of the GIPA Act.
- (b) The Service Provider must notify IC 1 immediately of any request received from any person which relates to or arises out of the GIPA Act.

47. Media and Public Relations

47.1 No Media Statements Without Approval

The Service Provider must not, and must ensure that its Personnel do not, make any statement to media or the public on behalf of IC 1, the Nominal Insurer or icare or in regards to the Services, or the Scheme (including Scheme Principles or IC 1's policies) without first obtaining Approval, unless the Media Code of Conduct in the Manuals is followed.

47.2 Media Enquiries to be Referred

All enquiries from the media arising out of or in connection with this Agreement, including Remuneration, payments of Benefits, payments to Third Party Service Providers, the Services, IC 1, icare, SIRA, any relationships involving IC 1, the Service Provider or any Other Service Providers, WH&S and Workers Compensation Legislation and proposed amendments to such Laws, must be immediately referred to the IC 1 Principal without comment to the media.

47.3 Requirement to Notify

The Service Provider must immediately notify the IC 1 Principal of all events that arise in the course of providing the Services that have or are likely to receive media attention or public attention.

47.4 Directions Regarding Marketing Material

IC 1 may Direct the Service Provider to immediately withdraw any marketing material that relates to the Scheme that has been made public by the Service Provider without any liability to IC 1.

47.5 Comparative Material

The Service Provider must not publish or disclose any information to any third party which compares the Service Provider's performance to any Other Service Provider's performance or to the Scheme Outcomes or Scheme Principles without prior Approval unless such

comparative information has already been published into the public domain by IC 1. For the avoidance of doubt, the identity of any Other Service Providers must not be used in comparative performance publications or disclosures unless that identity has been published into the public domain by IC 1 in the context of that comparative performance information.

47.6 Documents Required to be Sent by IC 1

The Service Provider must include any Document that IC 1 requires to be sent to any person:

- (a) at no cost to IC 1 if it can be included with any of the Service Provider's planned communications; or
- (b) at IC 1's cost, if the Service Provider has to send it separately.

47.7 Permitted Disclosures

Nothing in this clause 47 prevents the Service Provider disclosing information to any person to the extent that either:

- (a) the disclosure is required by Law; or
- (b) the information is not Confidential Information.

48. Records, Inspections and Audits

48.1 Record Keeping

The Service Provider must maintain proper Documentation, books, accounts and Records relating to the Services during the Period of Services and for a further period of the Period of Services, including those items set out in subclause 48.2 and any items referred to in Schedule 5 (*Governance*) in accordance with the Law and the Records management standards set out in the Manuals.

48.2 Access to Premises, Personnel, Systems and Information

- (a) The Service Provider must, at all reasonable times, provide IC 1 and IC 1's nominee with access to any Site, Personnel, Equipment, systems and information relating to this Agreement or the Services, for inspection and audit, including:
 - (i) compliance with the Transition Plan;
 - (ii) Claims files;
 - (iii) books, accounts, and Records;
 - (iv) receipts into or payments out of any IC 1 (or WCIF) bank account;

- (v) correspondence in relation to Claims received or sent by the Service Provider;
 - (vi) Service Provider IP or Developed IP, Records and Insurance Records;
 - (vii) Service Provider Operational Data;
 - (viii) Equipment used to provide the Services;
 - (ix) contracts with:
 - (A) Subcontractors;
 - (B) Service Companies;
 - (C) Designated Key Subcontractors; and
 - (D) any Third Party Service Providers that are appointed by the Service Provider in its capacity as agent for IC 1;
 - (x) reports and other Documentation prepared in connection with any audit or inspection undertaken by the Service Provider or the Service Provider's auditors under subclause 48.4 and Schedule 5 (*Governance*);
 - (xi) reports and other Documentation prepared in connection with the Service Provider's Quality Management Framework under Schedule 5 (*Governance*);
 - (xii) within _____ or such longer period as IC 1 may allow) of receiving a Direction from IC 1 – all Documentation that is reasonably necessary to enable the Direct Cost of a Project Service to be verified by IC 1 and/or an auditor appointed by IC 1, and
 - (xiii) all other Documents or Records as IC 1 may Direct from time to time.
- (b) The Documentation or information described in this subclause 48.2 must be made available on IC 1's request or Direction (as the case may require). IC 1 and/or its appointed representative may make copies, in any form, of any of the Documentation or information referred to in this subclause 48.2.

48.3 Service Provider External Audit Requirements

IC 1 will appoint an independent qualified auditor (which for the avoidance of doubt must not be the Service Provider's internal auditor) ("**Approved Auditor**") to oversee the books, Records, and systems of the Service Provider to determine whether:

- (a) the Service Provider is accurately recording and accounting for IC 1's monies and other assets;
- (b) IC 1's obligations to report to the relevant tax, authority or other Agency are properly met; and
- (c) the Service Provider has adequate internal controls.

48.4 Service Provider Internal Audit Requirements

- (a) The Service Provider's qualified internal auditor must undertake audits and inspections required by and in accordance with Schedule 5 (*Governance*), including those relating to the Service Provider's performance against the Service Standards and Outcome Measures.
- (b) Where the Service Provider does not have access to a qualified internal auditor to meet the requirements of paragraph 48.4(a), the Service Provider must procure an independent qualified auditor to undertake the audits and inspections detailed in Schedule 5 (*Governance*) on its own behalf.

48.5 Audit and Inspection by IC 1

In addition to the audit and inspection requirements referred to in subclause 48.4 and in Schedule 5 (*Governance*), IC 1 may at any time, acting reasonably:

- (a) conduct random inspections and tests of the:
 - (i) performance of the Services;
 - (ii) training and competency of the Service Provider's Personnel;
 - (iii) the Business Continuity Plan;
 - (iv) the utilization of the Service Provider's risk management policies;
 - (v) internal financial controls; and
 - (vi) books, accounts and Records for any purposes, including to determine how the Remuneration, Provider Payments, Benefits or any other payments have been made or accounted for, how conflicts of interest are managed and the financial standing of the Service Provider;
- (b) conduct random audits to determine the Service Provider's compliance with the requirements of this Agreement relating to:
 - (i) data protection;
 - (ii) data maintenance; and
 - (iii) data transfer;

- (c) conduct random audits to determine compliance with this Agreement, Applicable Standards and the adequacy of processes and methods put in place by the Service Provider in performing the Services; and
- (d) conduct any other tests or inspection that IC 1 considers necessary to ascertain whether or not the Service Provider is complying with its obligations under this Agreement.

48.6 Scope of Audit

The scope of any test, inspection or audit undertaken under subclauses 48.3 or 48.5 will be determined by IC 1.

48.7 Overriding Obligation

None of the tests, inspections or audits referred to in subclause 48.3, 48.4 or 48.5 or Schedule 5 (*Governance*) detract from the Service Provider's responsibility to ensure that its Personnel adopt safe working practices and to carry out appropriate training, supervision, inspection and audit to ensure that this is done.

48.8 No Advance Notice of Inspections, Test or Audits

The Service Provider must not give the Personnel advance notice of inspections, tests or audits referred to in subclause 48.5 without the Approval of the IC 1 Principal.

48.9 Co-operation

The Service Provider must, and must procure that any Personnel and Service Company must, at its own cost, fully co-operate with representatives of IC 1 conducting, reviewing, or making any inspection, test or audit under this Agreement, including providing such access to its Equipment, Site and Personnel as is required by IC 1.

48.10 Who May Carry out Inspection, Test of Audit?

IC 1 may conduct any inspection, test or audit referred to in subclause 48.5 itself, or appoint any other suitably qualified person to conduct the inspection, test or audit.

48.11 Cost of Inspections, Test and Audits – Service Provider

The costs of the inspections, tests and audits referred to in subclause 48.4 and Schedule 5 (*Governance*) that must be undertaken by the Service Provider or the Service Provider's auditor will be borne by the Service Provider.

48.12 Cost of Inspections, Test and Audits – IC 1

The costs of each inspection, test and audit carried out by IC 1, IC 1's auditor or the Approved Auditor in accordance with subclauses 48.3 and 48.5 and Schedule 5 (*Governance*) (excluding any costs incurred by the Service Provider in complying with this clause 48 and Schedule 5 (*Governance*)) will be borne by IC 1 unless the inspection, test or audit reveals either:

- (a) a material breach of the Agreement;
- (b) incorrect payment of:
 - (i) any one of the fees listed in subclause 26.1; or
 - (ii) any other amount payable to IC 1 by the Service Provider where the cause of incorrect payment is, or has been contributed to, by the Service Provider; or
- (c) incorrect amounts:
 - (i) payable to Workers, of all of the payments made by the Service Provider to Workers for the period that was subject to the inspection, test or audit; or
 - (ii) collectable from Employers, of the total of all of the amounts collectable by the Service Provider from Employers for the period that was subject to the inspection, test or audit,

in which case the Service Provider indemnifies IC 1 for all costs of the inspection, test or audit. For the avoidance of doubt, this subclause 48.12 does not in any way limit the Service Provider's obligation to reimburse or make any payments to IC 1 under subclause 27.4 and clause 29.

48.13 Implementation of Recommendations

The Service Provider must not unreasonably refuse to implement any recommendations made by IC 1's auditor within the timeframe Directed by IC 1.

48.14 NSW Auditor General

The Service Provider must permit the NSW Auditor General to conduct audits of the Service Provider and the Services of a nature to those described under subclauses 48.3, 48.4 and 48.5 and Schedule 5 (*Governance*). IC 1 will use its reasonable endeavours to provide the Service Provider with of any audit by the NSW Auditor General.

48.15 Confidential Information

- (a) IC 1 must take all reasonable steps to ensure that any of the Service Provider's Confidential Information that is disclosed to any representative or

auditor under this clause 48 (other than the NSW Auditor General who will be bound by the obligations at Law) is treated as confidential.

- (b) The Service Provider must take all reasonable steps to ensure that any of IC 1's Confidential Information that is disclosed to any auditor under this clause 48 is treated as confidential.

48.16 Rights of IC 1 where Designated Key Subcontractor or Service Company provides part of all of the Services

The Service Provider must ensure that:

- (a) IC 1 has the same rights as set out in this clause 48 in respect of any Designated Key Subcontractor and Service Company;
- (b) any Designated Key Subcontractor or Service Company is subject to the same obligations as set out in this clause 48 as if the Designated Key Subcontractor or Service Company was the Service Provider,

so that IC 1 is not disadvantaged in any way by the use of any Designated Key Subcontractor or Service Company providing part or all of the Services.

SECTION H - DISPUTE RESOLUTION, TERMINATION

49. Contract Disputes

49.1 Resolution of Contract Disputes

The parties must attempt to settle any Contract Dispute in relation to this Agreement, in accordance with:

- (a)
- (b) this clause 49,

before resorting to court proceedings or other dispute resolution process.

49.3 Obligations Continue

The Service Provider must continue to perform its obligations under this Agreement while a Contract Dispute is being dealt with, in accordance with this clause 49.

