

SCHEME AGENT CONTRACT

SCHEME AGENT CONTRACT
FOR
NEW SOUTH WALES WORKERS
COMPENSATION NOMINAL INSURER

BETWEEN

Workers Compensation Nominal Insurer
(“Nominal Insurer”)

AND

«**CoName**»
(“Scheme Agent”)

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Scheme Agent Deed

SCHEME AGENT DEED

This is an agreement, in the form of a deed, between:

- 1 The Nominal Insurer; and
- 2 «CoName» (“Scheme Agent”).

RECITALS AND BACKGROUND

- A. The WorkCover Authority of New South Wales is constituted by the *Workplace Injury Management and Workers Compensation Act 1998* as a statutory corporation representing the Crown.
- B. The Nominal Insurer is established by the *Workers Compensation Amendment (Insurance Reform) Act 2003*. The Nominal Insurer is the legal entity responsible for the Scheme. Its functions are set out in Part 7, Division 1A of the 2003 Act. The funds of the Scheme are held in the Workers Compensation Insurance Fund. The Nominal Insurer manages the Insurance Fund in accordance with Part 7, subdivision 2 of the 2003 Act.
- C. WorkCover administers the Scheme. The Scheme is a compulsory, no-fault insurance regime that provides workers compensation insurance for certain NSW employers and workers. The Scheme provides certain financial support, and medical, rehabilitation and other services to those injured at work and their families. The principal legislation relating to the Scheme is the *Workers Compensation Act 1987*, the *Workplace Injury Management and Workers Compensation Act 1998* and the *Workers Compensation Amendment (Insurance Reform) Act 2003*.
- D. Section 154C of the 2003 Act provides that WorkCover acts for the Nominal Insurer and that in acting for the Nominal Insurer, WorkCover has and may exercise all the functions of WorkCover under the 2003 Act, the 1998 Act or any other Law.
- E. The 2003 Act provides for the Nominal Insurer to enter into arrangements with persons to act as scheme agents. The 2003 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 functions the scheme agents can perform include Premium Collection and Claims Management.
- F. The 2003 Act provides that WorkCover's role in acting for the Nominal Insurer is not limited by any agency arrangement. The terms and conditions of this Deed do not limit the Nominal Insurer's or WorkCover's authority under the 1987, 1998 or 2003 Acts.

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- G. In order to engage persons to provide certain services in relation to Premium Collection and Claims Management for workers compensation policies the Nominal Insurer issued a Request for Proposal on 31 March 2005.
- H. The Scheme Agent provided a Response to the Request for Proposal and has represented that it has the skills, qualifications and experience necessary to perform and manage the Services and Transition Services in an efficient, cost effective and controlled manner, with a high degree of quality and responsiveness.
- I. The Scheme Agent has further represented that it will use every effort to implement the Nominal Insurer's Premium Collection and Claims Management strategies and achieve the Scheme Objectives.
- J. In reliance upon the Scheme Agent's representations and its Response, and after evaluation of tenders submitted throughout the competitive process, the Nominal Insurer has selected the Scheme Agent as part of a panel to provide the Services and Transition Services.
- K. The Nominal Insurer has requested that the Scheme Agent provide, and the Scheme Agent has agreed to provide, the Services and Transition Services to Nominal Insurer on the terms of this Deed.
- L. The Scheme Agent will provide Transition Services under a contract between the Nominal Insurer, as one legal entity, and the Scheme Agent, as a separate legal entity. If the Scheme Agent obtains the Nominal Insurer's Approval that the Scheme Agent has met the Minimum Operational Requirements as part of Transition Services the Nominal Insurer will appoint the Scheme Agent as a 'scheme agent' within the meaning of the 2003 Act as from the Scheme Services Commencement Date. The Scheme Agent will then provide the Services as agent for the Nominal Insurer.

Scheme Agent Deed

OPERATIVE PROVISIONS

PART A Period

1 Period

Period and Extension

- 1.1 This Deed commences on the Commencement Date and continues until the later of:
- (a) the date the Deed is terminated in accordance with Clause 2 or 43; or
 - (b) the last day of the provision of any Services.
- 1.2 The Transition Services commence on the Transition Commencement Date and provided the Scheme Agent has obtained the Nominal Insurer's Approval that it has met the Minimum Operational Requirements, the Transition Services will continue until the Transition Completion Date.
- 1.3 The Period of Scheme Services commences on the Scheme Services Commencement Date and continues until 31 December 2008, unless:
- (a) the Deed is terminated in accordance with Clause 43; or
 - (b) the Period of Scheme Services is extended in accordance with Sub-clauses 1.4, 1.5 and 5.9.
- 1.4 The Period of Scheme Services may, at the end of 2008 and at the end of each year of any extended Period of Scheme Services, be extended in annual period increments, up to a maximum extended Period of Scheme Services of three years, at the absolute discretion of the Nominal Insurer. Any extended Period of Scheme Services will be on the same terms and conditions as those set out in this Deed.
- 1.5 The Remuneration for any extended Period of Scheme Services will be determined according to the process in Clause 5 of this Deed.

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PART B Transition

2 Transition Services

- 2.1 The Scheme Agent must provide the Transition Services in accordance with Schedule 11 and this Deed. The Scheme Agent does not provide Transition Services as agent for the Nominal Insurer.
- 2.2 The Scheme Agent must:
- (a) ensure that the Transition Services can meet the Minimum Operational Requirements Milestone by the date set out in the Transition Plan; and
 - (b) continue to provide any other Transition Services after that date in accordance with the Transition Plan.
- 2.3 The Scheme Agent must assume responsibility for providing the Transition Services on the Transition Commencement Date.
- 2.4 If by the date set out in the Transition Plan for Approval of the Minimum Operational Requirements Milestone, the Scheme Agent has not obtained the Nominal Insurer's Approval, then the Nominal Insurer may give the Scheme Agent 10 Business Days notice of its intention to terminate this Deed. If the Scheme Agent has not satisfied the Nominal Insurer that this Deed should not be terminated then, following expiry of that 10 Business Day period, the Nominal Insurer may:
- (a) terminate this Deed, and the Scheme Agent must refund to the Nominal Insurer any Interim Payments received up to the date of termination;
 - (b) postpone the Scheme Services Commencement Date and require the Scheme Agent to achieve the Minimum Operational Requirements Milestone by the new date specified by the Nominal Insurer; or
 - (c) permit the Scheme Agent to provide specified Scheme Services, and otherwise perform all other obligations which are expressed to be performed from the Scheme Services Commencement Date in accordance with this Deed, and any activity or deliverable that has been notified by the Nominal Insurer under Schedule 11 as requiring completion or rectification must be completed and Approval obtained by the Scheme Agent within 20 Business Days of the Scheme Services Commencement Date or such longer period as the Nominal Insurer may agree in writing.
- 2.5 If the Scheme Agent does not receive Approval of the Minimum Operational Requirements Milestone by the date set out in the Transition Plan due to a default by the Nominal Insurer in performing the Nominal Insurer's obligations in the Transition Plan, then, at the

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Nominal Insurer's option, from the Scheme Services Commencement Date:

- (a) the Scheme Agent will commence providing such Scheme Services as are Directed by the Nominal Insurer and performing its other obligations under this Deed (to the extent to which it is not prevented from doing so by the Nominal Insurer's default); and
 - (b) the Scheme Agent must obtain Approval for the Minimum Operation Requirements Milestone in accordance with the time frame Directed by the Nominal Insurer.
- 2.6 Provided that the Nominal Insurer complies with Sub-clause 2.5, its default will not give rise to any Demand by the Scheme Agent.
- 2.7 The Nominal Insurer may provide a Direction to postpone the Scheme Services Commencement Date and will not be liable to the Scheme Agent for any consequences of such postponement. The Nominal Insurer must not unreasonably postpone the Scheme Services Commencement Date.
- 2.8 The Nominal Insurer will issue a Direction (the 'Initial Allocation Direction') that will set out;
- (a) the estimated Outstanding liability; and
 - (b) the estimated aggregate number of Policies;
- that will be transferred to the Scheme Agent, and/or transferred from the Scheme Agent to Other Scheme Agents as part of the initial Portfolio allocation, and the approximate timing of those transfers.
- 2.9 The Transition Plan will be updated by the Scheme Agent to reflect the Initial Allocation Direction and must obtain the Nominal Insurer's Approval for the updated Transition Plan. The Nominal Insurer will not unreasonably withhold its Approval for the updated Transition Plan.
- 2.10 The actual timing of the transfers and the identity of the Claims and Policies will be determined by the Nominal Insurer in subsequent Directions. The Nominal Insurer will provide as much notice as is practical if there is to be a significant deviation from the timeframes for the transfer of Claims and/or Policies that were set out in the Initial Allocation Direction. Provided that the allocation of the Portfolio is within the parameters in the Response (or as otherwise agreed in writing), the Scheme Agent will not be entitled to any additional payments arising out of or in connection with the Direction that sets out the allocation of the Portfolio.
- 2.11 The Nominal Insurer does not guarantee that any particular Employer's Policy, nor any particular Claim, nor the amount of the Outstanding liability, nor any Claim(s) or Portfolio with any specific characteristics will be transferred under Sub-clause 2.8. The Nominal Insurer's obligation is limited to a commitment that will be for the estimated aggregate number of Policies and the estimated aggregate amount of Outstanding liability, and that it will use every effort to affect

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the transfers in the estimated timeframes set out in the Initial Allocation Direction.

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PART C Scheme Objectives

3 Scope of Agency

- 3.1 The Nominal Insurer appoints the Scheme Agent as a 'scheme agent' under the 2003 Act to act as agent to provide the Services from the Scheme Services Commencement Date only in accordance with this Deed.
- 3.2 The Scheme Agent acknowledges and agrees that, as from the Scheme Services Commencement Date:
- (a) it owes a fiduciary duty to the Nominal Insurer, and that these duties are paramount, and accordingly from the Scheme Services Commencement Date the Scheme Agent will perform its obligations under this Deed and act in all respects in connection with the Scheme;
 - (1) in a manner which would not place the Scheme Agent in a position where there is conflict between the Scheme Agent's duty 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 the Nominal Insurer;
 - (2) without making any profit from any of the Nominal Insurer's property, including the Nominal Insurer's property in Confidential Information, New Contract Material, Records or Insurance Records, without the prior Approval of the Nominal Insurer;
 - (3) without making any profit from knowingly using any knowledge gained as a result of its relationship with the Nominal Insurer, without the prior Approval of the Nominal Insurer; and
 - (4) that keeps the Nominal Insurer fully and promptly informed of all the matters that materially affect the Scheme Objectives and the performance of this Deed.
 - (b) the Scheme Agent's rights as an agent under the law of agency are varied by this Deed, including:
 - (1) the Scheme Agent does not have a lien over any of the Nominal Insurer's property, including the Nominal Insurer's property in Confidential Information, New Contract Material, Records, Insurance Records or monies, cheques or any other form of payment that the Scheme Agent has received as agent for the Nominal Insurer;

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- (2) the right to any payment for the performance of the obligations in this Deed is limited to those set out in Clause 31;
 - (3) the right for indemnity for expenses is limited to those set out in Sub-clauses 25.7, 25.9, 29.11 and Clause 32;
 - (c) any arrangements, written or otherwise, entered into by it with any Employer, Policyholder, Third Party Service Provider or any other person, for which this Deed does not provide authority for the Scheme Agent to enter into as agent for the Nominal Insurer, are not arrangements made as agent for the Nominal Insurer.
- 3.3 The Nominal Insurer acknowledges that a Scheme Agent may promote its Services to Employers notwithstanding that the Scheme Agent may not be the then current best performing Scheme Agent.
- 3.4 The Nominal Insurer's obligations as a principal under the law of agency are varied as set out in this Deed.
- 3.5 The Scheme Agent does not have any authority to:
- (a) perform any act, or make any omission, which is not necessary or incidental to the performance of its obligations under this Deed;
 - (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:
 - (1) for or on behalf of WorkCover in any role other than as acting for the Nominal Insurer;
 - (2) in relation to any of the Nominal Insurer's functions that are described under the Law, for which the Scheme Agent has not been given express authority under this Deed, including:
 - (A) statements of current or future policy of the Nominal Insurer or any other person;
 - (B) suggestions that the Policies that are offered by different scheme agents are different in any way, or that different Premiums are payable depending on which scheme agent issues the Policy; or

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- (3) that the Scheme Agent is providing any services other than the Scheme Services or that the Scheme Agent is providing insurance.
 - (f) appoint any sub-agent;
 - (g) enter into contracts for Third Party Services Providers for services in relation to the Scheme other than as agent for the Nominal Insurer, other than as provided in Sub-clause 7.5;
 - (h) create any obligation of employment with any person on behalf of the Nominal Insurer;
 - (i) permit any Employer to provide any Scheme Services in relation to Claims arising from the Employer's own Policies or those of its Related Bodies Corporate;
 - (j) conduct any Scheme Services in relation to Claims arising under the Scheme Agent's own Policies or those of its Related Bodies Corporate; or
 - (k) conduct any litigation or arbitration proceedings as agent for the Nominal Insurer (including filing a statement of claim or filing a defence), except as expressly set out in this Deed including the Operational Document Set, or with prior Approval.
- 3.6 In performing its obligations under this Deed after the Scheme Services Commencement Date, the Scheme Agent is to represent itself as an agent of the Nominal Insurer in all dealings with Workers, Employers, Third Party Service Providers (for services relating to the Scheme and subject to Sub-clause 7.5), and any other persons, except Subcontractors.
- 3.7 The Scheme Agent must not, for any reason, refuse to issue or renew Policy unless Directed otherwise by the Nominal Insurer.
- 3.8 The Nominal Insurer will not be taken to have ratified any act or omission of the Scheme Agent which was outside the actual authority of a Scheme Agent, but which a third party claims was within the ostensible authority of the Scheme Agent, unless the ratification:
- (a) is Approved by the Nominal Insurer's Principal;
 - (b) sets out the full facts and consequences upon which the ratification is based; and
 - (c) is provided to the Scheme Agent;
 - (1) within 20 Business Days of the date of the act or omission, or
 - (2) such longer period as is reasonable for the Nominal Insurer to ratify in the circumstances.