49.4 Urgent Interlocutory Relief and Termination

Nothing in this clause 49 will prevent either party from seeking urgent interlocutory (including injunctive) relief or from exercising any right to terminate this Agreement.

50. Disputes with Third Parties

50.1 Management of disputes with Third Parties

Subject to subclause 50.3, the Service Provider may, without the prior Approval of IC 1, act on behalf of IC 1 in the event of a dispute between the Service Provider and a third party, including court proceedings, where the Demand arises out of or in connection with the Service Provider performing its obligations under this Agreement as agent for IC 1. For the avoidance of doubt, this subclause 50.1 only applies to circumstances where the Service Provider is being pursued as agent for IC 1, and not where the Service Provider is being pursued in its own name, for example, by a Subcontractor.

50.2 Legal and Other Costs Incurred by the Service Provider

The Service Provider may incur legal costs, disbursements and third party costs associated with the legal proceedings, described in subclause 50.1, as agent for the Nominal, Insurer without prior Approval , or series of related matters. Thereafter, the Service Provider must obtain IC 1's Approval for further costs, disbursements and third party costs associated with the legal proceedings.

50.3 Legal Proceedings Require Approval of IC 1

The Service Provider will seek the Approval of IC 1, such Approval to be given at IC 1's absolute discretion, prior to instituting legal proceedings (including issuing a statement of claim or filing a defence) on behalf of IC 1, subject to any conditions provided (if any) with such Approval, for any dispute in relation to:

- (a) Privacy or Intellectual Property Rights;
- (b) Confidential Information;
- (c) Third Party Service Providers;
- (d) claims of any nature arising in connection with the *Government Information Public Access Act 2009* (NSW);
- (e) any Demand which could have a material effect on the Scheme Principles or would become a precedent or cause for subsequent Claims arising from any Policy; or
- (f) any Demand (other than a Demand that arises from a Policy) from a third party which claims damages against IC 1 .

50.4 Indemnity by IC 1

IC 1 will indemnify the Service Provider for all damages (whether finally awarded or agreed through any form of settlement), legal costs, disbursements and third party costs (but not any internal costs of the Service Provider) associated with the legal proceedings under subclause 50.3 provided that:

- (a) if this Agreement requires the Service Provider to obtain IC 1's Approval, that Approval has been sought;
- (b) the Service Provider has met the obligations in this Agreement that are in any way connected to the indemnity;
- (c) the Service Provider has acted within the authority set out in this Agreement; and
- (d) the provisions of this Agreement do not provide otherwise.

50.5 Compliance with Policies

The Service Provider must comply, and must ensure that any Third Party Service Providers that are appointed by the Service Provider (where the appointment is in the Service Provider's capacity as Agent of IC 1), comply (or if debt recovery is done by the Service Provider's employees or the Third Party Service Provider's Personnel, then they must comply) with the policies relating to the conduct of litigation, as set out in the Manuals.

50.6 Fund Loss

The Service Provider agrees that:

- (a) subject to the dispute resolution provisions of this Agreement, IC 1 or the Nominal Insurer is entitled to recover on behalf of the WCIF any Fund Loss suffered as a result of an act or omission of the Service provider or its

Personnel in connection with this Agreement recoverable at all as if it were a loss suffered by IC 1 or the Nominal Insurer;

- (b) it will not, in any legal proceedings referred to in paragraph (a) above, raise as a defence or otherwise allege that IC 1 or the Nominal Insurer is not entitled to bring the legal proceedings or recover the Fund Loss claimed in the legal proceedings on the basis that the Fund Losses were not suffered by IC 1 or the Nominal Insurer; and
- (c) this clause may be pleaded in bar to any defence raised by the Service Provider in breach of paragraph (b) above.

For the avoidance of doubt, clause 50.6 does not permit any double recovery of any Fund Loss by IC 1 and the Fund.

51. Remedies and Obligations on a Breach of this Agreement

51.1 Service Provider's Obligations on Breach of Obligations Under this Agreement

- (a) Every time the Service Provider commits a breach of any of its obligations under this Agreement, then the Service Provider must, on becoming aware of such breach, immediately (or at such other time specified in the reporting requirements in this Agreement if applicable) report the breach to IC 1.
- (b) Any report required under paragraph 51.1(a) must be in writing and must contain details of the following matters:
 - (i) the problem causing the breach;
 - (ii) the status of the breach; and
 - (iii) the steps being taken to remedy the breach.
- (c) Following submission of a report under paragraph 51.1(a), the Service Provider must promptly:
 - (i) remedy the breach; and
 - (ii) except where IC 1 has confirmed in writing that it does not require a Remediation Plan to be implemented, prepare a Remediation Plan for the Approval of IC 1.

51.2 IC 1's rights on Breach of Obligations under this Agreement

- (a) If the Service Provider breaches any of its obligations under this Agreement, IC 1 may issue a Direction ("**Remediation Plan Direction**") to the Service Provider requiring that the Service Provider submit a draft Remediation

Plan, signed by the Service Provider Principal, within the time period specified in the Remediation Plan Direction.

- (b) The draft Remediation Plan should include the matters and items specified in the Remediation Plan Direction
- (c) IC 1 should, _____ of the date on which a draft Remediation Plan is received by IC 1:
 - (i) Approve the draft Remediation Plan, in which case the draft Remediation Plan will become a Remediation Plan; or
 - (ii) acting reasonably, requests amendments to the draft Remediation Plan, in which case the Service Provider must make the amendments and resubmit the draft Remediation Plan for IC 1's Approval, _____ of receiving the request. If Approved by IC 1, the amended draft Remediation Plan will become the Remediation Plan.
- (d) The Service Provider must, within 5 Business Days of IC 1's Approval of the Remediation Plan, provide to IC 1 a copy of the Remediation Plan that has been signed by the Service Provider's Chief Executive Officer and the Chair of the Service Provider's board of directors (or such other authorised representatives as agreed by IC 1).
- (e) The Service Provider's obligations under the Remediation Plan commence from the date specified in the Remediation Plan and will not be delayed due to any failure by the Service Provider to obtain the signatures of the Chief Executive Officer and/or the Chair of the Board (or such other authorised representatives as agreed by IC 1) as required under paragraph 51.2(d).
- (f) Subject always to paragraph 51.2(g), if the Service Provider fails to comply with the terms of a Remediation Plan that has been Approved by IC 1 in accordance with this subclause 51.2, then IC 1 may, in its absolute discretion:
 - (i) withdraw or suspend for such period determined by IC 1, the Service Provider's authority to handle any Claim; or
 - (ii) transfer any Claim to IC 1 or any Other Service Provider.

- (g) Nothing in this subclause 51.2 limits any exercise by IC 1 of its rights under subclauses 52.2 or 52.3.

51.3 Remediation Plan

If IC 1 Approves a Remediation Plan, this does not constitute a waiver of the breach, nor does it affect IC 1's rights if the Service Provider does not meet the requirements of a Remediation Plan that has been Approved prior to receipt of any notice of breach.

52. Termination

52.1 Termination Without Cause

IC 1 may, in its absolute discretion, immediately terminate this Agreement for any reason by giving _____ in writing to the Service Provider.

52.2 Termination for Cause

Where such termination has been approved by the IC 1 board, IC 1 may immediately terminate this Agreement by notice in writing to the Service Provider:

- (a) where the Service Provider makes any statement, provides any information, makes any representation, or provides material in the response which is false, untrue, or incorrect in a way which in the absolute opinion of IC 1 materially affects this Agreement;
- (b) where:
 - (i) APRA suspends or withdraws any authorisation or licence held by the Service Provider or any Designated Key Subcontractor or any of their Related Bodies Corporate or APRA or the Treasurer appoints any investigator to or makes any order relating to a dealing in insurance policies or assets of the Service Provider or any Designated Key Subcontractor or any of their Related Bodies Corporate enters into an enforceable undertaking with APRA;
 - (ii) APRA appoints a judicial manager to the Service Provider or any Designated Key Subcontractor or any of their Related Bodies Corporate under Part VB of the Insurance Act 1973;

- (iii) ASIC takes proceedings against or suspends or withdraws any licence held by the Service Provider, Designated Key Subcontractor or any of their Related Bodies Corporate enters into an enforceable undertaking with the Australian Securities and Investments Commission;
- (iv) the Australian Competition & Consumer Commission takes any proceedings against the Service Provider, any Designated Key Subcontractor or their Related Bodies Corporate or the Service Provider, Designated Key Subcontractor or any of their Related Bodies Corporate enters into an enforceable undertaking with the Australian Competition & Consumer Commission;
- (v) the Independent Commission Against Corruption makes finding of corrupt conduct by, or recommends prosecution or disciplinary action in relation to the Service Provider, any Designated Key Subcontractor or their Related Bodies Corporate or any of their directors or officers; or
- (vi) the police or SIRA (in its role as regulator) or other investigative body takes legal proceedings against the Service Provider, any Designated Key Subcontractor or their Related Bodies Corporate alleging corrupt conduct or breach of any Laws;

- (d) where the Service Provider commits a material breach of the Agreement that is not capable of remedy;
- (e) where the Service Provider commits a breach of the Agreement that is capable of remedy and the Service Provider does not remedy the breach in accordance with the terms of and within the period set out in any Remediation Plan issued or Approved in accordance with subclause 51.2;
- (f) where the Service Provider fails to achieve a Service Standard Score of
for any Service Standard in
- (g) where the Service Provider fails to achieve an Outcome Measure Score
for any Outcome Measure in
- (h) where the Service Provider commits a breach of any of its obligations in any of the following clauses (whether material or not):
 - (i) subclause 3.1 (Scope of agency) which was not ratified by IC 1;
 - (ii) subclause 3.7 (No Misconduct);
 - (iii) subclause 5.2 (Acceptance of Transition);
 - (iv) subclause 5.3 (Conditional Acceptance);
 - (v) subclause 6 (Delays);
 - (vi) subclauses 24.3 and 24.4 (IP Licences);
 - (vii) subclause 35.4 (Rectification);
 - (viii) paragraphs 36.1(a) – 36.1(j) (Warranties);
 - (ix) subclauses 36.5 and 36.6 (Disclosures);
 - (x) clause 40 (Insurance) (except subclause 40.9);
 - (xi) clause 41 (Performance Guarantee);
 - (xii) clause 42 (Financial Security);
 - (xiii) subclause 57.9 (Assignment); or
 - (xiv) subclause 57.10 (Assignment of subcontracts).

- (i) in the case of an Insolvency Event occurring in respect of the Service Provider or the Guarantor;
- (j) if, in IC 1's view, a conflict of interest exists for the Service Provider which in IC 1's absolute opinion prevents the proper performance of the Agreement;
- (k) there is a change of control (as defined in the Corporations Act) of the Service Provider or the Guarantor, that has not been Approved by IC 1; or
- (l) the Service Provider represents or communicates to IC 1, or IC 1 forms the opinion, on reasonable grounds, that the Service Provider is unable or unwilling substantially to fulfil the Service Provider's duties under this Agreement.

52.4 Powers Following Termination for Cause

If IC 1 terminates this Agreement for cause under subclause 52.2, IC 1 may do any or all of the following:

- (a) enter into an agreement with any other person to complete the provision of the Services;
- (b) deduct any loss or damages (which will be as ascertained and certified by IC 1) from any money due, or which may become due, to the Service Provider (arising out of or in connection with this Agreement or otherwise) from:
 - (i) any amounts payable under paragraph 52.3(a); or
 - (ii) the Financial Security,or otherwise set-off the amount in accordance with clause 34;
- (d) recover in an appropriate Court the balance of any outstanding loss or damage or Interim Payment as a debt due and payable by the Service Provider to IC 1.

52.5 No Right for Service Provider to Terminate for any Reason

The Service Provider may not terminate this Agreement for any reason and the Service Provider expressly waives any rights it has to terminate this Agreement.

52.6 No Release from Liability on Termination

Termination of this Agreement by IC 1 will not release the Service Provider from liability in respect of any breach or non-performance of any obligation by the Service Provider under this Agreement.

52.7 Termination Without Prejudice to Accrued Rights or Remedies

Any termination of this Agreement is without prejudice to any accrued rights or remedies of either party.

52.8 Commencement of Disengagement Services

Unless otherwise Directed by IC 1, on and from the date set out in the notice of termination the Service Provider must commence the Disengagement Services in accordance with its obligations under clause 53 and the Disengagement Plan.

52.9 Cumulative Remedies

The rights, remedies, powers, entitlements or privileges of IC 1 in this clause 52 and in this Agreement are cumulative with, without prejudice to, and not exclusive of, any other right, remedy, power, entitlement or privilege granted or given anywhere in this Agreement or the Law, (unless expressly stated otherwise in subclause 52.2).

SECTION I - DISENGAGEMENT

53. Disengagement Services

53.1 Obligation to Provide Disengagement Services

- (a) The Service Provider must commence providing the Disengagement Services immediately on:
 - (i) the date specified in the notice of termination issued under subclause 52.1 or 52.2;
 - (ii) the expiry of the Initial Agreement Period where an extension has not been exercised in accordance with subclause 4.2;
 - (iii) the expiry of any Extension Period exercised in accordance with subclause 4.2 where a further extension has not been exercised or does not apply; or
 - (iv) such earlier date as IC 1 Directs.

- (b) The Service Provider must provide the Disengagement Services for the duration of the Disengagement Period.
- (c) The Service Provider must continue to provide the Services and to achieve all Service Standards and Outcome Measures in each Reporting Period during the Disengagement Period, except as Directed by IC 1.

53.2 Requirements for Disengagement Services

The Service Provider must, when performing the Disengagement Services:

- (a) ensure that there is minimal disruption to Workers, Employers, Third Party Service Providers and other stakeholders to the fullest extent possible;
- (b) ensure that there is minimal interruption to the provision of Services;
- (c) cooperate as reasonably necessary with IC 1 or its nominee;
- (d) perform the Disengagement Services in accordance with the Disengagement Plan or as Directed by IC 1;
- (e) deliver all Deliverables described in the Disengagement Plan by the relevant Milestone; and
- (f) comply with any requirement Directed by IC 1 where IC 1 believes, in its absolute discretion, that the requirement is necessary or desirable to:
 - (i) minimise disruption to Workers, Employers, Third Party Service Providers and other stakeholders to the fullest extent possible; or
 - (ii) ensure all Services continue to operate without interruption or adverse effect.

53.3 Approval of Disengagement Plan

- (a) IC 1 should, within either:
 - (i) Approve the Draft Disengagement Plan, in which case the Draft Disengagement Plan will become the Disengagement Plan; or
 - (ii) acting reasonably, requests amendments to the Draft Disengagement Plan, in which case the Service Provider must make the amendments and resubmit the Draft Disengagement Plan for IC 1's Approval,

If accepted by IC 1, the amended Draft Disengagement Plan will become the Disengagement Plan.
- (b) The Disengagement Plan must be updated by the Service Provider:

- (ii) at any time as Directed by IC 1;
 - (iii) on any occasion when there is a substantial change to:
 - (A) this Agreement; or
 - (B) the number of Claims or Services managed by the Service Provider;
 - (iv) to the end of the Initial Agreement Period and any extension exercised in accordance with subclause 4.2; and
 - (v) if the Agreement is terminated in accordance with subclause 52.1,
- and must at all times meet the requirements specified in Schedule 10 (*Disengagement Plan*).

53.4 Appointment of Personnel to Provide Disengagement Services

During the Disengagement Period IC 1 may designate which of the Service Provider's Personnel must provide the Services, and the Service Provider must not remove those Personnel from providing the Services without IC 1's prior written Approval. The Service Provider is not in breach of this subclause 53.4 if a designated individual is an employee of the Service Provider or any Service Company and the individual leaves the employment of the Service Provider or any Service Company (provided the individual is not then employed, or engaged in any way, by any member of the Service Provider Group).

53.5 Obligations on Service Provider on Disengagement

Without limiting any of the Service Provider's obligations under the Disengagement Plan, the Service Provider must _____ to do so, or by the end of the Period of Services, or by the end of the Disengagement Period (whichever is sooner):

- (a) procure, at its cost, the novation of those Subcontractor contracts, to IC 1 or its nominee, as Directed by IC 1. The Service Provider is responsible for any costs associated with the novation of the Subcontractor contracts, and IC 1 is responsible for the on-going operational fees and charges for the goods or services that are the subject matter of the Subcontractor contracts;
- (b) deliver to IC 1 or its nominee a copy of all of IC 1's Confidential Information in the custody or control of the Service Provider, Subcontractor, Third Party Services Provider or Service Company;
- (c) deliver to IC 1 or its nominee a copy of the Intellectual Property Rights used in connection with the Services which IC 1 either owns or is entitled to have assigned to it under clause 24; and
- (d) deliver to IC 1, or its nominee, all of IC 1's Confidential Information, the Records, Insurance Records and any ancillary materials, including file jackets and bindings that IC 1 believes, in its absolute discretion, are necessary or desirable to enable the Services or goods or services similar to the Services to be provided by IC 1 or its nominees in a manner which minimises the disruption, to the fullest extent possible, to Workers, Employers, Third Party Service Providers and other stakeholders caused by the Disengagement of the Services.

53.6 Delivery up of Material in Electronic Form

To the extent that the items in paragraphs 53.5(b), 53.5(c) or 53.5(d) are stored in electronic form, the Service Provider must deliver them in an electronic form which is readily accessible to IC 1. If requested by IC 1 the Service Provider must provide IC 1 or its nominee access to or use of the Service Provider IP or Third Party IP as required by clause 24 or use of or access to any Equipment reasonably required to run or exercise its rights of access or use during the Period of Services and for a period of up to six Months after the Period of Services as may be required by IC 1, in its absolute discretion, to enable IC 1 to:

- (a) exercise its rights under clause 24;
- (b) store, access and view and reproduce any data incorporated in any item in paragraphs 53.5(c) or 53.5(d) without technical restriction; and
- (c) provide the Services or goods or services similar to the Services in a manner which minimises any disruption, to the fullest extent possible to Workers, Employers, Third Party Service Providers and other stakeholders caused by the Disengagement of the Services.

SECTION J - GENERAL

55. Force Majeure

55.1 Force Majeure

A party will not be liable for any failure or delay:

- (a) in the case of the Service Provider, in the performance or discharge of its obligations under this Agreement; and
- (b) in the case of IC 1, in the performance or discharge of its obligations under this Agreement,

to the extent that such failure or delay is caused, directly or indirectly, by a Force Majeure Event.

55.2 No Application if Caused or Contributed to by Party Seeking to Rely on Event

This clause 55 does not apply to the extent that any Force Majeure Event is caused or contributed to by a breach of this Agreement by the party claiming the Force Majeure Event. IC 1 is not liable to pay any Remuneration to the Service Provider in respect of any period during which the Service Provider has failed to perform any Services due to a Force Majeure Event.

55.3 Notification

A party whose performance or discharge of its obligations referred to in subclause 55.1 is affected by a Force Majeure Event must immediately:

- (a) notify the other party in writing; and
- (b) describe in a reasonable level of detail the nature of the Force Majeure Event, its likely effect on that non-performing party's performance or discharge of its obligations under this Agreement, and which Services or obligations can continue to be performed.

55.4 Duty to Mitigate

On the occurrence of a Force Majeure Event, the non-performing party must use every effort to continue or resume performance or observance whenever and to whatever extent possible without delay, including by means of alternate sources, work-around or other means.

55.5 Termination by IC 1

The Service Provider agrees that IC 1 may terminate this Agreement for cause under subclause 52.2 by notice to the Service Provider if any Force Majeure Event has the result that the Service Provider fails to be able to provide complete normal operational capacity and meet its obligations under this Agreement within _____ of the Force Majeure Event.

56. Notices

56.2 Giving of Notices

- (a) A notice, Approval, Direction, consent, or other communication under this Agreement must be in writing and must be:
 - (i) left at the property address of the addressee:
 - (A) The property address for IC 1 is:

Level 15, 321 Kent Street, Sydney NSW 2000

Attention: Group Executive, Workers Insurance
 - (B) The property address of the Service Provider is:

Employers Mutual NSW Limited, Level 3, 345 George Street,
Sydney NSW 2000

Attention: Chief Executive
 - (ii) sent by prepaid ordinary post (airmail if posted to or from a place outside Australia) to the property address of the addressee;
 - (iii) hand delivered to the relevant person identified in paragraph 56.2(a)(i);
or
 - (iv) sent by email to the email address of the addressee:
 - (A) The email address of IC 1 is:

Email:
 - (B) The email address of the Service Provider is:

Email:

- (b) Unless a later time is specified in it or in this Agreement, a notice, Approval, Direction, consent, or other communication takes effect from the time it is received.

56.3 Receipt of Notices

A notice, Approval, Direction, consent, or other communication is taken to be received:

- (a) if left at the property address, on the _____ after leaving it;
- (b) if posted, on the 2nd (7th if posted to or from a place outside Australia) Business Day after posting;
- (c) if sent by email at the time the email is received by the addressee; and
- (d) if given or served by hand, at the time of delivery.

56.4 Change of Address to be Given by Notice

A party may notify the other party of a change to the property address or email address by notice in accordance with subclause 56.3.

57. General

57.1 Requirement of Writing

All amendments to this Agreement and all consents, Approvals, ratifications, waivers and Directions made under this Agreement must be in writing.

57.2 Perfection of Rights

The Service Provider must execute all Documents and do all acts and things required, at its cost (unless otherwise agreed), for the purposes of giving effect to the provisions of this Agreement (including dealing with Intellectual Property Rights and Moral Rights).