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- 3.9 All the Nominal Insurer's rights in this Deed are in addition to those stated in the Law, including any rights the Nominal Insurer has as a principal under the law relating to agency.

4 Scheme Objectives

- 4.1 In accordance with its fiduciary duties the Scheme Agent will use every effort to ensure the Nominal Insurer achieves the following Scheme Objectives:
- (a) assist Employers make workplaces safe and promote the health, safety and welfare of Workers;
 - (b) ensure Workers receive prompt, proactive and effective treatment and management of their Injuries to improve Return to Work Outcomes;
 - (c) provide fair and affordable Premiums while maintaining the financial viability of the Scheme; and
 - (d) have a fully funded Scheme.
- 4.2 In addition to its obligations set out in Sub-clause 4.1, the Scheme Agent must achieve the results represented by the Scheme Agent to the Nominal Insurer in any Documentation.
- 4.3 The parties agree that achievement of the Scheme Objectives is only one requirement of this Deed, and the nature and extent of the Scheme Agent's obligations are not to be construed or interpreted solely by reference to the Scheme Objectives or their achievement.

5 Targets

- 5.1 The Scheme Agent acknowledges that the Nominal Insurer wishes to achieve the Scheme Objectives. The Scheme Agent further acknowledges that the Nominal Insurer has established this agency arrangement to achieve those Scheme Objectives through the achievement of Scheme Outcomes. The Scheme Agent further acknowledges that the Nominal Insurer has determined aggregate targets of the improvement in Scheme performance which the Nominal Insurer believes can be achieved by the combined efforts of all scheme agents under agency arrangements.
- 5.2 The Nominal Insurer and the Scheme Agent have agreed Quarterly Performance Fee Targets and Incentive Fee Targets to reflect the Scheme Agent's potential contribution towards the overall achievement of Scheme Objectives and Scheme Outcomes.
- 5.3 Each Quarter, the Scheme Agent must meet or exceed the target set at 100% performance for each Quarterly Performance Fee Target.
- 5.4 The calculation for the Quarterly Performance Fee Targets for the three years of Scheme Services from 1 January 2006 and, unless agreed otherwise under Sub-clause 5.9, the extended Period of

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Scheme Services (if any), is set out in Schedule 3. The first period for which a Quarterly Performance Fee Target is measured ends on 31 March 2006.

Target Setting

5.5 Prior to 1 November in each year of Scheme Services the Nominal Insurer will advise the Scheme Agent of any revision to the Quarterly Performance Fee Targets and Incentive Fee Targets for the subsequent year's Scheme Services where:

- (a) such revision reflects any changes in the Scheme Agent's then current Portfolio which have arisen as a result of the Nominal Insurer's Directed movement of Claims and/or Policies and in accordance with Sub-clauses 8.7, 8.9 or 42.1(b) and Schedule 3; and/or
- (b) the Scheme Actuary determines that there has been a significant change or one-off event affecting the Scheme Agent's then current Portfolio that would provide an unrepresentative outcome without the change.

The revised targets notified under Sub-clause 5.5 are binding on the parties.

5.6 The parties acknowledge that there are many factors that the Scheme Actuary may take into account in setting targets and determining whether the Scheme Agent has met these targets, including factors which may be outside of the control of the Nominal Insurer or the Scheme Agent. Accordingly, the parties agree that, in addition to the provisions in Sub-clause 5.5, the Quarterly Performance Fee Targets and the Incentive Fee Targets for a subsequent year's Scheme Services may be revised by the Nominal Insurer, acting on the advice of the Scheme Actuary. If the Nominal Insurer requires the Quarterly Performance Fee Targets and Incentive Fee Targets for a subsequent year of Scheme Services to be varied (up or down) it must provide the Scheme Agent with written notice of the revised targets prior to 1 November in each year of Scheme Services to which the revised targets are to apply.

5.7 Subject to Sub-clause 5.8 the revised targets notified under Sub-Clause 5.6 are binding on the parties.

5.8 The Nominal Insurer is limited in changes it can make to:

- (a) the revised Quarterly Performance Fee Targets; and
- (b) the revised Incentive Fee Targets;

as notified under Sub-clause 5.6. This limit is such that the revised targets for each of the Quarterly Performance Fee Targets and the Incentive Fee Targets cannot be more onerous for the Scheme Agent than by a total of 15% over the Period of Scheme Services up to 31 December 2008.

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- 5.9 If the Nominal Insurer intends to extend the Period of Scheme Services, then by 1 July 2008 and 1 July in the last year of any extended Period of Scheme Services:
- (a) the Nominal Insurer will commence good faith negotiations with the Scheme Agent in respect of revised Remuneration, Quarterly Performance Fee Targets and Incentive Fee Targets;
 - (b) if no agreement is reached between the Nominal Insurer and the Scheme Agent on the revised Remuneration, Quarterly Performance Fee Targets and Incentive Fee Targets by the following 1 September (or such later date prior to the following 1 November Directed by the Nominal Insurer), then the Nominal Insurer will have up to 10 Business Days to determine whether to extend the Period of Scheme Services;
 - (c) if the Nominal Insurer determines to extend the Period of Scheme Services under Sub-clause 5.9(b) then, by the following 15 September (or such later date prior to the following 15 November Directed by the Nominal Insurer), it will issue a Direction requiring the Scheme Agent to extend the provision of Services for the number of years set out in the Direction, and, subject to Sub-clause 5.10, the Remuneration, Quarterly Performance Fee Targets, Incentive Fee Targets, and the amounts and calculations of the Remuneration that will apply to the extended Period of Scheme Services are set out in the relevant Sections of Schedule 3.
- 5.10 Not used.
- 5.11 During any extended Period of Scheme Services the Nominal Insurer may vary the Performance Fee Targets and Incentive Fee Targets further on the same basis as described in Sub-clauses 5.5 and 5.6.
- 5.12 Subject to Sub-clause 5.13 the revised Performance Fee Targets and Incentive Fee Targets notified under Sub-clause 5.11 are binding on the parties.
- 5.13 The Nominal Insurer is limited in the changes that it can make to:
- (a) the revised Quarterly Performance Fee Targets; and
 - (b) the revised Incentive Fee Target,
- as notified under Sub-clause 5.11. The limit is such that the revised targets for each of the Quarterly Performance Fee Targets and the Incentive Fee Targets cannot be more onerous for the Scheme Agent than by a total of 5% multiplied by the number of years that the Period of Scheme Services has been extended, than the Performance Fee Target and Incentive Fee Targets determined under Sub-clause 5.9(a) or 5.9(c).
- 5.14 The Scheme Agent is not obliged to meet the Incentive Fee Targets. The Incentive Fee Targets are only used to calculate the Incentive Fee.

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Scheme Actuary Consultation

- 5.15 Prior to 1 October each year, the Scheme Agent may provide the Nominal Insurer and the Scheme Actuary with a written submission concerning the calculation, use of assumptions or methodologies which may be used to determine the Performance Fee Targets or Incentive Fee Targets, either at a Scheme level or as they specifically relate to the Scheme Agent (the 'Target Setting Methodology').
- 5.16 The Nominal Insurer will, and will procure that the Scheme Actuary will, consider any submissions made under Sub-clause 5.15. The Nominal Insurer will, and will procure that the Scheme Actuary will, meet with the Scheme Agent, either by itself or with Other Scheme Agents (as appropriate), to discuss any aspect of the Target Setting Methodology prior to the following 1 November.
- 5.17 Neither the Nominal Insurer nor the Scheme Actuary is bound to accept or follow any of the Scheme Agent's submissions or other representations in respect of any aspect of the Target Setting Methodology.

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PART D Services

6 General Provisions Relating to Services

- 6.1 The Scheme Agent must provide the Services and Transition Services in accordance with this Deed.
- 6.2 Nothing in this Deed restricts, hinders or prevents the Nominal Insurer its Personnel or WorkCover (in its role as regulator) from performing their respective rights or functions under Law.

Cooperation

- 6.3 The Nominal Insurer and the Scheme Agent have adopted the Relationship Values Charter set out in Schedule 4, Attachment A as their intention of how they will interact and cooperate with each other in order to achieve the Scheme Objectives. The other provisions of Schedule 4 – Commercial Management Framework, and this Deed, amongst other things, set out the processes, rights and obligations of the parties in respect of the governance and on-going management of the Deed.
- 6.4 Notwithstanding Sub-clause 6.3 it is acknowledged by both parties that the Relationship Values Charter does not vary or affect either party's rights or responsibilities under:
 - (a) this Deed, including where any right is expressed to be in a party's absolute discretion;
 - (b) the law of agency;or otherwise.
- 6.5 The Scheme Agent must use every effort to work cooperatively and collectively with Other Scheme Agents and the Nominal Insurer to achieve the Scheme Objectives and continuous improvement in the Scheme and in Scheme Outcomes.
- 6.6 The Scheme Agent must cooperate with Other Scheme Agents and Employers where a Policy and/or Claim has been transferred between scheme agents, including allowing the Receiving Scheme Agent 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 the Exiting Scheme Agent. Either an Exiting Scheme Agent or a Receiving Scheme Agent may request the Nominal Insurer to issue Directions where disputes arise under this Sub-clause 6.6. Nothing in this Sub-clause 6.6 requires the Scheme Agent to provide an Employer with any information which the Employer is not lawfully entitled to receive.

Assistance to Nominal Insurer

- 6.7 The Scheme Agent will comply with any Direction of the Nominal Insurer to provide information to enable the Nominal Insurer to comply with its obligations at Law and will provide such information within any reasonable timeframes set by the Nominal Insurer.

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Business Model

- 6.8 The Scheme Agent must:
- (a) have a Business Model that meets the requirements of Schedule 1, Sections 1-5.8.2;
 - (b) operate its business relating to the Services substantially in accordance with the Business Model in Schedule 1, Attachment B until 31 December 2006; and
 - (c) operate its business relating to the Services in accordance with the Approved Business Model from 1 January 2007.
- 6.9 If the Scheme Agent wishes to make a material change to the Business Model it must obtain the Nominal Insurer's prior Approval.

Annual Services Plan

- 6.10 The Scheme Agent must perform the Services in accordance with an Approved Annual Services Plan.
- 6.11 Prior to 10 November in each year of the Scheme Services the Scheme Agent must provide the Nominal Insurer with a draft Annual Services Plan ("DASP"). The DASP must include the items set out in Schedule 4.
- 6.12 The Nominal Insurer will conduct the Annual Review in accordance with Schedule 4. If the Nominal Insurer agrees with the DASP it will Approve it, and it will become the Annual Service Plan applicable for the subsequent annual period.
- 6.13 If the Nominal Insurer does not agree with the DASP it will endeavour to agree an acceptable Annual Service Plan with the Scheme Agent. If no agreement can be reached prior to the commencement of the subsequent annual period of the Scheme Services, then the matter will be a Contract Dispute and the parties will follow the process in Sub-clause 25.1. During the period when the DASP is subject to the process in Sub-clause 25.1 the Scheme Agent must continue to provide the Services in accordance with the previously Approved Annual Services Plan, and any items in the DASP that are not subject to the Contract Dispute.

Continuous Improvement

- 6.14 Prior to 1 October in each year of the Scheme Services, the Scheme Agent will present a comprehensive report to the Nominal Insurer setting out any improvements or enhancements to the Scheme Agent's internal processes, systems, methods, or to the Services that may:
- (a) improve or enhance the Services or reduce the costs of providing the Services;

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- (b) improve the quality and/or reduce the cost of Third Party Service Providers;
 - (c) improve the well being of Workers who have Long-Term Claims or Major Injuries; and
 - (d) provide Employers with Premiums that are better value for money.
- 6.15 Any items that were included in the report in Sub-clause 6.14 that the Nominal Insurer wishes to be included within the Services will be notified to the Scheme Agent by the following 28 October who must then include them in the DASP.
- 6.16 From time to time the Scheme Agent or the Nominal Insurer may propose initiatives that contribute to the Scheme Objectives or which may benefit any part of the Scheme. *If Approved by the Nominal Insurer these initiatives will be implemented as a Project Service by a Variation under Sub-clauses 10.2(a), 10.3, 10.5 and 10.6.* Payment for these initiatives will be agreed between the parties and will come from the Innovation Fee Pool described in Schedule 3.

Direction

- 6.17 The Scheme Agent must perform the Services in accordance with any Direction given from time to time.
- 6.18 Not used.

Operational Document Set

- 6.19 The Nominal Insurer will issue the Scheme Agent with an Operational Document Set from time to time. The Operational Document Set may be changed or have deletions or additions made to it under the relevant provisions in Clause 10, Schedules 4 and 7, and this Deed.
- 6.20 Not used.
- 6.21 If the Operational Document Set is also published on the Nominal Insurer's website and there is a conflict between the version posted on the website and that version issued under Sub-clause 6.19 then:
- (a) the Scheme Agent must advise the Nominal Insurer's Account Manager as soon as it becomes aware of the conflict; and
 - (b) the Scheme Agent must follow the version authorised in accordance with Sub-clause 6.19, unless that version is inconsistent with the then current Law, in which case the Scheme Agent must comply with the Law.
- 6.22 If the Nominal Insurer wishes to receive comment on any proposed changes to the Operational Document Set (in addition to the process for discussing proposed Variation to the Operational Document Set that is set out in Sub-clause 10.3), then the Nominal Insurer may issue the draft amendments for the Operational Document Set, and invite the Scheme Agent to comment on the draft amendments. The Scheme Agent must, within the timeframe required by the Nominal

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Insurer, provide written comments to the Nominal Insurer. The Scheme Agent may at any time submit written comments on any aspect of the Operational Document Set.