57.3 Giving of Directions, Approvals and Consents

IC 1 may make, give, issue, vary, withhold, replace or withdraw a Manual, Direction, Approval or Consent conditionally or unconditionally, in its absolute discretion, and without having or giving any reason, unless this Agreement specifically provides otherwise.

57.4 Variation

Subject to clauses 16(b) and 18, no agreement, deed or understanding varying or extending this Agreement will be legally binding upon either party unless the deed or understanding is in writing and signed by both parties. Any variation to this Agreement takes effect from the date specified in the deed or understanding or, if no date is specified, the date on which the Parties agree to the variation in writing.

57.5 Non-waiver

No failure or delay by a party in exercising any right, power or remedy under this Agreement and no course of dealing or grant by that party of any time or other consideration, will operate as a waiver of a default by the other party. Any waiver of a default of this Agreement must be in writing and will not be construed as a waiver of any further breach of the same or any other provision.

57.6 Severability

If any part of this Agreement is prohibited, void, voidable, illegal or unenforceable, then that part is severed from this Agreement but without affecting the continued operation of the remainder of the Agreement.

57.7 Relationship Created by this Agreement

The legal relationship created by this Agreement is that of principal and limited agent. Nothing in this Agreement creates a partnership, joint venture or contract of employment.

57.8 Transfer by IC 1

Notwithstanding any other provision of this Agreement, IC 1 may freely assign, novate or transfer this Agreement to any Agency or other person where it is necessary or convenient to do so in order to implement any change to the structure, functions or operations of IC 1 or any other Agency made by Law. IC 1 must give the Service Provider as much notice of such transfer as is reasonable in the circumstances.

57.9 Service Provider Must Not Assign without Approval

The Service Provider must not assign, novate or transfer the whole or part of this Agreement or any payment or other right, benefit or interest under this Agreement without obtaining the prior Approval of IC 1, which may be denied or given in its absolute discretion.

57.10 No Assignment of Subcontract with Designated Key Subcontractor

The Service Provider must ensure that the subcontract between it and any Designated Key Subcontractor is not assigned, novated or transferred in whole or part, including any payment or other right, benefit or interest under that subcontract, by the Designated Key Subcontractor or IC 1 without obtaining the prior Approval of IC 1, which may be denied or given in its absolute discretion.

57.11 Service Provider must Represent Itself as Agent

In carrying out its obligations under this Agreement, the Service Provider must represent itself as an agent of IC 1 in all dealings with Policyholders and any other third parties only to the extent of the scope of its agency as set out in subclause 3.1.

57.12 Entire Agreement Constituted by this Agreement

This Agreement constitutes the entire agreement and understanding between the parties as to the subject matter of this Agreement. Any prior arrangements, agreements, representations or undertakings as to the subject matter of this Agreement are superseded.

57.13 Legal Advice and Costs

Each party will bear its own costs incurred in relation to the preparation, negotiation and execution of this Agreement.

57.14 Stamp Duties and Taxes

In relation to this Agreement and its performance:

- (a) all stamp duties (including fines, penalties and interest) that may be payable on or in connection with this Agreement and any instrument executed under it must be borne by the Service Provider;
- (b) all taxes (except GST which is dealt with in clause 32), duties, charges imposed or levied in Australia or overseas in connection with the performance of this Agreement will be borne by the Service Provider; and
- (c) the Service Provider must indemnify IC 1 on Demand against any liability for breach of paragraphs 57.14(a) and 57.14(b).

57.15 Counterparts

This Agreement may be executed by counterparts by the respective parties, which together will constitute one Agreement.

57.16 Applicable Law

This Agreement is governed by, and must be construed in accordance with, the Laws applicable in force in the State of New South Wales.

57.17 Governing jurisdiction

Each party:

- (a) submits to the exclusive jurisdiction of the courts exercising jurisdiction in the State of New South Wales and the courts of appeal therefrom; and
- (b) expressly waives any right to object to the jurisdiction of the courts described in clause 57.17(a), whether on the ground of forum non conveniens or any similar principle of private international law.

57.18 Survival

Without limiting any other provision of this Agreement relating to survival, the following clauses survive any termination or expiration of this Agreement:

- (a) clause 24 (Intellectual Property Rights);
- (b) clause 25 (Data Protection Obligations);
- (c) subclause 26.8 (Remuneration may be Recalculated);
- (d) subclause 36.1 (General Warranties);
- (e) clause 38 (Indemnity);
- (f) clause 39 (IC 1's Limit of Liability);
- (g) clause 40 (Insurance to be Maintained by the Service Provider);
- (h) clause 41 (Performance Guarantee);
- (i) clause 42 (Financial Security);
- (j) clause 45 (Protection of Personal Information);
- (k) clause 46 (Confidentiality);
- (l) clause 48 (Records, Inspection and Audits);
- (m) clause 49 (Dispute Resolution);
- (n) clause 52 (Termination); and
- (o) any other provision of this Agreement which contemplates performance or observance following any termination or expiration of this Agreement by the passing of time or the provision of any Services.

58. Services to other Agencies

58.1 Obligation to provide Services

The Service Provider offers to provide the Services to any Agency in accordance with the requirements set out in this clause 58.

58.2 Acceptance

An Agency may accept the offer made under subclause 58.1 by giving the Service Provider an Instrument of Acceptance.

58.3 Contracting

- (a) The terms and conditions of that offer are the same terms and conditions as set out in this Agreement, except as modified by the Instrument of Acceptance.
- (b) Each Instrument of Acceptance given to the Service Provider in accordance with this Agreement will create a separate Agreement between the Service Provider and the Agency.

APPENDIX A – GLOSSARY

In this Appendix A (*Glossary*), references to clauses and subclauses are references to the terms and conditions of the Agreement. References to sections are references to sections of the relevant Schedule.

"1987 Act" means the Workers Compensation Act 1987 (NSW).

"1998 Act" means the Workplace Injury Management and Workers Compensation Act 1998 (NSW).

"2005 Deed" means the deed between the Nominal Insurer and the Service Provider entered into in pursuant to a Request for Proposal dated 31 March 2005 including all its Schedules, all attachments to the Schedules and Documents in the Appendix.

"2010 Deed" means the deed between the Nominal Insurer and the Service Provider entered into in pursuant to a Request for Proposal dated 14 May 2008 including all its Schedules, all attachments to the Schedules and Documents in the Appendix.

"2012 Legislative Reforms" means the amendments to the 1987 Act and the 1998 Act effected by the *Workers Compensation Legislation Amendment Act 2012* to the extent that they are connected with Benefits, Claims and Policies and related matters.

"2015 Deed" means the deed between the Nominal Insurer and the Service Provider entered into in pursuant to a Request for Proposal dated 7 April 2014 including all its Schedules, all attachments to the Schedules and Documents in the Appendix.

"2015 Act" means the State Insurance and Care Governance Act 2015 (NSW).

"Accept" means to accept Transition in accordance with subclause 5.2 signified by the issue of an Acceptance Certificate. **Accepted**, **Accepting** and **Acceptance** have corresponding meanings.

"Acceptance Certificate" means a certificate in the form (or substantially in the form) of the certificate set out in Schedule 14 (*Acceptance Certificate*).

"Acceptance Criteria" means the requirements set out in the Transition Plan, Schedules or a Project Services Order which a Deliverable or Services must meet to be Accepted by IC 1.

"Active Claims" means all Claims which receive a

"Actual Operating Cost"

"Adjustments", **"Adjustment Events"** and **"Adjustment Note"** have the meanings given to them in the GST Law.

"Agency" means:

- (a) a department of state;
- (b) a body corporate or an unincorporated body or office established or constituted for a public purpose by Commonwealth State or Territory Law, or an instrument made under that authority (including a local authority);
- (c) a body established by the Governor-General, a State Governor, or by a Minister of State of the Commonwealth, a State or Territory; or
- (d) an unincorporated company over which the Commonwealth, State or Territory exercises control.

"Agreed Terms" means:

- (a) clauses 1 to 58; and
- (b) the Glossary.

"Annual Operating Fee" has the meaning

for the provision of
the Services in a Calendar Year..

"Annual Service Fee" has the meaning

"Annual Outcome Fee" has the meaning

"APP Code" or **"Australia Privacy Principles Code"** has the same meaning as it has in the *Privacy Act 1988* (Cth).

"Appendix" means an appendix to this Agreement or a Schedule, as the context requires.

"Applicable Standards" means the standards specified by IC 1 in this Agreement or notified by IC 1 to the Service Provider from time to time, but do not include the Service Standards.

"APRA" means the Australian Prudential Regulation Authority, or any successor body.

"Approve" or **"Approval"** or **"Approved"** means written notice from IC 1 signifying that the relevant Milestone, Deliverable or other item that requires IC 1's approval has been through the formalities for approval.

"Approved Auditor" has the meaning given in subclause 48.3.

"Approved Medical Specialist" means a medical practitioner appointed as an approved medical specialist for the purposes of Part 7, s320 of the 1998 Act.

"ASIC" means the Australian Securities & Investments Commission, or any successor body.

"Attachment" means an attachment to a Schedule of this Agreement.

"Audit Plan" means the Service Provider's plan which identifies all scheduled audits to be undertaken by the Service Provider each Calendar Year.

"Australian Privacy Principles" has the meaning given in the *Privacy Act 1988* (Cth).

"Australian Standard" or **"Australian Standards"** means an Australian Standard (AS), or an Australian/New Zealand Standard (AN/NZS) published by Standards Australia (Standards Association of Australia).

"Banking and Financial Management Services" means the Services described in Schedule 3 (*Banking and Financial Management*) to be undertaken by the Service Provider, including in relation to banking arrangements, taxation management and financial reporting.

"Benefits" has the meaning given in the 1987 Act and the 1998 Act and includes payments made to Workers for:

- (a) compensation payable on death;
- (b) weekly compensation for income and support;
- (c) medical, hospital rehabilitation, legal and related expenses; and
- (d) non-economic loss and property damage.

For avoidance of doubt, Benefits includes amounts payable to Third Party Service Providers by IC 1.

"Business Activity Statements" or **"BAS"** means the form which the Service Provider must use to report GST and various other taxes, including PAYG to the Australian Taxation Office. For the Service Provider, this includes transactions which the Service Provider undertakes for the Scheme as a registered GST and PAYG branch of IC 1. Up to date details of the BAS contains can be obtained from the Australian Taxation Office website.

“Business Continuity Plan” or **“BCP”** means the plan addressing the Service Provider's capability, systems and processes for business continuity and disaster recovery, in place at the Commencement Date, and as updated from time to time.

“Business Day” means Monday through Friday excluding public holidays, bank holidays and gazetted holidays in New South Wales.

“Calendar Accident Year” means the Calendar Year in which a Claim is incurred.

“Calendar Day” means any day of the week from Monday to Sunday, irrespective of whether or not it is a public holiday.

“Calendar Year” or **“Year”** means the period commencing 00:00:00 1 January and ending 23:59:59 31 December.

“Case Management” means a coordinated approach that integrates both Injury Management and Claims Management to achieve an outcome including treatment, rehabilitation, retraining, liability determination, factual investigation, Claims estimation, and employment management practices, for the purpose of achieving optimum results regarding a timely, safe and durable Return to Work for injured Workers.

“Case Management Plan” or **“CMP”** means a plan that integrates Injury Management and Claims Management activities for all Claims involving payment of weekly Benefits.

“Case Management Specialist” means a suitably qualified individual responsible for the integration of all aspects of Injury Management and Claims Management.

“Certificate of Capacity” means a certificate given by a medical practitioner in a form Approved by IC 1, certifying the Worker's capacity for work.

“Certificate of Currency” is a certificate issued under the Law that confirms an Employer has a current Policy that is valid for a maximum of 4 months.

“Chief Executive Officer” means the Chief Executive Officer of icare acting for IC 1, or Chief Executive Officer of the Service Provider respectively (or their delegates) as required by the context in which this term appears.

“Claim” includes a claim for compensation or Work Injury Damages that a person has made or is entitled to make under a Policy. To avoid doubt, a Claim includes a Long Tail Claim.

“Claim Handover” means the transferring of a case and all associated files, Records and other necessary information to any individual within the Service Provider.

“Claims Transfer Planning Group” means the group identified as such in Schedule 11 (*Claims and Transfer*).

“Claims Incurred” means Claims with a date of Injury during the Calendar Year (n).

"Claims Management" means the effective coordination of all activities associated with the just and economic resolution of an injured Worker's Claim and includes activities associated with determining liability, providing Benefits and processing the Claim.

"Claims Management Expenses" means the cost of or incidental to the effective coordination of all activities associated with the just and economic resolution of a Claim and includes activities associated with determining liability, providing Benefits and processing a Claim.

"Claims Reported" means the Claims reported as appearing in the CDR but not including notification only claims.

"Claims Services" means all activities and processes associated with the management and administration of a Workers Compensation Claim under the NSW Workers Compensation Scheme.

"Claims Services Model" means the claims services model as shown in Attachment B.04 (*Claims Lifecycle*).

"Claims Technical Manual" means the Document of that name referred to in Schedule 2 (*Claims*).

"Closed Claims" means those Claims identified as being closed in the CDR.

"Code of Conduct" means the core values to be adopted by the Service Provider as described in Schedule 1 (*Code of Conduct and Customer Engagement*).

"Commencement Date" or **"2018 Agreement Commencement Date"** means 1 January 2018.

"Commutation" means an agreement to commute a liability to a lump sum, within the meaning of Part 3 of the 1987 Act.

"Company" has the meaning given in the Corporations Act.

"Compliance Audits, Inspections and Reviews" means those audits, inspections and reviewed carried out under clause 48 of the Agreement, Attachment 5.05 (*Internal Controls Framework*), and Schedule 5 (Governance).

"Conduct Risk" refers to the risk of inappropriate, unethical or unlawful behaviour or any associated incident on the part of an organisation's management or employees, where such conduct can be caused by deliberate actions or may be inadvertent and caused by inadequacies in an organisation's practice, frameworks or education programs.

"Confidential Information" means

- (a) any information disclosed by either party to the other, whether before or after the Commencement Date, that:
 - (i) is by its nature confidential;
 - (ii) is designated as confidential; or
 - (iii) the other party knows or ought to know is confidential;
- (b) the following provisions of this Agreement:
 - (iii) Schedule 10 (*Disengagement Plan*);
 - (iv) Schedule 13 (*Key Subcontractor Register*), as updated from time to time;
 - (v) Schedule 15 (*Service Provider Specific Obligations*), as updated from time to time; and
 - (vi) Appendix G (*Taxation Manual*),

excluding any provisions of the Schedules as listed in paragraph (k) below;
- (c) the director's declaration, in the form of Schedule 9 (*Director's Declaration*), as completed and executed;
- (d) the identity of the Guarantor inserted into a completed and executed Performance Guarantee;
- (e) the Service Provider specific details inserted into a completed and executed Financial Security;
- (f) performance data, reports and plans required under this Agreement except where IC 1 exercises discretion in accordance with the Agreement to release Records, Insurance Records and any other information including comparative performance data;
- (g) all IC 1 IP, Nominal Insurer IP, Foreground IP, Developed IP, Records, Insurance Records and Personal Information that relates to individuals who are directors, officers, employees or contractors of IC 1 and IC 1's Personnel;

but does not include information which:

- (h) is or becomes public knowledge other than by:
 - (i) breach of the Agreement; or
 - (ii) breach of any obligation of confidentiality; or
- (i) is in the lawful possession of the other party without restriction in relation to disclosure before the date of receipt of the information; or
- (j) is created independently of the disclosing party's Confidential Information; or
- (k) is contained in the following provisions of this Agreement:
 - (i) the operative provisions of this Agreement (other than the Schedules or part Schedules identified in subparagraph (b) of this definition);
 - (ii) Schedule 1 (*Code of Conduct and Customer Engagement*);
 - (iii) Schedule 2 (*Claims*);
 - (iv) Schedule 3 (*Banking and Financial Management*);
 - (v) Schedule 4 (*Disengagement*);
 - (vi) Schedule 5 (*Governance*);
 - (vii) Schedule 6 (*IP Deed and Confidentiality Deed*):
 - (A) Part A (*IP Deed*) (template only); and
 - (B) Part B (*Confidentiality Deed*) (template only);
 - (viii) Schedule 7 (*Project Services Framework*);
 - (ix) Schedule 8 (*Service Provider Principal Statutory Declaration*) (template only);
 - (x) Schedule 9 (*Director's Declaration*) (template only);
 - (xi) Schedule 10 (*Disengagement Plan*) (template only);
 - (xii) Schedule 11 (*Claims and Transfer*) (template only);
 - (xiii) Schedule 12 (*Performance Guarantee*) (template only);
 - (xiv) Schedule 14 (*Acceptance Certificate*);
 - (xv) Schedule 16 (*Instrument of Acceptance*) (template only); and

(xvi) the Manuals except Appendix G (*Taxation Manual*).

"Confidentiality Deed" means the deed set out in Part B (*Confidentiality Deed*) of Schedule 6 (*IP Deed and Confidentiality Deed*).

"Conflict" means any conflict of interest, any risk of conflict of interest and any apparent conflict of interest arising through the Service Provider (or its officers, Personnel), Service Company (or its Personnel) or Related Body Corporate engaging in any activity or obtaining any interest that is likely to conflict with or restrict the Service Provider in performing the Services fairly and independently. Without limiting the meaning of Conflict, the parties acknowledge and agree that the following scenarios represent a Conflict:

- (a) if the Service Provider, Service Company or Related Body Corporate (or their respective Personnel) receives, or accepts, an offer of a gift or benefit (directly or indirectly) above \$100 from a third party involved in the Services (including, to avoid doubt, a Third Party Service Provider), unless accepting the gift or benefit that is:
 - (i) expressly permitted under this Agreement; or
 - (ii) approved in writing by IC 1; and
- (b) if the Service Provider fails to pursue a Benefit, remedy or action on behalf of IC 1, a Worker or Employer, where the pursuit or recovery of that Benefit, remedy or action would cause the Service Provider or a Designated Key Subcontractor, Service Company or Related Body Corporate (or their respective Personnel) to incur a cost or a detriment. For example, a failure to pursue a compulsory third party insurer that is liable for contribution in respect of a Claim when that compulsory third party insurer is a Related Body Corporate of the Service Provider.

"Contract Dispute" means any difference between the parties arising under or in connection with this Agreement.

"Controllable Costs" means the

"Corporate Data Repository" or "CDR" means the data repository used by the Nominal Insurer as a Claims database which comprises data submitted by the Service Provider and Other Service Providers.

"Corporate Overhead" means the amount

"Corporations Act" means the *Corporations Act 2001* (Cth).

"Created Data" means any Records or Insurance Records that the Service Provider or its subcontractors create, modify or adapt in the course of providing the Services.

"Critical Milestone" means the Milestone specified as such in the Transition Plan, Disengagement Plan or Project Services Order.

"Critical Milestone Date" means the date for achievement of a Critical Milestone as set out in the Transition Plan, Disengagement Plan or Project Services Order.

"Customer Complaints" means complaints received by the Service Provider from an Employer, injured Worker or Third Party Service Provider in relation to the provision of the Services.

"Customer Forum"

"Customer Service Charter" has the meaning given in Schedule 1 (*Code of Conduct and Customer Engagement*).

"Customer Service Model" means the systems, processes, practices and values the Service Provider must develop and implement for managing customer service in accordance with Schedule 1 (*Code of Conduct and Customer Engagement*).

"Decision Rights" means the framework under which the Service Provider must manage the Services and consult with IC 1 and/or the Nominal Insurer as required and detailed in Attachment 5.06 (*Decision Rights*).

"Delay" has the meaning given in subclause 6.1.

"Deliverable" means any Material, Documentation or other item to be supplied by the Service Provider under this Agreement.

"Demand" includes any allegation, causes, suits, rights, claims, debt, expenses, liability, losses, proceedings and demands of any nature, including any claim for damages, costs, interest or indemnity, and whenever present or future, fixed or ascertained, actual or contingent, however arising, known or unknown.

"Designated Key Subcontractor" has the meaning given in paragraph 11.1(b).

"Developed IP" means any Intellectual Property Rights that are created or otherwise brought into existence by or on behalf of the Service Provider, its Personnel or any member of the Service Provider Group in the course of performing a Project Service and does not include Service Provider IP, IC 1 IP or Nominal Insurer IP.

“Direction” or **“Direct”** includes any lawful approval, authorisation, certificate, decision, demand, determination, direction, explanation, guideline, instruction, notice, notification, order, permission, rejection, request or requirement which IC 1 or the Nominal Insurer may make, give or issue. “Direction” may include a Non-Urgent Direction or an Urgent Direction or both.

“Disengagement Period” is the _____ or such longer period until all Disengagement Services have been completed to the reasonable satisfaction of IC 1, commencing on the earlier of:

- (a) the expiry of the Initial Agreement Period where an extension has not been exercised in accordance with subclause 4.2;
- (b) the expiry of any Extension Period exercised in accordance with subclause 4.2 where a further extension has not been exercised or does not apply;
- (c) the date specified by IC 1 in the notice of termination issued under subclause 52.1 or 52.2; and
- (d) such earlier date as IC 1 Directs,

during which the Service Provider will provide Disengagement Services in accordance with this Agreement and the Disengagement Plan.

“Disengagement Plan” means the plan developed and updated by the Service Provider in accordance with subclause 53.3.

“Disengagement Services” means:

- (a) the services required by the Service Provider to effect an orderly transfer of the Services, functions and operations provided or required to be provided by the Service Provider under the Agreement to a new service provider, an Other Service Provider or to IC 1 itself, as set out in the Disengagement Plan; and
- (b) the continuation of the Services until the end of the Disengagement Period in accordance with the Disengagement Plan.