Measurement Systems and Reporting

- 6.23 The Scheme Agent must ensure that its measurement and monitoring systems will permit accurate and consistent reporting at a level of detail that is reasonably determined by Nominal Insurer.
- 6.24 The Scheme Agent must provide:
- (a) the reports set out in Schedule 4, Attachment C to Nominal Insurer, and such other reports (including any reports requested by 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 the Nominal Insurer) as may be specified by the Nominal Insurer from time to time (such other reports will be at no cost to the Nominal Insurer unless the creation of the report requires a significant amount of effort);
 - (b) any reports in such a form that they are readily understandable by the Nominal Insurer and can be readily communicated to the Nominal Insurer and its Personnel; and
 - (c) detailed supporting information for each report as reasonably specified or requested by the Nominal Insurer from time to time.

Facilities

- 6.25 The Scheme Agent is responsible for providing any accommodation, facilities, Equipment, furnishings, fixtures and support it needs to supply the Services and Transition Services.

7 Third Party Service Providers

Third Party Service Providers – Management

- 7.1 The Scheme Agent is responsible for management of the performance of the Third Party Service Provider's services, and must comply with the obligations in managing Third Party Service Providers that are set out in Schedule 2 and the Operational Document Set.

Worker's Right to Appoint

- 7.2 Nothing in this Deed hinders, varies or reduces a Worker's right to appoint any Third Party Service Provider in accordance with the Law.

Procurement of Third Party Service Providers by Scheme Agent

- 7.3 Unless Directed otherwise, the Scheme Agent must ensure that, as from the Scheme Services Commencement Date, any contract that is entered into by the Scheme Agent with a Third Party Service Provider is entered into by the Scheme Agent acting on behalf of the Nominal

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Insurer, so that a contract is formed between the Nominal Insurer and the Third Party Service Provider.

7.4 Where there is no fee prescribed by Law or specified in the Operational Document Set for the particular service required by the Scheme Agent from a Third Party Service Provider, the Scheme Agent may determine the fee that is payable by the Nominal Insurer for that service, provided that the fee is reasonable in all the circumstances and the Scheme Agent complies with the other provisions of this Deed relating to the procurement of those services.

7.5 Notwithstanding Sub-clause 7.3 the Scheme Agent may enter into separate agreements (an 'SLA'), including establishing panel arrangements, with Third Party Service Providers only in relation to standards of service, reporting requirements and other terms relating to the management and administration of the arrangements with Third Party Service Providers. Any SLA must be entered into by the Scheme Agent in the Scheme Agent's own name, and not as agent for the Nominal Insurer.

7.6 If the Scheme Agent wishes to enter into any master contract covering more than one supply of a service over a given period with a Third Party Service Provider that is providing:

- (a) legal services;
- (b) medical, hospital or rehabilitation or other treatment or service for:
 - (1) which an Employer is liable to pay under the 1987 Act or 1998 Act; or
 - (2) any assessment, examination or report for the purpose of the 1987 or 1998 Act;

that covers any obligations other than those in an SLA (as referred to in Sub-clause 7.5) it must obtain the Nominal Insurer's prior Approval, such Approval not to be unreasonably withheld.

7.7 Unless the Scheme Agent is Directed to acquire the relevant Third Party Service Provider's services from a panel under Sub-clause 7.13, then for all Third Party Service Providers that the Scheme Agents appoint as agent for the Nominal Insurer that:

- (a) are likely to receive in excess of \$250,000 in Pass-Through Costs per person per annum; or
- (b) are a Related Body Corporate of the Scheme Agent;

then either:

- (c) where the Scheme Agent either in a capacity as a Scheme Agent, temporary agent or Licensed Insurer or otherwise completes a procurement process prior to 31 December 2006, the Scheme Agent must certify to the Nominal Insurer that the procurement process did obtain best value for money; or

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- (d) where the Scheme Agent completes the procurement process after 31 December 2006 or is unable to make the certification in Sub-clause 7.7(c), then the Scheme Agent must complete a procurement process that:
 - (1) is competitive;
 - (2) is fair and transparent;
 - (3) obtains best value for money; and
 - (4) complies with any requirements set out in the Transition Plan or the Operational Document Set.

- 7.8 A Scheme Agent must use a procurement process for all Third Party Service Providers that it appoints as agent for the Nominal Insurer who provide services on and after 1 January 2006 that:
 - (a) reflects the fiduciary duty of the Scheme Agent to the Nominal Insurer as set out in the Law and in Sub-clause 3.2(a); and
 - (b) is in accordance with any requirements in the Operational Document Set, including any proforma contract or proforma terms and conditions set out in the Operational Document Set.

- 7.9 In respect of Third Party Service Providers described in Sub-clauses 7.3 or 7.4, the Scheme Agent must not agree to provide any commitment to:
 - (a) any volume of service;
 - (b) exclusivity; or
 - (c) payment terms of less than 15 Business Days from receipt of Tax Invoice.

- 7.10 The Scheme Agent will give written notice to the Nominal Insurer at least 10 Business Days prior to appointing a Third Party Service Provider on or after the Scheme Services Commencement Date who is expected to receive more than \$250,000 p.a. in Pass-Through Costs.

- 7.11 The Scheme Agent must ensure that it includes in any agreement with any Third Party Service Provider under Sub-clauses 7.3 or 7.4 terms and conditions that:
 - (a) require Third Party Service Providers to hold the necessary licences, permits or qualifications;
 - (b) where payment arrangements are included in a contract, include payment arrangements which are not inconsistent with the Scheme Objectives or the Law;
 - (c) ensure that ownership of all Records and Insurance Records vests in or remains with the Nominal Insurer, and that the

Scheme Agent Deed

Nominal Insurer or its nominee has a right of prompt and unhindered access at reasonable times to such items wherever they are stored;

- (d) advise the Third Party Service Provider with notice that a representative from the Nominal Insurer may intervene in any disputes between the Scheme Agent and the Third Party Service Provider; and
- (e) in respect of arrangements for Third Party Service Providers for legal services, state that, as between the Nominal Insurer and the Scheme Agent, the legal service provider owes its contractual and professional obligations to the Nominal Insurer and not the Scheme Agent, subject to its overriding obligation to the Court.

7.12 The Scheme Agent 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 the Nominal Insurer); and
 - (b) meet all its obligations;
- under any agreements with Third Party Service Providers.

7.13 The Nominal Insurer reserves the right to appoint panels of one or more types of Third Party Service Providers and to Direct the Scheme Agent to use those Third Party Service Providers.

7.14 Prior to approving any invoice as a Qualifying Invoice in respect of Third Party Service Providers that are included within Sub-clause 7.7 the Scheme Agent must ensure that the Third Party Service Provider has provided a written statement that the Third Party Service Provider has paid all:

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

due in accordance with Law to its employees and contractors that have provided the services.

7.15 For the avoidance of doubt all third parties appointed by Scheme Agents to collect debts or enforce payments are Third Party Service Providers and qualify for payment as a Pass-Through Cost. If the Scheme Agent uses its own staff for this function then the Scheme Agent is not entitled to any additional fees outside of the Remuneration for this function.

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8 Scheme Services

- 8.1 The Scheme Agent must perform the Scheme Services during the Period of the Scheme Services.
- 8.2 The Scheme Agent must meet or exceed the KPIs from three months after the Scheme Services Commencement Date until the completion of all Scheme Services and Disengagement Services.
- 8.3 The Nominal Insurer may require the incorporation of a new KPI or variation of any existing KPI where in the Nominal Insurer's opinion it is desirable in order to achieve or further the Scheme Objectives. The introduction of a new KPI or variation of any existing KPI will be dealt with as a Nominal Insurer proposed Variation under Sub-clause 10.2 but if either:
- (a) the Scheme Agent is in breach of any obligation under this Deed and the new KPI, or variation to an existing KPI, has been added as part of a Corrective Action Plan in respect of that breach; or
 - (b) the provisions of Sub-clause 10.14 apply.
- then there will be no increase in any amount payable to the Scheme Agent as a result of that incorporation of a new KPI or variation of an existing KPI.

Non-Exclusive

- 8.4 The Scheme Agent agrees that its relationship with the Nominal Insurer is not exclusive and as such the Nominal Insurer may itself perform any part of the Services or enter into any agency arrangements with any third party or Other Scheme Agents to perform all or any part of the Services or similar services.
- 8.5 Other than in respect of the Initial Allocation Direction under Sub-clause 2.8, but subject to Sub-clause 2.11;
- (a) the Nominal Insurer does not guarantee any volume of Services or allocation of any particular Policies and/or Claims;
 - (b) any information relating to the volume of Services or allocation of any Policies and/or Claims provided to the Scheme Agent (whether prior to this Deed, during the procurement process or during the Term) is indicative only and not binding on the Nominal Insurer or its Personnel.

Transfer of Policies and/or Claims

- 8.6 The Scheme Agent acknowledges that the Nominal Insurer is to advance the Scheme Objectives and that to do so may involve the movement of certain Policies for particular Employers, or Claims arising from current or previous Policies.
- 8.7 If the Nominal Insurer changes its general policy in respect of how Major Injury Claims or other specialist Claims are to be managed then

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the Nominal Insurer may in its absolute discretion on one or more occasions issue a Direction to:

- (a) transfer some or all Major Injury Claims to an Other Scheme Agent or other person;
- (b) transfer some or all of other specialist Claims to an Other Scheme Agent or other person.

8.8 If Sub-clause 42.1(b) applies, the Nominal Insurer may transfer any Policies for particular Employers and/or any Claim to any Other Scheme Agent.

8.9 The Nominal Insurer may, from time to time, require the Scheme Agent to provide Scheme Services in respect of Policies and/or Claims that have previously been managed by Other Scheme Agents. The Scheme Agent must accept those Policies for particular Employers and/or Claims provided that the transfer does not result in the Scheme Agent exceeding the Scheme Agent's maximum allocation of Policies or Outstanding liability stated in its Response (or as updated in its Approved Annual Services Plan).

8.10 If any of the transfers in Sub-clauses 8.7, 8.8 or 8.9 occurs the provisions of Sub-clause 5.5 will apply.

8.11 If the Scheme Agent is either losing or receiving Policies and/or Claims then it must follow the procedures for those transfers set out in the Operational Document Set.

9 Disengagement Services

9.1 The Scheme Agent must provide Disengagement Services at the end of the Period of Scheme Services, (where the Period of Scheme Services is terminating because either a notice of termination of the Deed has been issued or the Period of Scheme Services is expiring by the passing of time), or from such earlier date as the Nominal Insurer Directs.

9.2 The Nominal Insurer will pay the Scheme Agent for the Disengagement Services at a rate set out in Schedule 3. The fee for Disengagement Services will be payable following the Nominal Insurer's Approval of the completion of the Disengagement Services.

9.3 The Disengagement Services must:

- (a) ensure that the Scheme Agent minimises disruption to Workers, Employers, Third Party Service Providers and other stakeholders to the fullest extent possible;
- (b) be performed in accordance with the Disengagement Plan;
- (c) include any service or requirement that the Nominal Insurer requires where the Nominal Insurer believes in its absolute discretion that it is necessary or desirable to:

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- (1) to minimise disruption to Workers, Employers, Third Party Service Providers and other stakeholders to the fullest extent possible; or
 - (2) ensure all Scheme Services continue to operate without interruption or adverse effect.
- 9.4 The Scheme Agent must obtain the Nominal Insurer's Approval for its Disengagement Plan by 31 March 2006. The Disengagement Plan must be updated by the Scheme Agent on the earlier of:
- (a) the preparation of the Annual Services Plan; or
 - (b) each occasion when there is a substantial change to the Deed, including the Operational Document Set, and the Nominal Insurer advises the Scheme Agent in writing that it believes the change is likely to affect Disengagement Services.
- 9.5 During the Disengagement Period the Nominal Insurer may designate which of the Scheme Agent's Personnel must provide the Services, and the Scheme Agent must not remove those Personnel from providing the Services without the Nominal Insurer's prior written Approval. For the avoidance of doubt, the Scheme Agent is not in breach of this Sub-clause 9.5 if a designated individual is an employee of the Scheme Agent and the individual leaves the employment of the Scheme Agent, (provided the individual is not then employed, or engaged in any way, by any member of the Scheme Agents' Group).
- 9.6 Not used
- 9.7 The Scheme Agent must, except to the extent Approved by the Nominal Insurer, within 5 Business Days of receipt of a Direction to do so, or by the end of the Term (whichever is sooner):
- (a) procure, at its cost, the novation of those Subcontractor contracts and any SLA's (described in Sub-clause 7.5) that relate to the Services to the Nominal Insurer or its nominee as Directed by the Nominal Insurer. The Scheme Agent is responsible for any costs solely associated with the novation of the Subcontractor contracts and SLA's (described in Sub-clause 7.5), and the Nominal Insurer is responsible for the on-going operational fees and charges for the goods or services that are the subject matter of the Subcontractor contracts and any SLA's (as described in Sub-clause 7.5);
 - (b) deliver to the Nominal Insurer or its nominee a copy of the Intellectual Property Rights used in connection with the Services for which the Nominal Insurer either owns or has been granted a licence under Clause 21; and
 - (c) deliver to the Nominal Insurer, or its nominee, all of the Nominal Insurer's Confidential Information, the Records, Insurance Records and any ancillary materials, including file jackets and bindings that the Nominal Insurer believes, in its absolute discretion, is necessary or desirable to minimise the

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disruption to Workers, Employers, Third Party Service Providers and other stakeholders caused by the transition of the Services to the fullest extent possible.

- 9.8 To the extent that the items in Sub-clause 9.7(b) or (c) are stored in electronic form, the Scheme Agent must deliver them in an electronic form which is readily accessible to the Nominal Insurer. If requested by the Nominal Insurer the Scheme Agent must provide the Nominal Insurer or its nominee access to any Scheme Agent Materials or hardware during the Term and for a period of up to six months after the Term as may be required by the Nominal Insurer, in its absolute discretion, to enable the Nominal Insurer to:
- (a) exercise its rights under Clause 21;
 - (b) store, access and view and reproduce any data incorporated in any item in Sub-clauses 9.7(b) or (c) without technical restriction;
 - (c) minimise any disruption to Workers, Employers, Third Party Service Providers and other stakeholders caused by the transition of the Services to the fullest extent possible.

10 Variation

Types of Variation

- 10.1 Any Variation to this Deed will be implemented as follows:
- (a) as a change that is agreed by the parties, which may be initiated by the Nominal Insurer or the Scheme Agent, and may include a Project Service;
 - (b) as a change, deletion or addition to the Operational Document Set;
 - (c) as a Non-Urgent Direction; or
 - (d) as an Urgent Direction.

The Nominal Insurer will pay for the cost of implementing the Variation in accordance with Sub-clauses 10.12 to 10.14 and will vary the Remuneration to reflect any change in the ongoing operational costs in accordance with Sub-clauses 10.15 to 10.16.

Nominal Insurer Proposed Variation

- 10.2 Where the Nominal Insurer proposes a Variation which is:
- (a) any variation to this Deed, including a Project Service;
 - (b) a change, deletion or addition to the Operational Document Set; or
 - (c) a Non-Urgent Direction;

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then the Nominal Insurer must submit a draft Variation Notice, endorsed by the Nominal Insurer's Principal, to the Scheme Agent's Account Manager.

- 10.3 The Account Managers (acting reasonably) must then endeavour to agree a Variation Notice (including any impact on the Operational Document Set). The draft Variation Notice must set out the amount that will be paid, if any, for the cost of implementing the Variation and any impact on the on-going operational costs, for the remainder of the Year using the basis of calculations set out in Sub-clauses 10.12 and 10.13.
- 10.4 To enable the Nominal Insurer to determine if any costs are payable for implementing the Variation under Sub-clause 10.2 the Scheme Agent must provide a written statement setting out the costs of implementing the Variation in Sub-clause 10.2 within 10 Business Days (or such longer period reasonably agreed by the Nominal Insurer) of receipt of the draft Variation Notice.
- 10.5 Where the Variation is a Project Service the draft Variation Notice must also include the details in Schedule 7, Part D.
- 10.6 If the Account Managers agree a Variation Notice under Sub-clause 10.3 the Scheme Agent's Principal must promptly sign the Variation Notice and provide two originals of the Variation Notice to the Nominal Insurer's Principal. Once the Nominal Insurer's Principal has countersigned the Variation Notice and delivered a copy to the Scheme Agent it is binding on the parties.
- 10.7 If the Account Managers have not agreed a Variation Notice under Sub-clause 10.3 within 20 Business Days of the first monthly Account Manager's meeting after the draft Variation Notice was submitted under Sub-clause 10.2 (or such longer period as the Nominal Insurer reasonably agrees in writing) then:
 - (a) providing the Variation Notice does not relate to a Project Service, the Nominal Insurer may sign the Variation Notice and deliver it to the Scheme Agent, and the Variation Notice is then binding on the Scheme Agent. Notwithstanding that the Scheme Agent is bound by the Variation Notice, if the Scheme Agent disputes the amount that is stated as payment for the cost of implementing the Variation the Scheme Agent's Principal must notify the Nominal Insurer in writing of a Contract Dispute within 10 Business Days of receipt of the Variation Notice signed by the Nominal Insurer's Principal. This Contract Dispute will enter the process for resolving Contract Disputes at the level where the parties' Principal's attempt to resolve the Contract Disputes set out in Section 5.2 of Schedule 4. If no such written notice of a Contract Dispute is received by the Nominal Insurer then the Scheme Agent is also bound by the determination of the costs of implementing the Variation as set out in the Variation Notice;
 - (b) if the Variation is a Project Service, the parties will not proceed with the Project Service and the parties will continue to comply

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with the obligations in the Deed unaltered by the draft Variation Notice; or

- (c) the Nominal Insurer may withdraw the draft Variation Notice, and the parties will continue to comply with the obligations in the Deed unaltered by the draft Variation Notice.

- 10.8 If the Sub-clauses 10.7(b) or 10.7(c) applies then the Nominal Insurer will pay the reasonable costs directly associated with the Scheme Agent's internal costs of operational evaluation and comment on the draft Variation Notice up to a maximum amount of \$10,000.

Scheme Agent Proposed Variation

- 10.9 If the Scheme Agent proposes a Variation then the Scheme Agent must submit a draft Variation Notice, endorsed by the Scheme Agent's Principal, to the Nominal Insurer's Account Manager. If the parties agree to the draft Variation Notice, then the Scheme Agent's Principal will sign the Variation Notice and provide two originals to the Nominal Insurer's Principal. Once the Nominal Insurer's Principal has countersigned the Variation Notice and delivered a copy to the Scheme Agent it is binding on the parties.

Urgent Directions

- 10.10 Where the Nominal Insurer requires the Scheme Agent to urgently implement a Variation, or to follow an instruction in relation to the Services or Transition Services, the Nominal Insurer's Principal will sign and deliver an Urgent Direction to the Scheme Agent. The Scheme Agent is then bound by that Urgent Direction and must follow it immediately. The Urgent Direction must include the Nominal Insurer's reasonable determination of the cost of implementing the change and a reasonable timeframe for the implementation of the change.
- 10.11 If the Scheme Agent disputes the amount that is stated as payment for the cost of implementing the Urgent Direction the Scheme Agent's Principal must notify the Nominal Insurer in writing of a Contract Dispute within 10 Business Days of receipt of the Urgent Direction under Sub-clause 10.10, and the Parties will then follow the process for Contract Disputes set out in Clause 25. If no such written notice of a Contract Dispute is received by the Nominal Insurer then the Scheme Agent is also bound by the determination of the costs of implementing the Urgent Direction.

Costs of Implementing Variations

- 10.12 The parties agree that the basis of calculating the cost of implementing any Variation will be calculated as the lesser of:
 - (a) the amount the Nominal Insurer believes it would cost a scheme agent that was operating at the highest Australian insurance industry standard to implement the Variation; or
 - (b) the actual cost to the Scheme Agent of implementing the change.

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Any amounts payable by the Nominal Insurer to the Scheme Agent for the cost of implementing Variations, will be made in accordance with Clause 38.1.

10.13 In calculating the 'highest Australian insurance industry standard' for the purpose of Sub-clause 10.12 the Scheme Agent agrees that:

- (a) the Nominal Insurer may take into account the costs that Other Scheme Agents state are their costs of implementing the Variation;
- (b) the Nominal Insurer may, but is not bound to, determine that the average of the four lowest costs from all scheme agents is one method of determining the 'highest Australian insurance industry standard';
- (c) the Nominal Insurer may, but is not bound to, take into account the Scheme Agent's Portfolio; and
- (d) The Nominal Insurer may, but is not bound to, take into account a situation where the lowest costs are the lowest primarily because they represent a situation where the relevant scheme agents are using a common IT platform and the costs of implementing the Variation have been shared between those scheme agents.

10.14 The Nominal Insurer will not pay any additional amount for any cost of implementing a Variation where the costs for implementing the Variation are determined in accordance with Sub-clauses 10.12 and 10.13 to be less than \$10,000 for that Variation, and these costs are deemed to be included in the Remuneration.

Annual Review of Cumulative Effect of Variations and On-going Costs

10.15 Prior to 30 October each Year the Scheme Agent must provide a written report setting out:

- (a) the estimated cost of implementing Variations for which no payment has been received by reason of Sub-clause 10.14;
- (b) the change, up or down, in the on-going operational costs of the provision of Services that results directly from all Variations (whether or not the Nominal Insurer has paid any additional amount for the cost of implementing the change).

10.16 The Nominal Insurer:

- (a) may increase the Service Fee Pool for the subsequent Year, (or may make a one time payment to the Scheme Agent) where the Nominal Insurer determines, acting reasonably, that the Variations for which no payment has been received by reason of Sub-clause 10.14 have had a material affect on the Scheme Agents' cost of providing the Services; and
- (b) must vary, up or down, the Service Fee Pool for the subsequent Years, by an amount that the Nominal Insurer

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determines, acting reasonably, reflects the increased or decreased on-going costs that a scheme agent that is operating at the highest Australian insurance industry standards would incur, or not incur, as a direct result of the Variations in that Year.

10.17 In calculating the 'highest Australian insurance industry standard' for the purpose of Sub-clause 10.16(b) the Scheme Agent agrees that:

- (a) the Nominal Insurer may take into account the costs that Other Scheme Agents state are their on-going costs of compliance;
- (b) the Nominal Insurer may, but is not bound to, determine that the average cost of the four lowest costs of on-going operational costs from all scheme agents is one method of determining the 'highest Australian insurance industry standard'; and
- (c) the Nominal Insurer may, but is not bound to do so, take into account the Scheme Agent's Portfolio.

10.18 For the avoidance of doubt, a change to the Quarterly Performance Fee Targets or Incentive Fee Targets under Clause 5 does not entitle the Scheme Agent to additional fees under Clause 10.

Project Methodology

10.19 The Scheme Agent must use the project management methodology set out in the Operational Document Set for any Variation:

- (a) which is a Project Service; or
- (b) where the cost of implementing a Variation under Sub-clause 10.7(a) or 10.11 exceeds \$10,000.

11 Technology and Process

11.1 The Scheme Agent must ensure that any systems, interfaces, and processes used by it to perform the Services interface and integrate with the Nominal Insurer's systems, data exchange requirements and processes. The Nominal Insurer's systems, interfaces and processes are set out in the Operational Document Set. The Scheme Agent must ensure that in providing the Services or Transition Services it does not knowingly (whether by act or omission) adversely affect or alter the operation, functionality or technical environment of Nominal Insurer's systems, data exchange requirements or processes without prior Approval.

11.2 If the Scheme Agents, its Related Bodies Corporate or their respective Personnel, systems or Equipment directly or indirectly introduce any Virus into the Nominal Insurer's or any third party's software or systems, the Scheme Agent must promptly:

- (a) notify the Nominal Insurer; and

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- (b) ensure that the Scheme Agent's, its Related Bodies Corporate and their respective Personnel's protection against Viruses is updated to address that and similar Viruses.
- 11.3 If the Nominal Insurer or its systems directly or indirectly introduce any Virus into the Scheme Agent's software or systems, the Nominal Insurer must promptly:
 - (a) notify the Scheme Agent; and
 - (b) update its protection against Viruses to address that and similar Viruses.
- 11.4 The Scheme Agent must use every effort to ensure that its Equipment and processes keep pace with the industry and technological advancements, including:
 - (a) by implementing business process technology solutions and/or environments that the Scheme Agent is using in similar environments anywhere else in Australia; and
 - (b) unless the Nominal Insurer Directs otherwise, ensuring that the Services are at all times the Scheme Agent's highest quality and functionality of the comparable services which the Scheme Agent or any member of the Scheme Agent Group offers to any of its customers anywhere else in Australia.
- 11.5 If requested by the Nominal Insurer, the Scheme Agent must:
 - (a) provide access to the design characteristics of the Scheme Agent's Equipment and related information to facilitate interoperability and exchange;
 - (b) provide any interface resource (including software, hardware or equipment) necessary to enable the Scheme Agent's Equipment to interface with the Nominal Insurer's systems or systems of Other Scheme Agents.

Any information provided under Sub-clause 11.5 is deemed to be the Scheme Agent's Confidential Information.
- 11.6 The Scheme Agent must ensure that the technologies it employs to provide the Services are sufficiently scalable and modular to allow integration of new technology without the need to replace whole, or significant parts of that technology, subject to any implementation timeframe set out in the Approved Business Model.

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12 Operational Risk Management

Business Continuity

- 12.1 The Scheme Agent will be responsible for:
- (a) business continuity and disaster recovery planning;
 - (b) annual business continuity and disaster recovery testing and reporting on the results of those tests;
 - (c) preparation, implementation and execution of the BCP in accordance with Schedule 2;
 - (d) any fees charged by third party business continuity or disaster recovery suppliers in relation to the BCP (including invocation fees);
 - (e) any other costs, charges, fees or expenses relating to business continuity and disaster recovery including, due to the requirement for any upgrade, supplement, modification or replacement in relation to any Equipment, data and processes used by the Scheme Agent to provide the Services; and
 - (f) supporting any Nominal Insurer business continuity and disaster recovery plans that have been provided to the Scheme Agent and execution of those plans;
- in relation to the Services.
- 12.2 The Scheme Agent must at all times comply with and be responsible for the BCP.
- 12.3 The BCP must ensure that the Services have resumed so as to:
- (a) ensure all payments can continue to be made to Workers within 4 Business Days;
 - (b) resume the Services to meet the KPIs within 7 Business Days; and
 - (c) resume all the Services within 15 Business Days;
- of any adverse event.
- 12.4 Each year, commencing in 2006, the Scheme Agent's director who is responsible for internal controls and the management of operational risk must personally:
- (a) review the BCP, Annual Services Plan, information security strategy and relevant Documents in the Operational Document Set relating to internal controls, including those relating to the handling of money and cheques; and
 - (b) confirm that there are processes and systems in place which meet the requirements of the Deed, including the BCP, and that those processes and systems they have successfully

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passed internal testing within the previous 60 Business Days, or such other period Approved by the Nominal Insurer.

The director must then sign the Statutory Declaration in the form of Schedule 8 and provide it to the Nominal Insurer at the same time as providing the Draft Annual Services Plan.