“Dispute Notice”

“Document” or **“Documentation”** means documentation or material in any form (including in machine readable or other form) and includes reports, specifications, user or technical manuals, designs, plans, spread sheets, drawings, pictures, or any other marking in any format.

"Draft Disengagement Plan" means the draft plan set out at Schedule 10 (*Disengagement Plan*).

"Employer" means a business (including an individual) that employs or hires Workers or deemed Workers within the meaning of the 1987 Act and the 1998 Act on a full-time, part-time or casual basis, under an oral or written contract of service or apprenticeship.

"Entry Point" means

"Equipment" means the systems, hardware, software and telecommunications systems that are owned, licensed, procured by, or subject to the control of, the Service Provider or Service Company (and their respective Personnel) and are used to perform or deliver the Services. To avoid doubt, Equipment includes software and hardware sourced by the Service Provider as a service or provided to the Service Provider by IC 1 or the Nominal Insurer.

"Exiting Scheme Agent" means a Scheme Agent from whom a Claim is being transferred.

"Exiting Service Provider" means an Other Service Provider or Licensed Insurer, from whom a Claim or Service Component is being transferred.

"Expected Operating Cost" means

"Expense Control Metric" is

"Extended Period" has the meaning given in subclause 4.2.

"Fault" has the meaning given in paragraph 35.4(a).

"Fees"

"File Service Transfer" means the movement of Claims files as Directed by IC 1 in accordance with Schedule 11 (*Claims and Transfer*).

"Final Adjustment" means a positive or negative adjustment in relation to an Interim Payment once additional information becomes available in respect of the payment.

"Final Critical Milestone" means the Milestone specified as such in the Transition Plan, Disengagement Plan or any Project Services Order.

"Final Critical Milestone Date" means the date referred to as such in the Transition Plan, Disengagement Plan or any Project Services Order.

"Financial Forum"

"Financial Security" means the security referred to in clause 42.

"Force Majeure Event" is limited to:

- (a) an act of God, lightning strike, meteor strike, earthquake, storm, flood, water damage, landslide, extreme heat conditions, explosion, fire, unexpected electromagnetic interference caused by unlicensed or illegal transmission of electromagnetic energy or interference which is not reasonably foreseeable, or collapse of structures;
- (b) disruption of facilities or systems caused by the impact of an aircraft, ship, vessel or vehicle;
- (c) strikes or other industrial action, other than strikes or other industrial action primarily involving some or all the party's employees, or employees of its subcontractors or agents;
- (d) war (declared or undeclared), terrorism, sabotage, blockade, revolution, riot, insurrection, civil commotion or disorder, rebellion or epidemic,

the consequence of which:

- (e) is beyond the control of and was not caused or contributed to by the party which is seeking to rely on the event;
- (f) could not have been reasonably prevented or remedied by expenditure by the party which is seeking to rely on the event;
- (g) cannot be circumvented by the party which is seeking to rely on the event through the use of other practicable means including alternate sources and work around plans which provide a viable solution for the other party, as determined by that other party acting reasonably; and
- (h) could not have been prevented by the operation of the Business Continuity Plan.

"Foreground IP" means the Intellectual Property Rights:

- (a) in all Material created by the Service Provider on or following the Commencement Date for the purpose of or as a result of performing its obligations under this Agreement;

- (b) incorporated in, supplied or required to be supplied with the Material referred to in paragraph (a); or
- (c) copied or derived from the Material referred to in paragraphs (a) or (b),

and includes the Service Provider Operational Data and the Developed IP but excludes the Records and Insurance Records.

"Fraud" includes fraud on the Workers Compensation Scheme as described in section 235A of the 1998 Act, or suspected conduct that would, if proven, amount to such fraud.

"Fraud Co-ordinator" means the individual Service Provider's organisation responsible for facilitating information and / or evidence gathering within the Service Provider's organisation in relation to Fraud, as described in Schedule 5 (*Governance*).

"Fraud Identification and Management Model" means the approach and framework adopted by the Service Provider to ensure that all Fraud is managed in accordance with the requirements of the Agreement.

"Fund Loss" means any loss, liability, damage, cost or expense of the WCIF of any kind (including but not limited to any diminution in the value of the assets of the Fund or the deprivation of any gain to which the Fund would otherwise be entitled).

"General Manual" means the document attached to Schedule 17 (*General Schedule*) as issued by IC 1 to the Service Provider from time to time.

"GIPA Act" means the Government Information (Public Access) Act 2009 (NSW).

"Glossary" means Appendix A (*Glossary*) to this Agreement.

"Governance Forums"

"GST" means any tax imposed by the Commonwealth of Australia on the supply of goods and services or things, whether described as a goods and services tax, value added tax or any other like tax.

"GST Act" or "GST Law" means A New Tax System (Goods and Services Tax) Act 1999 (Cth).

"Guarantor" means a holding company of the Service Provider or other person Approved by IC 1 who has executed a Performance Guarantee pursuant to a request under clause 41.

"Half Year" and "Half Yearly" means each six Month period ending 23:59:59 30 June and 23:59:59 31 December each Calendar Year.

"Highest Standard" has the meaning set out in subclause 15.1.

"IC 1" or "Workers Compensation IC 1" means icare Support Solutions Pty Ltd (ABN 77 620 395 306).

"IC 1 Account Manager" or "Nominal Insurer Account Manager"

"IC 1 IP" means any Intellectual Property Rights that:

- (a) are comprised in Material provided to the Service Provider by IC 1 before or after the Commencement Date;
- (b) are comprised in any Material copied or derived from the Material referred to in paragraph (a); and
- (c) are created or otherwise brought into existence by or on behalf of IC 1 (other than by the Service Provider or its Personnel) in connection with this Agreement,

including the Monitoring Tool and the icare Database, but excluding records and Insurance Records.

"IC 1 Resources" has the meaning given in subclause 37.2.

"IC 1 Scheme Agent Deed" means the Scheme Agent Deed between the Nominal Insurer and IC 1 dated on or about 19 December 2017.

"IC 1 Principal" or "Nominal Insurer Principal" means the person appointed by IC 1 who is authorised to represent IC 1 in accordance with clause 22.

"icare" means New South Wales Insurance and Care, as regulated by the State Insurance and Care Governance Act 2015 (NSW)

"icare Database" means the data repository used by IC 1.

"icare Principles" has the meaning given in Attachment 1.01 (*icare Principles*) to Schedule 1 (*Code of Conduct and Customer Engagement*)

"Initial Agreement Period" means the period from the Commencement Date
Commencement Date.

"Injury" means a personal injury arising out of, or in the course of employment within, the meaning of section 4 of the 1987 Act and section 4 of the 1998 Act.

"Injury Management" means the process that comprises activities and procedures that are undertaken or established for the purpose of achieving a timely, safe and durable Return to Work for Workers following an Injury.

"Injury Management Plan" means a document which provides information for an injured Worker and Employer with a focus on documenting information relating to the Worker's Return to Work and recovery goals. The plan is developed in collaboration with the injured Worker, the Employer and the Nominated Treating Doctor.

"Input Tax Credits" has the same meaning as in the GST Act.

"Insolvency Event" means any of the following occurring to a company:

- (a) an arrangement is entered into between it and its creditors other than for purposes of reconstruction under Part 5.1 or 5.3A of the Corporations Act;
- (b) it ceases to be able to pay its debts as they become due;
- (c) a mortgagee enters into possession or disposes of the whole or part of its assets or business;
- (d) a receiver, a receiver and manager, a trustee in bankruptcy, a liquidator, an administrator, or similar is appointed over the whole or any part of its assets or business;
- (e) a voluntary administrator is appointed; or
- (f) any similar event in any foreign jurisdiction occurs.

"Instrument of Acceptance" means an instrument of acceptance substantially in the form of Schedule 16 (*Instrument of Acceptance*).

"Insurance Records" has the same meaning as in Part 19A of Schedule 6 of the 1987 Act.

"Intellectual Property Rights" means:

- (a) all rights conferred by statute, common law or in equity and subsisting anywhere in the world in relation to:
 - (i) all copyright (including rights in relation to phonograms and broadcasts);
 - (ii) inventions (including patents, innovation patents and utility models);
 - (iii) Confidential Information, trade secrets, Technical Data and know-how;
 - (iv) registered and unregistered designs;
 - (v) registered and unregistered trademarks;
 - (vi) circuit layout designs, topography rights and rights in databases, whether or not any of these are registered, registrable or patentable;

- (b) any other rights resulting from intellectual activity in the industrial, commercial, scientific, literary or artistic fields which subsist or may hereafter subsist;
- (c) any licence, sub-licence or other similar right from a third party to use any of the above;
- (d) any applications and the right to apply for registration of any of the above; and
- (e) any rights of action against any third party in connection with the rights included in paragraphs (a) to (d) above,

but excluding Moral Rights.

“Interim Payment” means

“Internal Business Purposes” means the use or application of the Developed IP in the business systems and practices of the Service Provider, including in respect to the delivery of a service to a customer of the Service Provider, but excluding the purpose of directly generating revenue from the Developed IP such as licensing the Developed IP or providing consulting services using the Developed IP.

“Internal Controls” means the Service Provider's checks and measures to ensure that appropriate policies and procedures are in place within the Service Provider and which are audited annually by IC 1's independent auditor.

“IP Deed” means the deed set out in Part A (*IP Deed*) of Schedule 6 (*IP Deed and Confidentiality Deed*).

“Key Personnel” means:

- (a) the Service Provider Principal and any personnel of the Service Provider who directly report to the Service Provider Principal; and
- (b)

“Key Subcontractor” means a Subcontractor that:

- (a) is remunerated more than \$250,000 per annum;
- (b) provides more than 15% of the Equipment or infrastructure that supports the Service Provider's provision of the Services (e.g. IT systems supplier); or

- (c) provides more than 15% of the Personnel used to provide the Services.

"Key Subcontractor Register" means the register of Key Subcontractors referred to in subclause 11.4 which is set out at Schedule 13 (*Key Subcontractor Register*), as updated from time to time.

"Key Transfer Personnel" means the Personnel of the Service Provider and IC 1 with responsibility for undertaking or monitoring (as applicable) the transfer of Claims in accordance with Schedule 11 (*Claims and Transfer*).

"Knowledge Articles" means items including processes and information used in the day to day provision of the Services.

"Knowledge Management" means the process of creating, sharing, using and managing the knowledge and information of the parties.

"KPI" means metrics of performance as recommended by the Governance Forums and included within the KPI Register.

"KPI Register" means the register of KPIs recommended by the Governance Forums for use in calculating Service Standard results.

"Large Employer" means an Employer with a Basic Tariff Premium of more than \$500,000 per annum.