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PART E Warranties, Indemnities and Liability

13 Warranties

13.1 Throughout the Term the Scheme Agent represents and warrants that:

- (a) it has the power to enter into and observe its obligations under this Deed;
- (b) it has in full force and effect the licences, consents and authorisations necessary to enter into this Deed and allow them to be enforced. The Scheme Agent will provide the Nominal Insurer with copies on request;
- (c) it is registered under the GST Act;
- (d) the signing or performance of its obligations under this Deed will not violate any judgment, order or decree, nor be a material default under any material contract by which it or its assets are bound;
- (e) it will not sell, dispose of or transfer ownership in:
 - (1) any of the Intellectual Property Rights that are being used to provide the Services without prior Approval, such Approval not to be unreasonably withheld where the Scheme Agent provides alternative Intellectual Property Rights that enable the Scheme Agent to meet the obligations under this Deed; or
 - (2) substantially all of its assets without prior Approval;
- (f) it has entered into this Deed solely on the basis of its own investigations and determination as to the liability assumed or to be assumed by the Scheme Agent and the risk involved in entering into this Deed;
- (g) it is not relying on any statement or representation as to any level of profitability, or estimated or expected mark-up on costs, that will be provided by the Remuneration;
- (h) it has examined and acquired actual knowledge of this Deed, all information provided to the Scheme Agent prior to signing this Deed in connection with this Deed, the Services, the Transition Services and any other information made available to the Scheme Agent whether by the Nominal Insurer, the Nominal Insurer's Principal, WorkCover (in its role prior to the commencement of the 2003 Act or when acting for the Nominal Insurer) or otherwise;
- (i) 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 Scheme Agent's decision to offer to enter into or accept this Deed;

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- (j) it has informed itself of the nature of the Services and Transition Services; and
- (k) it did not rely on any express or implied statement, warranty or representation, whether oral or written, made by or on behalf of the Nominal Insurer or WorkCover (in any capacity and whether before or after the Nominal Insurer was created by the 2003 Act) that is not expressly contained in this Deed.

13.2 Throughout the Term the Scheme Agent represents and warrants that the Services and Transition 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 Australian insurance industry standards. For the avoidance of doubt nothing in this Sub-clause 13.2(b) requires the Scheme Agent:
 - (1) where there is a KPI that relates to the particular obligation, to perform at a higher standard than that set out in the KPI; or
 - (2) to implement its Business Model in a shorter timeframe than that agreed in Schedule 1;
- (c) will meet or exceed the timing requirements in this Deed (including any relevant KPIs) or if no timing requirements are set out, the Scheme Agent must perform the obligation promptly;
- (d) are fit for the purposes for which they are supplied, including achieving the Scheme Objectives;
- (e) will ensure its Personnel have adequate and continuous relevant training; and
- (f) will be provided in accordance with all Laws, the Operational Document Set and any Direction.

13.3 Throughout the Term the Scheme Agent represents and warrants that:

- (a) the Scheme Agent and its Personnel have the relevant time, resources, capacity, expertise, capability, licences, qualifications, and ability to provide the Services and Transition Services to meet their obligations under this Deed.
- (b) it will promptly pay all:
 - (1) payroll tax;
 - (2) applicable workers compensation insurance; and
 - (3) remuneration;

Scheme Agent Deed

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 Premiums, Benefits, or payments 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, Premium or payments to Third Party Service Providers the Scheme Agent will either:
 - (1) where there is a specific KPI relating to that payment or collection, meet or exceed the KPI; or
 - (2) in all other cases, use the highest Australian insurance industry standard of skill and care; and
 - (3) comply with any other obligation in this Deed, including in Schedule 2, and in the Operational Document Set, relating to internal controls in respect of the payment, collection or handling of money.

13.4 Throughout the Term the Scheme Agent represents and warrants that:

- (a) the information that it provides to the Nominal Insurer is consistent, complete and accurate;
- (b) its systems and Equipment are capable, of correctly and securely interoperating and exchanging information with the Nominal Insurer's systems that are set out in the Operational Document Set;
- (c) it will use every effort to ensure that the Scheme Agent, its Related Bodies Corporate and their respective Personnel or their systems will not introduce any Virus to the Nominal Insurer's or any other person's software or systems;
- (d) all reporting and invoicing carried out by the Scheme Agent will be compatible and integrate with the Nominal Insurer's systems and data exchanging requirements that are set out in the Operational Document Set;
- (e) the Nominal Insurer's or its Personnel's use in accordance with the Deed of the Services, Transition Services or any item provided by or on behalf of the Scheme Agent will not infringe the Intellectual Property Rights or Moral Rights of any person;
- (f) it will actively monitor the use of its Equipment and processes to prevent their use for any illegal activity or unauthorised transaction; and
- (g) its Response is accurate, complete and not misleading.

Scheme Agent Deed

13.5 It is a condition of this Deed that the Scheme Agent has disclosed in writing to the Nominal Insurer prior to the Commencement Date:

- (a) any litigation or proceeding whatsoever, actual or threatened, against the Scheme Agent and its 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 upon the Scheme Agent, its Related Bodies Corporate and their respective Personnel (including its Key Personnel); or
- (c) matters relating to the commercial, technical or financial capacity of the Scheme Agent, its Related Bodies Corporate and their Personnel (including its Key Personnel) that are proposed to be engaged in respect of this Deed;

which could materially adversely affect the Scheme Agent's ability to perform any of its obligations under this Deed.

13.6 Throughout the Term the Scheme Agent must promptly notify and fully disclose to the Nominal Insurer in writing;

- (a) each actual or threatened event of the kind that is set out in Sub-clause 13.5 if and when it arises;
- (b) any notice that the Scheme Agent, the Guarantor or any of their respective Related Bodies Corporate, provides to any Stock Exchange, ASIC, APRA or any other regulatory body in Australia, where that notice relates to any of the following:
 - (1) corporate governance;
 - (2) prudential standards;
 - (3) authority of the entity to conduct its business;
 - (4) company secretarial matters (eg. change of directors);
or
 - (5) any matter which could be considered to be adverse to the reputation of the Scheme Agent, the Guarantor or any of their respective Related Bodies Corporate.

Scheme Agent Deed

14 Nominal Insurer Warranties

- 14.1 The Nominal Insurer represents and warrants to the Scheme Agent that:
- (a) the Nominal Insurer has the requisite power and authority to enter into this Deed;
 - (b) the Nominal Insurer is registered under the GST Act and will remain registered throughout the Term; and
 - (c) for all agency arrangements entered into with Other Scheme Agents as a result of RFP, the Nominal Insurer will include:
 - (1) warranties substantially in the form of the warranties set out in Sub-clauses 13.4(a), (b) and (d); and
 - (2) requirements substantially in the form of Schedule 2 Sections 3.5.1(b) and (c).
- 14.2 To the extent that the Nominal Insurer licences, provides or otherwise makes available any information, facilities or resources to the Scheme Agent under this Deed (collectively "Nominal Insurer Resources") they are provided to the Scheme Agent on an 'as is' basis, and the Scheme Agent 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 the Nominal Insurer or its Personnel in respect of:
- (a) the condition, state of repair, quality, fitness for purpose or merchantability of any of Nominal Insurer Resources;
 - (b) the accuracy, completeness, currency, suitability or efficacy of any of Nominal Insurer's information.
- 14.3 The Nominal Insurer disclaims all responsibility for any information given to the Scheme Agent before or after the Commencement Date which disclaimer is acknowledged by the Scheme Agent. The information is not guaranteed as to accuracy, sufficiency or otherwise.

15 Indemnity

- 15.1 To the maximum extent permitted by Law, the Scheme Agent agrees to indemnify and keep indemnified the Nominal Insurer, its Personnel, its successors and assigns ("those indemnified") against any Demand incurred or suffered by any of those indemnified where such Demand arises out of or in connection with:
- (a) the Scheme Agent exceeding its authority as agent of the Nominal Insurer;
 - (b) any breach of any Laws by:

Scheme Agent Deed

- (1) the Nominal Insurer or its Personnel that is caused or contributed to by the Scheme Agent or its Personnel; or
- (2) the Scheme Agent, its Related Bodies Corporate and/or their respective Personnel applicable to the Services, Transition Services and the performance of the obligations under this Deed;
- (c) any act or omission of the Scheme Agent, its Related Bodies Corporate or their respective Personnel (other than an act or omission that constitutes negligence in the provision of the Services or Transition Services) that causes or contributes to personal injury (including sickness) to, or the death of, any person;
- (d) any act or omission of the Scheme Agent, its Related Bodies Corporate or their respective Personnel resulting in loss of, or damage to, property;
- (e) any unlawful, wilful or negligent act or omission of the Scheme Agent, its Related Bodies Corporate or their respective Personnel;
- (f) subject to Sub-clauses 15.1(g) and 25.9, any Demand from any third party, including:
 - (1) from any Subcontractor;
 - (2) from any Employer or Worker (other than a Demand arising from a Policy); or
 - (3) any Demand arising out of the Scheme Agent's (or their permitted sub-licencees', if any) unauthorised use of any Intellectual Property Rights that are licensed by the Nominal Insurer to the Scheme Agent under this Deed;
- (g) notwithstanding Sub-clause 25.9, any Demand from a provider of services to the Scheme Agent arising out of or in connection with a contract or other arrangement with that provider of services that was entered into prior to the Scheme Services Commencement Date;
- (h) fraud by the Scheme Agent, its Related Bodies Corporate, their respective Personnel or their respective directors, officers and employees;
- (i) fraud by Third Party Services Providers or their respective Personnel, Employers or Workers to the extent that the Scheme Agent failed to provide Fraud prevention and detection procedures in accordance with this Deed, and had such procedures been in place the amounts lost would not have been likely to have been lost; or

Scheme Agent Deed

- (j) breach of obligation of confidence or privacy by the Scheme Agent, its Related Bodies Corporate or their respective Personnel.
- 15.2 The Scheme Agent must indemnify the Nominal Insurer, its Personnel, its successors and assigns (those "indemnified") against loss, damage or expense that has been incurred by those indemnified as the result of a Demand made by a third party where that loss, damage or expense arises from a Demand made against those indemnified in which it is alleged that the Services, Transition Services or any item provided by or on behalf of the Scheme Agent ("Deliverable"), including the use of the Services, Transition Services or Deliverable, in accordance with this Deed infringes the Intellectual Property Rights or Moral Rights of any person.
- 15.3 For the purposes of Clause 15.2 an infringement of Intellectual Property Rights includes unauthorised acts which would, but for the operation of the *Patents Act (Cth) 1990* s.163, the *Designs Act 2003 (Cth)* ss 96 and 100 the *Copyright Act (Cth) 1968* s.183 and the *Circuits Layout Act (Cth) 1989* s.25, constitute an infringement.
- 15.4 The indemnity referred to in Clause 15.2 will be granted whether or not legal proceedings are instituted, and if such proceedings are instituted, irrespective of the means, manner or nature of any settlement, compromise or determination.
- 15.5 Although the Nominal Insurer may elect to defend a Demand alleging an infringement under Sub-clause 15.2, the Scheme Agent must if requested by the Nominal Insurer but at the Scheme Agent's expense, conduct the defence of a Demand alleging such infringement. The Scheme Agent must follow the Nominal Insurer's Directions and the procedures in the Operational Document Set relating in any way to that defence or to negotiations for settlement of the Demand.
- 15.6 The Nominal Insurer must if requested, but at the Scheme Agent's expense, provide the Scheme Agent with reasonable assistance in conducting the defence of such a Demand.
- 15.7 Without limiting the generality of Sub-clauses 15.2, 15.4 and 15.5, if it is determined by any independent tribunal of fact or Law, or if it is agreed between the parties to the dispute, that an infringement of any Intellectual Property Rights or Moral Rights of any person has occurred on grounds in any way related to the Services, Transition Services or the Deliverables, the Scheme Agent must at its own expense:
- (a) modify or replace the Service, Transition Services or Deliverable so that such infringement, defect or inadequacy is removed; or
 - (b) procure for the Nominal Insurer the right to continue enjoying the benefit of the Service, Transition Services or Deliverable, and any rights it has under Clause 21.

Scheme Agent Deed

- 15.8 If the solutions in Sub-clauses 15.7(a) or 15.7(b) cannot be achieved, the Nominal Insurer may immediately terminate this Deed and pursue all remedies available to it under this Deed or at Law for the Scheme Agent's material breach of this Deed.
- 15.9 The Scheme Agent's liability to indemnify those indemnified under this Deed will be reduced proportionally to the extent that any unlawful, wilful or negligent act or omission of the Nominal Insurer caused or contributed to the liability or loss.

16 Nominal Insurers Limit of Liability

- 16.1 To the maximum extent permitted by Law, the total aggregate liability of the Nominal Insurer and its agents in contract, tort (including negligence), breach of statutory duty or otherwise for any loss or damage which arises from any Demand arising out of or in connection with this Deed (whether before or after the Scheme Services Commencement Date) or the relationship between the parties, is limited to \$1,000,000.
- 16.2 The limit of liability in Sub-clause 16.1 does not apply to liability arising in relation to:
- (a)
 - (1) death or personal injury; or
 - (2) damage to tangible property;
that was caused by the wilful, or negligent act or omission of the Nominal Insurer or its agents (other than the Scheme Agent or Other Scheme Agents);
 - (b) a failure to pay any fee or amount set out in Sub-clauses 31.1 to 31.3; or
 - (c) the indemnity under Sub-clause 25.9.

17 Performance Guarantee

- 17.1 If requested by the Nominal Insurer, the Scheme Agent must provide a Performance Guarantee duly executed by the Guarantor within 10 Business Days of the request. The Nominal Insurer will only release the Guarantor in accordance with the terms of the Performance Guarantee.