"Law" includes:

- (a) *Workers' Compensation (Dust Diseases) Act 1942 (NSW)*;
- (b) *Workers Compensation Act 1987 (NSW)*;
- (c) *Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987 (NSW)*;
- (d) *Workplace Injury Management and Workers Compensation Act 1998 (NSW)*;
- (e) *Occupational Health and Safety Act 2000 (NSW)*;
- (f) *Work Health and Safety Act 2011 (NSW)*;
- (g) *Workers Compensation Amendment (Insurance Reform) Act 2003 (NSW)*;
- (h) any statute, regulation, by-law, ordinance or subordinate legislation in force in Australia, whether made by a State, Territory, Commonwealth, or a local government;
- (i) any ancillary rules, guidelines, orders, directions, directives, codes of conduct or other instruments made or issued thereunder;

- (j) common law and the principles of equity;
- (k) any Direction issued under any Law; and
- (l) any relevant industry codes of conduct (whether mandatory or voluntary in their application).

"Liquidated Damages" has the meaning given in subclause 6.5.

"Local Operating Cost" means

"Long Tail Claim" means a Claim that:

- (a) is non-premium impacting for Employers at the Commencement Date (date of injury prior to 1 January 2012); and
- (b) was opened prior to the 2012 Legislative Reforms (Claims with a date of Claim prior to 1 October 2012); and
- (c) has been transitioned to the *Work Health and Safety Act 2011* (NSW) and Regulations but remain active within the Scheme; or
- (d) is directed by IC 1 as being a Long Tail Claim.

"LPR Policies" means the methods by which premiums are calculated related to Large Employers (if such Large Employers elect) derived from Claims costs. .

"Manuals" means the manuals issued by IC 1 to the Service Provider from time to time which describe certain technical requirements, guidelines and instructions for the performance of the Services, and are identified by IC 1 as being a 'manual', a 'guide' or a 'guideline', and includes the General Manual.

"Material" includes Documents, goods, information and data stored by any means including all copies and extracts of the same.

"Measurable Elements" mean the Service Standard measurable elements described in Appendix I (*Service Standards*).

"Medium Employer" means an Employer with a written Basic Tariff Premium greater than \$30,000 per annum and less than or equal to \$500,000 per annum.

"Merit Review" or **"Merit Review Service"** means a merits review of a Work Capacity Decision undertaken by SIRA under the 1987 Act.

"Metric" or **"M"** means a measure or measurement.

"Metric Categories" means the Metric categories described in Appendix I (*Service Standards*).

"Milestone" means a key Deliverable or event in the delivery of any Service that is described in any plan in respect of this Agreement, including the Transition Plan, the Disengagement Plan or a Project Services Order, for which Approval or Acceptance is required.

"Milestone Date" means the date for achievement of a Milestone. **"Monitoring Tool"** means the tool provided by IC 1 for the Service Provider to assess its performance.

"Month" means calendar month.

"Moral Rights" means rights of integrity of authorship, rights of attribution of authorship, rights not to have authorship falsely attributed, and rights of a similar nature conferred by statute, that exist, or may come to exist, anywhere in the world.

"Net Promoter Score" or "NPS" means the measurement undertaken by the Nominal Insurer of customer satisfaction,

"Net Promoter Score Measure" means the

"New Employment Assistance" means the financial and non-financial assistance available to an injured Worker in cases where they are unable to Return to Work with their pre injury employer, due to Injury.

"Nominal Insurer" means the Nominal Insurer established by Division 1A of Part 7 of the 1987 Act, as inserted by the 2003 Act.

"Nominal Insurer IP" means any Intellectual Property Rights that:

- (a) are comprised in Material provided to the Service Provider by the Nominal Insurer before or after the Commencement Date, including Intellectual Property Rights in Material owned by the Nominal Insurer and in possession of the Service Provider as a result of the 2005 Deed, the 2010 Deed or the 2015 Deed;
- (b) are comprised in any Material copied or derived from the Material referred to in paragraph (a); and

- (c) are created or otherwise brought into existence by or on behalf of the Nominal Insurer (other than by the Service Provider or its Personnel) in connection with this Agreement,

including the Monitoring Tool and the icare Database, but excluding the Records and Insurance Records.

“Nominated Treating Doctor” means the doctor responsible for coordinating all aspects of treatment and Return to Work management (as defined for all parts of the Agreement

“Non-Urgent Direction” means a Direction other than an Urgent Direction.

“Notice of Change” has the meaning given in paragraphs 17(a) or 18(a), as the context requires.

“Notification” means a notification made within the meaning of section 44 of the 1998 Act.

“NSW Auditor General” means the Auditor-General of New South Wales, as appointed under the *Public Audit and Finance Act 1983* (NSW), and includes any employee or other representative of that person.

“Operating Expense Outcome Measure” means

“Operational Committees”

“Operational Reports” means the operational reports described in Schedule 5 (*Governance*).

“Other Service Providers” means all Scheme Agents other than IC 1, and other persons with whom IC 1 or the Nominal Insurer has entered or will enter into agency arrangements or arrangements similar to this Agreement in relation to Claims Management, whether or not those persons are Scheme Agents.

“Outcome Measures” means the

“Outcome Measure Score” means

"Panel" means a standing offer agreement entered into by IC 1 to provide Third Party Service Provider services to the Scheme.

"Payment Account" means the WCIF bank account that is allocated to the Service Provider by IC 1 from which the Service Provider pays Benefits and Third Party Service Providers.

"Payment Transactions" means the number of individual payments made by a Service Provider during a period as recorded in the CDR.

"People Forum"

"Performance Guarantee" means a guarantee of performance, including financial obligations, from a Related Body Corporate of the Service Provider, substantially in the form of Schedule 12 (*Performance Guarantee*), or as otherwise agreed to by IC 1, in its absolute discretion.

"Performance Management Governance Framework"

"Performance Management Register"

"Period of Services" means the Initial Agreement Period plus any extension exercised in accordance with subclause 4.2 plus the Disengagement Period.

"Personnel" means any person, employee, subcontractor or permitted agent of a party, and in respect of:

- (a) the Service Provider, includes its Key Personnel, Subcontractors, any personnel of a Subcontractor, and any personnel of any Service Company but not any Third Party Service Provider; and
- (b) IC 1, includes icare acting for IC 1, but not the Service Provider or any Other Service Provider.

"Personal Information" has the same meaning as in the *Privacy Act 1988* (Cth).

"Policy" means a policy of insurance that an Employer obtains under the 1987 Act.

"Policyholder" means an Employer with a Policy with the Nominal Insurer.

"Principal" means either the Service Provider Principal or IC 1 Principal.

"Project Plan" means a plan which describes the activities that will be undertaken and the processes that will be followed by the Service Provider in relation to the management of a Project Service.

"Project Services" means services that are:

- (a) additional to the scope of the Services at the Commencement Date; and
- (b) are provided under a Project Services Order in accordance with subclause 15.4.

"Project Services Order" means a written order for Project Services and substantially in the form of Attachment 7.03 (*Project Services Order*) to Schedule 7 (*Project Services Framework*) and includes a Project Services Order for Urgent Project Services.

"Project Services Request" has the meaning given in paragraph 15.3(a)(i).

"Project Service Response" has the meaning given in paragraph 15.3(a)(ii).

"Provider Payment" means an amount which is payable to a Third Party Service Provider, and which does not form any component of the Remuneration.

"Qualifying Invoice" means a Tax Invoice for a Third Party Service Provider's services that meets all the criteria set out in clause 27.

"Quality Management Framework" means the programs, practices and measures implemented by the Service Provider to ensure the provision of a high quality, contemporary, timely and accountable Service, in accordance with Schedule 5 (*Governance*).

"Quarter" or **"Quarterly"** means each three Month period commencing 00:00:00 1 January, April, July and October each Calendar Year and ending at 23:59:59 on 31 March, 30 June, 30 September and 31 December respectively.

"Receiving Service Provider" means the Service Provider, a specific Other Service Provider, or other person, to which responsibility for a particular Claim or Service Component that has been, or may be, transferred under the Direction of IC 1.

"Records" means all information that is made or kept, or received and kept, by the Service Provider in the exercise of its functions on behalf of IC 1 other than Service Provider IP.

"Related Body Corporate" bears the same meaning as defined in the Corporations Act.

"Remediation Plan" means a plan prepared by the Service Provider to address underperformance or non-compliance by the Service Provider.

"Remediation Plan Direction" has the meaning given in paragraph 51.2(a).

“Remuneration”

“Reporting Period” in relation to a Service Standard is the reporting period specified in respect of a Service Standard or an element of a Service Standard.

“Resolution Group”

“Return to Work” or “RTW”

“Return to Work Measure” means the Outcome Measure set out in Appendix I (*Service Standards*).

“Revenue Account” means IC 1’s or its nominee’s bank account that will receive all premiums collected by the Service Provider as agent of IC 1 including overpayment of Claims and recoveries.

“Risk Forum”

“RTW&S Leadership Forum”

“Schedule” means a schedule attached to this Agreement including any Attachment or Appendix to a Schedule.

“Scheme” means the part of the NSW Workers Compensation system which is administered by the Nominal Insurer and IC 1.

“Scheme Agent” has the meaning set out in the 1987 Act.

“Scheme Outcomes” means improved service delivery for Employers and Workers, improved Return to Work outcomes and improved financial performance of the Scheme.

“Scheme Principles” means the principles referred to in subclause 2.2.

"Self Insurer" means a person who holds a licence as a self insurer under Division 5 of Part 7 of the 1987 Act.

"Service Company" means Employers Mutual Management Pty Ltd (ABN 11 001 735 191) or a Related Body Corporate of the Service Provider who employs Personnel which are engaged by the Service Provider in the performance of the Services.

"Service Component" means any individual component of the work required to be performed by the Service Provider under this Agreement.

"Service Delivery and Operations Forum"

"Service Assets" means those assets and/or parts of assets of the Asset Owner that have been used in providing the Services. Service Assets do not include Service Provider IP.

"Service Provider" has the meaning set out in the parties clause on Page 1.

"Service Provider Account Manager" means the person nominated as such by the Service Provider from time to time.

"Service Provider Group" means the Service Provider, any Service Company and any Related Body Corporate of the Service Provider, or any Service Company.

"Service Provider IP" means any Intellectual Property Rights that are created, written or brought into existence by the Service Provider, its Personnel or any member of the Service Provider Group which:

- (a) is in existence at the Commencement Date or is subsequently brought into existence other than as a result of the performance of this Agreement; and
- (b) is embodied in, or attaches to, the Foreground IP, Records or Insurance Records or is otherwise necessarily related to the functioning or operation of the Services,

but excludes any Developed IP, IC 1 IP, Nominal Insurer IP, Third Party IP, Records or Insurance Records.

"Service Provider Operational Data" means information that relates to, or is created by or for, IC 1 or its Personnel relating to the operation, facilities, customers, employees, assets, finances, transactions, policies or processes of IC 1 and/or an Agency.

"Service Provider Principal" means the person appointed by the Service Provider who is authorised to represent the Service Provider in accordance with clause 22.

"Service Provider Strategy and Performance Forum"

"Service Segment" means the different streams of the Claims Services Model, being care, specialised, support guide and empower.

"Service Segmentation" means the process of allocating Claims and Service Components to the appropriate Service Segment.

"Service Standard" means

"Service Standard Score" means

"Services" means the work required to be performed by the Service Provider in accordance with the Agreement, including:

- (a) all services and requirements described in Schedule 2 (*Claims*) and Schedule 3 (*Banking and Financial Management*) and any Attachments or Appendices to those Schedules, and which for the avoidance of doubt includes any Direction issued under this Agreement;
- (b) Service Components;
- (c) all obligations to undertake activities, or provide Deliverables or outputs in the clauses of the Agreement or in any Schedule;
- (d) the Transition;
- (e) the Project Services; and
- (f) the Disengagement Services,

and includes any service or work that is necessary or incidental to the provision of the Services or by virtue of the Law.

"Severe Injury" means severe and permanent disabilities, including paraplegia, quadriplegia, acquired brain injury, blindness, bilateral or multiple amputation, and severe burns (i.e. full thickness burns) to more than 30% of the whole body.

"Severely Injured Worker" has the meaning given in section 10 of Appendix B (*Claims Operations Manual*).

"Shared Services" means business activities that are common across the Service Provider's organisation and not limited to the Service Provider's provision of Services under this Agreement. This includes but is not limited to human resources, finance and information technology.

"Site" means any location where the Services are or have been performed.

"Small Employer" means an Employer with a Basic Tariff Premium of \$10,000 per annum or less or Wages payment of \$300,000 per annum or less.

"Specialised Insurer" means an Insurer who holds a licence as a specialised insurer under Division 3 of Part 7 of the 1987 Act.

"Specified Supplies" for the purpose of subclause 33.4, means the fees specified in paragraph 26.1(a), including any Interim Payment or final adjustment of those fees.

"State Insurance Regulatory Authority" or **"SIRA"** refers to the State Insurance Regulatory Authority as constituted under Part 3 of the *State Insurance and Care Governance Act 2015* (NSW).

"Statutory Fees" means a fee charged in accordance with any Law.

"Strategic Reports" means the strategic reports described in Schedule 5 (*Governance*).

"Subcontractor" means any subcontractor or agent and their respective directors, officers, employees, engaged by the Service Provider to fulfil some of the Service Provider's obligations to perform the Services, but is not a Third Party Service Provider or Service Company. A Key Subcontractor and a Designated Key Subcontractor are Subcontractors. A Related Body Corporate may be a Subcontractor.

"Suitable Employment" means employment in work which the Worker is currently suited:

- (a) having regard to:
 - (i) the nature of the Worker's incapacity and the details provided in medical information including, but not limited to, any certificate of capacity supplied by the Worker (under section 44B of the 1987 Act);
 - (ii) the Worker's age, education, skills and work experience;
 - (iii) any plan or Document prepared as part of the Return to Work planning process, including an Injury management plan under Chapter 3 of the 1998 Act;
 - (iv) any occupational rehabilitation services that are being, or have been, provided to or for the Worker; and

- (v) such other matters as the Workers Compensation Guidelines may specify, and
- (b) regardless of:
 - (i) whether the work or the employment is available;
 - (ii) whether the work or the employment is of a type or nature that is generally available in the employment market;
 - (iii) the nature of the Worker's pre-injury employment; and
 - (iv) the Worker's place of residence.

"Suspect Activity" means any conduct or behaviour which might give rise to an allegation of a contravention of Workers Compensation legislation.

"Target", where applicable, means

"Tax Invoice" means an invoice that is in a form that complies with the GST Act.

"Technical Data" means all research materials, technical reports, test results, analysis, computer programs, computer data bases, computer and software routines, network and topology diagrams and information, working papers, drawings, specifications, formulae, manufacturing processes, recipes, operating procedures and other technical and scientific data and information of whatever kind relating to any Workers Compensation Scheme.

"Third Party IP" means any Intellectual Property Rights which are owned by a party other than IC 1, the Nominal Insurer or the Service Provider or a member of the Service Provider Group, and is embodied in the Services, or attaches to the Services or is otherwise necessarily related to the functioning or operation of the Services.

"Third Party Service Provider" means any person that provides services (exclusively or otherwise):

- (a) for which an Employer is liable to pay under the 1987 Act or the 1998 Act that may include medical or related assessments, examinations or reports for the purposes of the 1987 or 1998 Acts, legal services, medical or health services;
- (b) that are services other than those in (a) and are either Approved by IC 1, or are specified as Third Party Service Provider services in the Manuals.

"Transfer Period" means the period during which Claims are being transferred under Schedule 11 (*Claims and Transfer*).

"Transfer Plan" means the plan developed by the Service Provider and Approved by IC 1 to effect the transfer of Claims in accordance with Schedule 11 (*Claims and Transfer*).

"Transition" means the activities to be carried out by the Service Provider to prepare for the transition of the performance of the Services by the Service Provider (including the preparation of the Service Provider's systems to perform the Services, transfer of assets and management to and/or from the Service Provider) under the Agreement.

"Transition Period" has the meaning given in the Transition Plan.

"Transition Plan" means the plan of that name prepared by the Service Provider and Approved by IC 1.

"Treasurer" means the Treasurer of the Commonwealth of Australia.

"Triage" means a Claims Management activity that involves the classification and segmentation of notifications and Claims into groups according to specific requirements of the Claim.

"Triage Specialist" means the subject matter expert whose role is to apply triage practices to support the identification and understanding of risk on Claims and assign them to appropriate Service Segments.

"Unique Identifier" means an identifier that is formatted in accordance with a Direction that uniquely identifies a Notification or Claim across the Scheme and has the following characteristics:

- (a) will remain constant irrespective of the Service Provider handling the Notification or Claim;
- (b) must not be merged with or form part of other identifiers; and
- (c) must be used in all correspondence to the injured Worker, Employer and Third Party Service Provider.

"Urgent Direction" means a Direction identified by IC 1, in its absolute discretion, as urgent and which must be implemented urgently.

"Urgent Project Services" means services that are:

- (a) outside the scope of the Services at the Commencement Date; and
- (b) initiated by IC 1 under paragraph 15.5(b) and provided under a Project Services Order in accordance with subclause 15.5.

"Virus" includes any 'Trojan horse', 'worm', 'drop dead device', virus or other hardware or software designed or intended to:

- (a) disable, damage, erase, disrupt or impair the normal operation of any hardware, software or system; or
- (b) permit unauthorised access or use of hardware, software or systems; or
- (c) assist in or enable unauthorised access to, or disclosure of or destruction or corruption of data.
- (d) s or deemed Workers as defined under the Schedule 1 of the 1998 Act.]

"Vocational Rehabilitation Plan" means a range of initiatives available to injured Workers to assist with Returning to Work. Initiatives include, but are not limited to, work trials, training, workplace equipment or modifications, transitions to work assistance and Jobcover placement programs.

"Wages" includes salary, overtime, shift and other allowances, bonuses, commissions, payment to working directors, payment for public and annual holidays, payments for sick leave, value of board and lodging provided by the Employer, or any other consideration paid to the Worker as described under the 1987 Act.

"WCC" means the Workers Compensation Commission.

"WH&S and Workers Compensation Legislation" includes:

- (a) *Workers Compensation Act 1987 (NSW)*;
- (b) *Workplace Injury Management and Workers Compensation Act 1998 (NSW)*;
- (c) *Work Health and Safety Act 2011 (NSW)*;
- (d) *Work Health and Safety Regulation 2011 (NSW)*;
- (e) *Occupational Health and Safety Act 2000 (NSW)*;
- (f) *Occupational Health and Safety Regulation 2001 (NSW)*;
- (g) any other legislation in force in Australia whether made by a State, Territory, Commonwealth or local government;
- (h) any ancillary rules, guidelines, orders, directions, directives, codes of conduct or other instruments made or issued thereunder;
- (i) common law and the principles of equity;
- (j) any Direction issued under any of the above; and
- (k) any Direction issued under any of the above as applicable from time to time, in relation to work health and safety and Workers Compensation.

"Work Capacity Assessment" means a work capacity assessment under section 44A of the 1987 Act.

"Work Capacity Decision" has the meaning given in section 43 of the 1987 Act.

"Work Capacity Guidelines" means the Guidelines relating to the assessment of work capacity for the purposes of section 44A of the 1987 Act.

"Work Capacity Handbook" means the resource developed by the Nominal Insurer and IC1 detailing key processes and guidance to be applied by the Service Provider when applying Work Capacity Decisions related to a Claim.

"Work Injury Damages" or **"WID"** means a Claim for damages made under Part 5 of the 1987 Act.

"Workers Care" is a service provided by Lifetime Care (an entity associated with Insurance and Care NSW), to Workers with Highest Needs Claims (and other associated Claims as determined by the Nominal Insurer).

"Workers Compensation Guidelines" means the guidelines issued under section 376 of the 1998 Act, Guidelines for claiming workers compensation and any other Guidelines made for any other matter provided for in the workers compensation legislation from time to time.

"Workers Compensation Independent Review Officer" or **"WIRO"** means the statutory office of that name established under Part 3 of Chapter 2 of the 1998 Act (and includes any member of the staff of that officer).

"Worker" means a Worker within the meaning of the 1987 Act and includes a deemed Worker within the meaning of the 1998 Act, and an injured Worker who is or may be entitled to Benefits under the 1987 Act and/or the 1998 Act.

"Workers Compensation" means the scheme of insurance regulated by the 1987 Act and the 1998 Act that provides Benefits to Workers who sustain work-related Injuries.

"Workers Compensation Insurance Fund" or **"WCIF"** means the fund established by the under section 154D of the 1987 Act.

"Workers Compensation Scheme" means the Scheme, or any arrangement that includes Self Insurers, Specialised Insurers, or the Treasury Managed Fund.

"Workers with Highest Needs" had the meaning as defined in section 32A of the 1987 Act.

"Workers with Highest Needs Claims" means those

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SIGNING PAGE

EXECUTED as an Agreement.

Executed by Insurance and Care NSW
acting for and on behalf of the **Workers**
Compensation Nominal Insurer ABN 16
759 382 489 by its duly authorised
representative:

In the presence of:

Signature of authorised representative

Signature of witness

Name of authorised representative (print)

Name of witness (print)

Date

Executed by icare Support Solutions Pty
Ltd ABN 77 620 395 306 by its duly
authorised representative:

In the presence of:

Signature of authorised representative

Signature of witness

Name of authorised representative (print)

Name of witness (print)

Date

Executed by Employers Mutual NSW Limited
ABN 52 003 201 885 in accordance with
section 127 of the Corporations Act 2001:

Signature of director

Signature of director / company secretary
(Please delete as applicable)

Name of director (print)

Name of director / company secretary
(print)

Date

Executed by Employers Mutual Management
Pty Limited ABN 11001735191 in accordance
with section 127 of the Corporations Act
2001:

Signature of director

Signature of director / company secretary
(Please delete as applicable)

Name of director (print)

Name of director / company secretary
(print)

Date