18 Financial Security

- 18.1 The Scheme Agent must provide and maintain a Financial Security in an amount that is the greater of:
- (a) \$2,000,000;

Scheme Agent Deed

- (b) 15% of the amount of the Service Fee estimated by the Nominal Insurer to be payable for the next four Quarters; or
 - (c) an amount equal to any amounts payable on account (or Interim Payments) which are potentially recoverable from the Scheme Agent.
- 18.2 The Financial Security must be provided to the Nominal Insurer within 10 Business Days of the Commencement Date, and be updated (if applicable) within 20 Business Days of the relevant due date of a Service Fee or Interim Payment.
- 18.3 The Nominal Insurer will hold the Financial Security as security for the due and proper performance and completion of the obligations of the Scheme Agent under this Deed whether before or after the Scheme Services Commencement Date. If the Nominal Insurer makes a deduction from the Financial Security then either Party may within 10 Business Days of the deduction raise a Contract Dispute, and the Parties will follow the process for Contract Disputes set out in Clause 25.
- 18.4 If, in the absolute opinion of the Nominal Insurer, the Scheme Agent fails to properly perform and complete its obligations under this Deed and the Nominal Insurer suffers loss or damage arising from, or in connection with, such failure by the Scheme Agent, the Nominal Insurer:
 - (a) may first make a written demand on the Scheme Agent for payment of any or all such loss or damage (as ascertained and certified by the Nominal Insurer); and
 - (b) if the Scheme Agent does not pay the Nominal Insurer the amount set out in the written demand, within 10 Business Days of receipt of the written demand, or the Nominal Insurer does not make such a demand, then the Nominal Insurer may deduct any or all such loss or damage (as ascertained and certified by the Nominal Insurer) from the Financial Security.
- 18.5 If the Financial Security is not sufficient to meet payment of all the loss or damage suffered by the Nominal Insurer, the balance remaining will be a debt due and owing from the Scheme Agent to the Nominal Insurer and may be recovered by the Nominal Insurer in any appropriate Court.
- 18.6 The Financial Security must be issued by a bank, independent insurance company or other financial institution, located in Australia, acceptable to the Nominal Insurer in its absolute discretion.
- 18.7 The Nominal Insurer will have no liability to the Scheme Agent (whether in negligence or otherwise) for any loss or damage suffered or incurred by the Scheme Agent where the Nominal Insurer exercises its rights under this Clause 18 in good faith.
- 18.8 The Scheme Agent must not take any action to injunct or otherwise prevent the Nominal Insurer from making a claim or receiving a

Scheme Agent Deed

payment under Sub-clause 18.4. This Sub-clause 18.8 does not prevent the Scheme Agent from subsequently taking action to recover from the Nominal Insurer any amount invalidly received by the Nominal Insurer under Sub-clause 18.4.

- 18.9 If the Nominal Insurer deducts monies from the Financial Security and the Deed has not been terminated by the Nominal Insurer for cause, then the Scheme Agent must reinstate the Financial Security to the full amount stated in Sub-clause 18.1, in the manner Directed by the Nominal Insurer, provided that the Nominal Insurer must not Direct that the amount of the Financial Security be reinstated until 20 Business Days after the relevant due date of the next Interim Payment.
- 18.10 The Nominal Insurer may withhold payment of any of the fee or amount set out in Sub-clauses 31.1 to 31.3 if the Scheme Agent has not complied with Sub-clause 18.9.
- 18.11 The Nominal Insurer must release the Financial Security to the Scheme Agent (or whom the Scheme Agent directs) if:
- (a) the Nominal Insurer is satisfied that the Scheme Agent has fully performed and discharged all of its obligations under this Deed; or
 - (b) 12 months after the expiration or termination of this Deed has passed and the Nominal Insurer has given Approval that in its reasonable opinion:
 - (1) there is no prospect that money or damages will become owing (whether actually or contingently) by the Scheme Agent to the Nominal Insurer; and
 - (2) no payment by the Scheme Agent or the provider of the Financial Security is likely to be void, voidable or refundable under any law, including any law relating to insolvency.
- 18.12 The Scheme Agent will meet all costs associated with obtaining, maintaining and renewing the Financial Security.
- 18.13 If the Nominal Insurer makes a deduction from the Financial Security then either Party may within 10 Business Days of the deduction raise a Contract Dispute, and the Parties will follow the process for Contract Disputes set out in Clause 25.

Scheme Agent Deed

PART F Compliance with Laws, Information and Intellectual Property

19 Compliance with Laws

Compliance with Laws

- 19.1 The Scheme Agent must:
- (a) comply with all Laws applicable to the Services, Transition Services and the performance of its obligations under this Deed; and
 - (b) obtain and maintain any licences, authorisations, consents, approvals and permits required by applicable Laws to provide the Services, Transition Services and to perform its obligations under this Deed.

Privacy

- 19.2 In addition to any statutory requirements which apply to the Scheme Agent, when performing its obligations under this Deed, the Scheme Agent and its Personnel must comply with the provisions of the Commonwealth Privacy Act 1988 which apply to 'organisations' as defined in that Act, including the National Privacy Principles.
- 19.3 The Scheme Agent agrees:
- (a) to notify the Nominal Insurer immediately of any complaint received by the Scheme Agent or its Personnel which arises out of an obligation referred to in Sub-clause 19.2; and
 - (b) that, where a complaint referred to in Sub-clause 19.3(a) is not within the jurisdiction of the New South Wales Privacy Commissioner or the Federal Privacy Commissioner, the Scheme Agent will implement the complaints handling process set out in the Operational Document Set; and
 - (c) to immediately report to the Nominal Insurer the outcome of any investigation of a complaint referred to in this Sub-clause 19.3.
- 19.4 The Scheme Agent must ensure that any contract it enters with a Subcontractor under this Deed imposes the obligations in Sub-clauses 19.2 and 19.3 on that Subcontractor.
- 19.5 The Scheme Agent must comply with all Directions of the Nominal Insurer or a Privacy Commissioner in relation to matters referred to in Sub-clauses 19.2, 19.3 and 19.4.

Scheme Agent Deed

20 Confidentiality

- 20.1 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:
 - (1) in accordance with this Clause 20; or
 - (2) after receiving the written consent or Approval of the other party.
- 20.2 The Scheme Agent must not make any use of the Nominal Insurer's Confidential Information or any part of it except for performing its obligations or exercising its rights under this Deed. Subject to Sub-clause 20.5, prior to disclosing any of the Nominal Insurer's Confidential Information to any third party the Scheme Agent must provide written notice to the Nominal Insurer and obtain its Approval for the disclosure and use, which may be denied or granted in the Nominal Insurer's absolute discretion.
- 20.3 The Scheme Agent must:
- (a) ensure that any person to whom it is authorised to disclose the Nominal Insurer's Confidential Information (including its employees and professional advisers) is aware of the confidential nature of the Nominal Insurer's Confidential Information; and
 - (b) ensure that any person to whom it is authorised to disclose the Nominal Insurer's Confidential Information holds the Nominal Insurer's Confidential Information in confidence on no less onerous terms than those set out in this Deed.
- 20.4 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) the Nominal Insurer may disclose any information provided by the Scheme Agent to:
 - (1) WorkCover (in its role as regulator) and its Personnel; or
 - (2) any other Agency and its Personnel;

Scheme Agent Deed

provided that if the information is Confidential Information the Nominal Insurer must take all reasonable steps to ensure that such information is treated as confidential by WorkCover and other such Agencies;

- (c) the Nominal Insurer may disclose the Scheme Agents' Confidential Information:
 - (1) to any Minister, Parliamentary Committee or Parliament: and
 - (2) to any Agency to carry out any of its functions, powers or discretions, (other than the Nominal Insurer may not disclose the Scheme Agents Confidential Information to any Other Scheme Agent other than as permitted under Sub-clause 20.4(d));
- (d) where Confidential Information is also Intellectual Property Rights of a party, then the receiving party may disclose that Confidential Information to the extent that it is granted a licence under Clause 21;
- (e) a party may disclose any Confidential Information to the auditor for the purposes or conducting an audit, inspection or test in accordance with Clause 29;
- (f) where required by Law.

20.5 The Scheme Agent may disclose the Nominal Insurer's Confidential Information relating to Claims and Policies to Workers, Employers or Third Party Service Providers only to the extent necessary to ensure the efficient provision of the Services, and such disclosure does not require the Scheme Agent to obtain an Information and IP Deed from the Worker, Employer or Third Party Service Provider (as applicable).

21 Intellectual Property

New Contract Material

- 21.1 Title to any Intellectual Property Rights in all New Contract Material will, on creation, vest or otherwise be assigned or transferred to the Nominal Insurer, without the need for further assurance.
- 21.2 The Nominal Insurer grants to the Scheme Agent a limited, non-exclusive licence for the Scheme Agent, (including the right to sublicense to members of the Scheme Agent's Group) and their respective Personnel, only to copy, translate, adapt or otherwise use the New Contract Material for internal use of the Scheme Agent's or any of the members of the Scheme Agent's Group. The internal use that is permitted under this Sub-clause 21.2 includes the Scheme Agent or any member of its Scheme Agent Group using the New Contract Material in providing their respective services to other persons. The licence commences on the date the New Contract Material is first brought into existence and may only be terminated by the Nominal Insurer if either the Deed is terminated for cause by the Nominal Insurer, or the Scheme Agent is in breach of the terms of the

Scheme Agent Deed

licence and such breach is not remedied within 20 Business Days or such longer period agreed between the parties of notice from the Nominal Insurer specifying the breach.

- 21.3 If the Scheme Agent wishes to sub-licence the New Contract Material to persons other than the Scheme Agent Group, or otherwise use the New Contract Material in excess of the licence granted under Sub-clause 21.2, the Scheme Agent must seek prior Approval of the Nominal Insurer, such Approval may be granted or withheld in the Nominal Insurer's absolute discretion.
- 21.4 Where the New Contract Material is created under a Project Service and that New Contract Material is not a Record, an Insurance Record, or the Confidential Information or Personal Information of the Nominal Insurer, then the parties may agree that the Nominal Insurer will pay a fee for any commercial exploitation (including granting the right of use and access to Other Scheme Agents and other third parties) by the Nominal Insurer. This fee must be agreed at the time the Variation Notice is signed and be stated on the Variation Notice.

Scheme Materials

- 21.5 This Deed does not affect the ownership of Intellectual Property Rights in Scheme Materials, but the Scheme Agent grants to the Nominal Insurer from the later of the Commencement Date or the date when the Scheme Material was first brought into existence, without additional cost, a perpetual, non-exclusive, irrevocable, transferable licence:
- (a) for the Nominal Insurer and its Personnel, to copy, translate, communicate to the public, adapt or otherwise use the Scheme Material; and
 - (b) for the Nominal Insurer to sub-licence the Scheme Material to third parties (including Other Scheme Agents) to copy, translate, communicate to the public and adapt or otherwise use the Scheme Materials;
- for purposes solely associated with any Workers Compensation Scheme.

Scheme Agent Material

- 21.6 This Deed does not affect the ownership of Intellectual Property Rights in Scheme Agent Material, but the Scheme Agent grants to the Nominal Insurer from the later of the Commencement Date or the date when the Scheme Agent Material was first brought into existence, without additional cost, a non-exclusive, irrevocable, transferable licence for the Nominal Insurer, and its Personnel to copy, translate, adapt and otherwise use the Scheme Agent Material for purposes solely associated with the Scheme, during the Term, and for six months after the Term. For the avoidance of doubt the Nominal Insurer is not granted any right to licence the Scheme Agent Materials to Other Scheme Agents, and is restricted to use for purposes solely associated with the Scheme, and not for any broader use for the Workers Compensation Scheme.

Scheme Agent Deed

Third Parties and Intellectual Property Rights

- 21.7 Prior to using any Intellectual Property Right that is owned by any third party in connection with the performance of the obligations under this Deed, the Scheme Agent must obtain the Nominal Insurer's Approval to its use and the terms of any licence to use. The Nominal Insurer will grant Approval where:
- (a) the third party provides a licence to use that Intellectual Property Right on the same basis as set out in Sub-clauses 21.5 or 21.6 (as appropriate) without additional cost to the Nominal Insurer; or
 - (b) in respect of the Scheme Agent Material the Nominal Insurer determines that the Scheme Agents obligations in Sub-clauses 9.7-9.8 will be unaffected by the Nominal Insurer being granted a licence on the terms and conditions that are proposed by the Scheme Agent.
- 21.8 The Scheme Agent must give the Nominal Insurer written notice of all Scheme Materials and Scheme Agent Material that is to be used in connection with the performance of the obligations under this Deed prior to it using it to perform the Services or Transition Services.
- 21.9 If the Scheme Agent believes that the Intellectual Property Right is Scheme Agent Material it must inform the Nominal Insurer of this fact in writing prior to using it in connection with the performance of the obligations under this Deed and seek the Nominal Insurer's determination whether the Intellectual Property Right falls within the definition of Scheme Agent Material. The Nominal Insurer must act in good faith in making such determination.
- 21.10 Once the Nominal Insurer has made a determination in Sub-clause 21.9, it is final and binding on the parties. If the Nominal Insurer determines that the Intellectual Property Right is not Scheme Agent Material, then the Scheme Agent may elect to not use the Intellectual Property Right in connection with the performance of the obligations under this Deed. If the Scheme Agent does not seek the Nominal Insurer's determination under Sub-clause 21.9, or the Nominal Insurer determines that the Intellectual Property Right is not Scheme Agent Material, and the Scheme Agent uses the Intellectual Property Right in connection with the performance of the obligations under this Deed, the Intellectual Property Right will be deemed to be Scheme Materials. The Nominal Insurer will use every effort to provide its determination within 20 Business Days of receipt of the Scheme Agent's written notice, or such longer period as is agreed between the parties.
- 21.11 The Nominal Insurer will maintain an Intellectual Property Register in the form of Schedule 6 during the Term. The Nominal Insurer will include on the Intellectual Property Register a record of:
- (a) the material that is determined by the Nominal Insurer to be Scheme Material;

Scheme Agent Deed

- (b) the material that is determined by the Nominal Insurer to be Scheme Agent Material; and
- (c) the conditions of any Approval given by the Nominal Insurer under Sub-clause 21.7(b).

Nominal Insurer's Intellectual Property Rights

21.12 The Nominal Insurer grants to the Scheme Agent a non-exclusive, non-transferable licence for the Scheme Agent and its Subcontractors to use:

- (a) any information provided by the Nominal Insurer; and
- (b) the Monitoring Tool;

during the Term solely for the purpose of performing the Services and Transition Services.

Moral Rights

21.13 The Scheme Agent must:

- (a) hold; or
- (b) if it does not hold at the Commencement Date, then unless it is unreasonable in all the circumstances then it must obtain;

consents from all authors of New Contract Material, Scheme Materials, Scheme Agent Materials, Records and Insurance Records to its use and adaptation by the Scheme Agent, the Nominal Insurer or their Personnel, without restriction and without any requirement to attribute the New Contract Material, Scheme Materials, Scheme Agent Materials, Records and Insurance Records to its authors.

Trademarks

21.14 From the Scheme Services Commencement Date, the Nominal Insurer grants to the Scheme Agent a non-exclusive, non-transferable, and royalty free licence to the Scheme Agent and its Subcontractors to use any Nominal Insurer's logo for the Term of this Deed solely for the purposes of performing the Services and Transition Services.

21.15 If the Scheme Agent wishes to use WorkCover's logo then it must apply to WorkCover (in its role as regulator) and use the WorkCover logo only after receiving written approval from WorkCover (which the Nominal Insurer's Account Manager may facilitate) and complying with any requirements in the Operational Document Set.

21.16 The Scheme Agent will seek individual Approval of the Nominal Insurer for the format of any letterhead, cheques, forms and standard Documentation used in relation to the Services, unless the format is described in the Operational Document Set.

Scheme Agent Deed

No transfer of rights in Records etc

21.17 The parties agree that the Records are subject to s154K of the 2003 Act and that nothing in this Deed transfers to the Scheme Agent any rights in any Records. Any Records, Insurance Records or other Intellectual Property Rights that are owned by the Nominal Insurer, are held by the Scheme Agent as bailee only.

Protection of Information

21.18 The Scheme Agent must:

- (a) maintain safeguards against the destruction, loss or alteration of any information, Records or Insurance Records in electronic form in the course of delivering the Services that:
 - (1) are no less rigorous than the safeguards that can be expected when using the highest Australian insurance industry standard; and
 - (2) comply with all Laws applicable to the Scheme Agent's use and custody of such items; and
- (b) implement and operate appropriate backup procedures to ensure that the Nominal Insurer has unhindered, immediate and independent access to the items set out in Sub-clause 21.18(a) above at all times during the Term.

No Lien

21.19 The Scheme Agent does not have, and must not permit the creation of any general or particular, security interest or other form of encumbrance over the Nominal Insurer's property including the Nominal Insurer's Confidential Information, New Contract Material, Records or Insurance Records whether for the Scheme Agent's benefit or for the benefit of any third party.

Reports

21.20 The Scheme Agent acknowledges and agrees that the Nominal Insurer will, from time to time, issue to third parties, (including Other Scheme Agents and the public), reports consisting of Records, Insurance Records and any other information including comparative performance data relating to (and identifying) the Scheme Agent, Scheme Outcomes and/or the Scheme Objectives. The Nominal Insurer may designate the Scheme Agent as being the source of such items where the Nominal Insurer, acting reasonably considers it appropriate.

Scheme Agent Deed

PART G Commercial Management and Dispute Resolution

22 Principal

Scheme Agent's Principal

- 22.1 The identity, roles and responsibilities of the Scheme Agent's Principal and the Nominal Insurer's Principal are primarily set out in this Clause 22 and Schedule 4.
- 22.2 The Scheme Agent's Principal must be Approved by the Nominal Insurer and be based in New South Wales, such Approval not to be unreasonably withheld.
- 22.3 The Scheme Agent's Principal is authorised and empowered to act on behalf of and bind the Scheme Agent in all matters arising between the parties and for the purposes of any act, matter or thing to be done by the Scheme Agent arising out of or in connection with this Deed.
- 22.4 The Scheme Agent's Principal must be available at all reasonable times for consultation with the Nominal Insurer in connection with any matter arising out of or in connection with this Deed.
- 22.5 Matters within the knowledge of the Scheme Agent's Principal will be deemed to be within the knowledge of the Scheme Agent.

Nominal Insurer's Principal

- 22.6 The Nominal Insurer must ensure there is a Nominal Insurer's Principal appointed at all times.
- 22.7 The Nominal Insurer's Principal is the agent of the Nominal Insurer for the purposes of any act, matter or thing to be done by the Nominal Insurer arising out of or in connection with this Deed.
- 22.8 The Nominal Insurer's Principal may delegate any powers, duties and functions under the Deed to other employees or agents of the Nominal Insurer. The Nominal Insurer must keep the Scheme Agent advised of the identities and delegated authorities of such persons. The Scheme Agent acknowledges that there may be more than one delegation by the Nominal Insurer's Principal.
- 22.9 The Scheme Agent must comply with any requirements, instructions or the like given to it by any of the Nominal Insurer's Principal delegates in accordance with their delegated authorities as if there were requirements or instructions given to it by the Nominal Insurer's Principal.

Scheme Agent Deed

23 Account Manager

- 23.1 The identity, roles and responsibilities of the parties' Account Managers are primarily set out in this Clause 23 and Schedule 4.
- 23.2 The Nominal Insurer will nominate an Account Manager to manage the operation of this Deed for the Nominal Insurer and to represent the Nominal Insurer (either in person or through his or her delegate) in all day to day dealings with the Scheme Agent in accordance with Schedule 4.
- 23.3 The Scheme Agent will nominate an Account Manager to manage the operation of this Deed for the Scheme Agent and to represent the Scheme Agent in all day to day dealings with the Nominal Insurer.
- 23.4 The Scheme Agent's Account Manager will:
- (a) be the single point of contact for the Nominal Insurer for the purposes of this Deed;
 - (b) have the authority and be given the responsibility to perform each of the tasks referred to in Schedule 4 for the Scheme Agent;
 - (c) be a full time employee of the Scheme Agent or a member of the Scheme Agent's Related Bodies Corporate; and
 - (d) have a strong working knowledge of the Scheme Agent's business operations and the Scheme Objectives and how they all interrelate.
- 23.5 The Account Managers will meet at the times and locations agreed by the parties, unless otherwise Directed by the Nominal Insurer.

24 Scheme Actuary

- 24.1 The Nominal Insurer will ensure that it has a Scheme Actuary appointed throughout the Term and for such period as is necessary to effectively calculate Remuneration payable under this Deed. The Scheme Actuary must be a fellow of the Institute of Actuaries of Australia.
- 24.2 The Scheme Actuary will be required to provide advice and determination based on the highest industry standards using its experience in the industry and will substantially follow the methodology set out in Schedule 3.
- 24.3 The parties agree that in absence of obvious error, each will be bound by any determination by the Scheme Actuary, including the calculation, use of assumptions or methodology, of the following type;
- (a) setting entry level targets and initial Portfolio allocation baselines;

Scheme Agent Deed

- (b) setting or re-setting of the Quarterly Performance Fee Targets and the Incentive Fee Targets;
 - (c) the determination of the Scheme Agent's performance against any targets; or
 - (d) Remuneration generally;
- unless the provisions of Sub-clause 25.2 apply.

24.4 The Scheme Agent indemnifies the Nominal Insurer for any Demand that it makes against the Nominal Insurer or the Scheme Actuary alleging that the Scheme Actuary's advice or determinations in relation to any item in Sub-clause 24.3 are inaccurate for any reason, unless Sub-clause 25.2 applies.

25 Dispute Resolution

25.1 The parties must attempt to settle any Contract Dispute in relation to this Deed in accordance with:

- (a) the procedure in Schedule 4; and
- (b) this Clause 25;

before resorting to court proceedings or other dispute resolution process.

25.2 In order to minimise the costs of resolving Contract Disputes, where there is a Contract Dispute that arises from the calculation of Remuneration using the targets determined under Clause 5 (but not a Contract Dispute arising out of or in connection with the setting of targets) and if the amount in genuine dispute is less than \$1,000,000, then:

- (a) first the dispute will attempt to be resolved by the parties' Account Managers in accordance with Schedule 4, and if it remains unresolved;
- (b) second the parties agree that the Nominal Insurer's auditor, Scheme Actuary (or such other appropriately qualified person appointed by the Nominal Insurer ('appointee')) will determine the dispute, and that determination will be final and binding on the parties, in absence of obvious error. In reaching its determination the auditor, Scheme Actuary or other appointee may adopt its own process, provided that at a minimum that process includes each party providing the opportunity to make a written submission and oral presentation prior to the auditor, Scheme Actuary or other appointee making a determination. The Nominal Insurer will instruct the auditor, Scheme Actuary or appointee to act impartially and as an Expert, and to provide a determination within 20 Business Days of appointment unless both parties agree otherwise; and
- (c) the fees payable to the auditor, Scheme Actuary or appointee will be paid by the Nominal Insurer and the Scheme Agent will

Scheme Agent Deed

reimburse the Nominal Insurer for 50% of that fee, within 10 Business Days of request.

- 25.3 Subject to Sub-clause 24.3, the dispute resolution process for Contract Disputes other than those described in Clauses 25.2 and 25.5 is set out in Schedule 4.
- 25.4 The Scheme Agent must continue to perform its obligations under this Deed while a dispute is being dealt with in accordance with this Clause 25.
- 25.5 Nothing in this Clause 25 will prevent either party from seeking urgent interlocutory relief or from exercising any right to terminate this Deed.

Management of disputes with Third Parties

- 25.6 Subject to Clause 25.8 below, the Scheme Agent may, without the prior Approval for the Nominal Insurer, act on behalf of the Nominal Insurer in the event of a dispute with a third party, including court proceedings where the Demand arises out of or in connection with the Scheme Agent performing its obligations under this Deed. For the avoidance of doubt, this Sub-clause 25.6 only applies to circumstances where the Scheme Agent is being pursued as agent for the Nominal Insurer, and not where the Scheme Agent is being pursued in its own name e.g. by a Subcontractor.
- 25.7 The Scheme Agent may incur legal costs, disbursements and third party costs associated with the legal proceedings, described in Sub-clause 25.6 as agent for the Nominal Insurer without prior Approval up to an amount of \$25,000 per matter, or series of related matters. Thereafter the Scheme Agent must obtain the Nominal Insurer's Approval for further costs, disbursements and third party costs associated with the legal proceedings.
- 25.8 The Scheme Agent will seek the Approval of the Nominal Insurer, such Approval to be given at the Nominal Insurer's absolute discretion, prior to instituting legal proceedings (including issuing a statement of claim or filing a defence) on behalf of the Nominal Insurer, subject to any conditions provided (if any) with such Approval, with any dispute in relation to:
 - (a) Privacy or Intellectual Property Rights;
 - (b) Confidential Information;
 - (c) Third Party Service Providers;
 - (d) Freedom of Information claims of any nature;
 - (e) any Demand which could have a material effect on the Scheme Objectives 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 the Nominal Insurer in excess of \$50,000.

Scheme Agent Deed

- 25.9 The Nominal Insurer will indemnify the Scheme Agents 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 Scheme Agent) associated with the legal proceedings provided that:
- (a) if this Deed requires the Scheme Agent to obtain the Nominal Insurer's Approval, that Approval has been sought;
 - (b) the Scheme Agent has met the obligations in this Deed that are in any way connected to the indemnity;
 - (c) the Scheme Agent has acted within the authority set out in this Deed; and
 - (d) the provisions of this Deed do not provide otherwise.
- 25.10 The Scheme Agent must comply, and must ensure that any Third Party Service Providers that are appointed by the Scheme Agent as agent of the Nominal Insurer (or if debt recovery is done by its own employees, then they must comply) with the policies relating to the conduct of litigation as set out in the Operational Document Set.

Scheme Agent Deed

PART H Service Conditions

26 Ability of the Nominal Insurer to Step-In

26.1 The Nominal Insurer may, at its absolute discretion, and at any time, appoint a person or persons as its nominee to either:

- (a) assist the Scheme Agent in the discharge of its obligations in respect of so much of the Services or Transition Services as is required by the Nominal Insurer; or
- (b) take over and manage the performance of the Services or Transition Services.

The Nominal Insurer must act in good faith in exercising its rights under this Clause 26.

26.2 The Nominal Insurer may obtain services similar to the Services or Transition Services elsewhere or may make any other arrangements considered necessary by the Nominal Insurer to maintain the Services or Transition Services.

26.3 The Nominal Insurer must act reasonably, insofar as the circumstances permit, in appointing any nominee to provide the Services and in agreeing a fee for those services.

26.4 The Nominal Insurer will give notice to the Scheme Agent as soon as practicable of its intention to exercise its rights under this Clause 26. This notice must include:

- (a) the reason for exercising these rights including whether the step-in is under Sub-clause 26.1(a) or 26.1(b) and whether the step-in is a result of a breach of this Deed by the Scheme Agent;
- (b) details of the intended nominee; and
- (c) description of the intended contract with any nominee.

26.5 The Nominal Insurer must manage any contract with the nominee appointed under this Clause 26 in good faith.

26.6 The Scheme Agent must assist the Nominal Insurer and its nominee, in the exercise of its step-in rights including:

- (a) facilitating access to the Scheme Agent's relevant files and systems;
- (b) providing access to its Confidential Information, Scheme Agent Operational Data, Records, any Intellectual Property Rights which the Nominal Insurer owns or licences under Clause 21 and Insurance Records;
- (c) making the Personnel available to provide information and assistance; and

Scheme Agent Deed

- (d) informing and securing the co-operation of subcontractors and Third Party Service Provider;
as required by the Nominal Insurer or nominee.
- 26.7 Neither the Nominal Insurer, nominee, nor any third party supplier, is liable to the Scheme Agent for any act or omission caused during the period of step-in unless the act or omission is caused by gross negligence.
- 26.8 The Nominal Insurer will be entitled to recover from the Scheme Agent 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 Deed by the Scheme Agent.
- 26.9 The appointment of the nominee will cease when:
 - (a) the Nominal Insurer determines, in its absolute discretion;
 - (b) the Deed is terminated by the Nominal Insurer; or
 - (c) the Term expires by the passing of time.
- 26.10 Nothing in this Clause 26 prevents the Nominal Insurer from being entitled to give notice for termination for cause, nor for terminating without cause under Sub-clause 43.1.

27 Personnel

- 27.1 The Scheme Agent is responsible for all the planning, scheduling, supervision and safety of its Personnel that are engaged in providing the Services and Transition Services.
- 27.2 Prior to disclosing the Nominal Insurer's Confidential Information or Personal Information, or entering any contract with a Subcontractor, the Scheme Agent must obtain a signed Information and IP Deed from:
 - (a) the relevant Subcontractor and its employees and agents; and
 - (b) if requested by the Nominal Insurer, the Scheme Agent's employees or employees of the Scheme Agent's Related Bodies Corporate where they are providing Services or Transition Services.
- 27.3 The Scheme Agent must promptly comply with the Nominal Insurer's Directions in respect of any action required to enforce such Information and IP Deed, at the Scheme Agent's own expense.
- 27.4 The Scheme Agent must ensure that its Personnel must comply with:
 - (a) any Direction;
 - (b) any of the Nominal Insurer's policies relevant to the provision of the Services, including equal opportunity, health and safety

Scheme Agent Deed

that have been incorporated in the Operational Document Set;
and

(c) the Law.

27.5 Within 15 Business Days of receipt of a request from the Nominal Insurer, the Scheme Agent must provide to the Nominal Insurer's Principal evidence of the qualifications, competencies and permits held, and training completed, by:

(a) any of the Key Personnel providing the Services, Transition Services; or

(b) Third Party Service Providers who are appointed by the Scheme Agent acting as agent of the Nominal Insurer where the Third Party Service Provider provides services in excess of \$250,000 per annum.

27.6 If the Nominal Insurer's Principal requires the removal of any individual who is an employee or contractor of the Scheme Agent or its Personnel from the provision of Services or Transition Services, the Scheme Agent must immediately (unless otherwise Directed), remove or procure the removal of that individual from the provision of the Services or Transition Services.

27.7 If an individual has been removed at the request of the Nominal Insurer under Sub-clause 27.6, such an individual can only return to the provision of Services or Transition Services with Approval of the Nominal Insurer's Principal, which it may withhold in its absolute discretion.

27.8 Where the Nominal Insurer reasonably requires a particular individual to perform particular tasks or roles, the Nominal Insurer may issue a Direction to designate any of the Scheme Agent's other Personnel engaged in performing the Services or Transition Services as Key Personnel.

27.9 The Nominal Insurer is not required to give any reasons, nor is it required to pay any compensation for any act or omission under Sub-clauses 27.6 or 27.7.

28 Key Personnel

28.1 The parties must comply with their respective obligations relating to the Key Personnel in Schedule 4 and Schedule 11 for Key Transition Personnel.

28.2 The Nominal Insurer must notify the Scheme Agent within 5 Business Days of a change to its Principal in accordance with Clause 48.

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

Scheme Agent Deed

Scheme Agent's Key Personnel Obligations

- 28.4 The Scheme Agent must ensure that its Key Personnel are not unreasonably diverted by the Scheme Agent attending to any other clients or to the Scheme Agent's internal requirements.
- 28.5 The Scheme Agent must obtain the prior Approval of the Nominal Insurer if any of its Key Personnel will be absent from providing the Services for longer than 20 consecutive Business Days. The Nominal Insurer will not refuse Approval unreasonably.
- 28.6 Where any of the Scheme Agent's Key Personnel are absent from providing the Services or Transition Services for more than 5 consecutive Business Days then the Scheme Agent must provide a replacement that is acceptable to the Nominal Insurer at its own cost.

Replacement of Scheme Agent Key Personnel

- 28.7 The Scheme Agent must not remove or replace any of its Key Personnel without the Nominal Insurer'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 Scheme Agent certifies that it believes is sufficient at Law to demonstrate gross misbehaviour of the Key Personnel; or
 - (c) the Scheme Agent has notified the Nominal Insurer of a suitable replacement for the Key Personnel (such notice to be given at least 10 Business Days prior to the proposed replacement) and the Nominal Insurer has Approved the replacement. The Nominal Insurer will not refuse Approval unreasonably, except that during the Disengagement Period the Sub-clause 9.5 will prevail.
- 28.8 If the Nominal Insurer requests, the Scheme Agent must provide the Nominal Insurer with such information as the Nominal Insurer reasonably requires concerning any proposed replacement of any Key Personnel.
- 28.9 The Scheme Agent must use every effort to retain its Key Personnel as employees.

29 Records, Inspections and Audits

Record Keeping

- 29.1 The Scheme Agent must maintain proper Documentation, books, accounts and records relating to the Services and Transition Services, including those items set out in Sub-clause 29.3 in accordance with the Law and the records management standards set out in the Operational Document Set.
- 29.2 The Scheme Agent must keep all books, accounts and records relating to the Services and Transition Services for a period of not less than 7 years from the end of the Term.

Scheme Agent Deed

29.3 The Scheme Agent must provide the Nominal Insurer or an appointed representative with access at all reasonable times at the Scheme Agent's premises to all Personnel, systems and information relating to this Deed, the Services or Transition Services, for inspection and audit, including:

- (a) Policy, Policyholder, Premium and Claims files;
- (b) books, accounts, and records;
- (c) payments into or out of any Nominal Insurer (or WCIF) bank account;
- (d) correspondence in relation to Claims and Policies received or sent by the Scheme Agent;
- (e) New Contract Material, Scheme Materials, Scheme Agent Materials, Records and Insurance Records;
- (f) Scheme Agent Operational Data;
- (g) Equipment used to provide the Services or Transition Services;
- (h) contracts with subcontractors and any Third Party Service Providers that are appointed by the Scheme Agent as agent for the Nominal Insurer; and
- (i) all other Documents or records as the Nominal Insurer may Direct from time to time.

This Documentation must be made available within 3 Business Days of any request from the Nominal Insurer, unless the Documentation relates to a Claim which was finalised more than 3 months prior to the date of request, when the Documentation must be made available within 5 Business Days of request.

Audit and Inspection

29.4 The Nominal Insurer may at any reasonable time:

- (a) conduct random inspections and tests of the:
 - (1) performance of the Services and Transition Services;
 - (2) training and competency of the Scheme Agent's Personnel;
 - (3) the Business Continuity Plan;
 - (4) the utilisation of the risk management methodology;
 - (5) internal financial controls; and
 - (6) books, accounts and records for any purposes, including to determine how the Remuneration, Pass-Through Costs, Premiums, Benefits or any other

Scheme Agent Deed

payments have been made or accounted for, how conflicts of interest are managed and the financial standing of the Scheme Agent.

- (b) conduct random audits to determine compliance with this Deed, Applicable Standards and the adequacy of processes and methods put in place by the Scheme Agent in performing the Services and Transition Services;
 - (c) conduct any other tests or inspection that the Nominal Insurer considers necessary to ascertain whether or not the Scheme Agent is complying with its obligations under this Deed.
- 29.5 None of these inspections or tests referred to in Sub-clause 29.4 by the Nominal Insurer detract from the Scheme Agent'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.
- 29.6 The Scheme Agent must not give the Personnel advance notice of inspections, tests or audits without the Approval of the Nominal Insurer's Principal.
- 29.7 The Scheme Agent must, at its own costs fully co-operate with representatives of the Nominal Insurer conducting, reviewing, or making any inspection, test or audit under this Deed, including providing such access to its Equipment, Site and Personnel as is required by the Nominal Insurer.
- 29.8 The Nominal Insurer may conduct any inspection, test or audit itself, or appoint any other suitably qualified person to conduct the inspection, test or audit.
- 29.9 The costs of the inspections, tests and audits in this Clause 29 will be borne by the Nominal Insurer unless the inspection, test or audit reveals either:
- (a) a material breach of the Deed;
 - (b) incorrect payment by more than 5% of:
 - (1) any one of the fees listed in Sub-clauses 31.1(a) to (i), 31.2 or 31.3; or
 - (2) any other amount payable to the Nominal Insurer by the Scheme Agent where the cause of incorrect payment is, or has been contributed to, by the Scheme Agent; or
 - (c) incorrect amounts:
 - (1) payable to Workers, by more than 1% of the total of all of the payments made by the Scheme Agent to Workers for the period that was subject to the inspection, test or audit;

Scheme Agent Deed

- (2) collected from Employers, by more than 1% of the total of all of the amounts collected by the Scheme Agent from Employers for the period that was subject to the inspection, test or audit;

in which case the Scheme Agent must immediately indemnify the Nominal Insurer for all costs of the inspection, test or audit.

- 29.10 The Scheme Agent must appoint an independent qualified auditor Approved by the Nominal Insurer to oversee and audit the books, records and systems of the Scheme Agent that the Nominal Insurer believes to be appropriate to determine that:
- (a) the Scheme Agent is accurately recording and accounting for the Nominal Insurer's monies and other assets;
 - (b) the Nominal Insurer's obligations to report to the relevant tax, authority or other Agency are properly met; and
 - (c) ensure that the Scheme Agent has adequate internal controls.
- 29.11 The scope of the audit in Sub-clause 29.10 will be determined by the Nominal Insurer, and will be paid for by the Nominal Insurer subject to Sub-clause 29.9.
- 29.12 The audits described in Sub-clause 29.10, will be conducted in accordance with the relevant Standards in so far as directed by the Nominal Insurer including AGS 10402 Report on Control Processes at Outsourcing Entities. The Scheme Agent must promptly provide unhindered access to its Equipment Site, Personnel and Documents and co-operation at any reasonable time as is required by the Approved auditor for such audit.
- 29.13 The Nominal Insurer may require that the Scheme Agent permit the NSW Auditor General to conduct similar audits to those described under Sub-clauses 29.3, 29.4 and 29.10. The Nominal Insurer will use every effort to provide 2 Business Days notice of any audit by the NSW Auditor-General.
- 29.14 The Nominal Insurer must take all reasonable steps to ensure that any of the Scheme Agent's Confidential Information that is disclosed to any representative or auditor under this Clause 29 (other than the NSW Auditor General who will be bound by the obligations at Law) is treated as confidential.

30 Media and Public Relations

Media

- 30.1 The Scheme Agent must not, and must ensure that none of its Personnel, make any statement to media or the public on behalf of the Nominal Insurer or in regards to the Services, Transition Services or the Scheme (including Scheme Objectives or policies) without first obtaining Approval, unless the Media Code of Conduct in the Operational Document Set is followed.

Scheme Agent Deed

- 30.2 All enquiries from the media arising out of or in connection with this Deed, including Remuneration, payments of Benefits, payments to Third Party Service Providers, the Services, the Nominal Insurer, WorkCover, any relationships involving the Nominal Insurer, the Scheme Agent or Other Scheme Agents, OH & S and Workers Compensation Legislation and proposed amendments to such Laws, must be immediately referred to the Nominal Insurer's Principal without comment to the media.
- 30.3 The Scheme Agent must immediately notify the Nominal Insurer's Principal of all events that arise in the course of providing the Services and Transition Services that have or are likely to receive media by the Scheme Agent or public attention.
- 30.4 The Nominal Insurer may Direct the Scheme Agent to immediately withdraw any marketing material that relates to the Scheme that has been made public by the Scheme Agent without any liability to the Nominal Insurer.
- 30.5 The Scheme Agent must not publish or disclose any information to any third party which compares the Scheme Agent's performance to any Other Scheme Agent(s) performance or to the Scheme Outcomes or Scheme Objectives without prior Approval unless such comparative information has already been published into the public domain by the Nominal Insurer. For the avoidance of doubt, the identity of scheme agents must not be used in comparative performance publications or disclosures unless that identity has been published into the public domain by the Nominal Insurer in the context of that comparative performance information.
- 30.6 The Scheme Agent must include any Document that the Nominal Insurer requires to be sent to any person:
- (a) at no cost to the Nominal Insurer if it can be included with any of the Scheme Agent's planned communications;
 - (b) at the Nominal Insurer's cost, if the Scheme Agent has to send it separately.
- 30.7 Nothing in Clause 30 prevents a Scheme Agent 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.

Scheme Agent Deed

PART I Financial Arrangements

31 Payment for Services

- 31.1 The Nominal Insurer must pay to the Scheme Agent the following Remuneration subject to the provisions in this Deed:
- (a) the Transition Fee for the Transition Services, calculated in accordance with Schedule 3, Section 6;
 - (b) not used;
 - (c) the fee for the Scheme Services from 1 January 2006 until the end of the Period of Scheme Services, including:
 - (1) the Service Fee calculated in accordance with Schedule 3, Section 1;
 - (2) the Performance Fee calculated in accordance with Schedule 3, Section 2;
 - (3) the Incentive Fee calculated in accordance with Schedule 3, Section 3;
 - (4) Not Used.
 - (5) the Additional Incentive Fee calculated in accordance with Schedule 3, Section 3.15;
 - (d) the fees for Disengagement Services, calculated in accordance with Sub-clause 9.2 and Schedule 3, Section 8;
 - (e) the fees for transferring any Claims that have been transferred to an Other Scheme Agent under Sub-clause 8.7 or 8.8, calculated in accordance with Schedule 3, Section 7;
 - (f) the fees for receiving any Claims and/or Policies that have been transferred to the Scheme Agent under Sub-clause 8.9, calculated in accordance with Schedule 3, Section 7;
 - (g) any amounts payable for Variations in accordance with Clause 10 and Schedule 7;
 - (h) any amount payable in accordance with Sub-clause 43.2(c) or 43.2(d); and
 - (i) any other amount payable as set out in the Operational Document Set.
- 31.2 The Scheme Agent may also earn fees from the Innovation Fee Pool in accordance with an Approved Project Service in accordance with the agreement set out in the relevant Variation Notice.
- 31.3 The amounts payable under Sub-clause 31.1 are the only amounts payable to the Scheme Agent as Remuneration for all the Transition

Scheme Agent Deed

Services and the Scheme Services, and for the Scheme Agent performing all of the obligations under this Deed in respect of those Transition Services and Scheme Services.

- 31.4 This Deed must be in force on the due date of any payment for that amount to be due and payable.
- 31.5 No interest is payable by the Nominal Insurer in respect of any delay in the assessment of payment of any amounts due to the Scheme Agent, including expenses, Remuneration or other amount payable under this Deed.
- 31.6 The Nominal Insurer reserves the right to recalculate any payment of Remuneration if there are errors in the data on which the calculation is based, if those errors were caused or contributed to by the Scheme Agent.
- 31.7 If the Remuneration paid to the Scheme Agent is incorrect as a result of an error in the underlying data submitted by an Other Scheme Agent then the Nominal Insurer reserves the right to vary the Remuneration paid to the Scheme Agent by the amount of the over or under payment. The Nominal Insurer waives this right where the Nominal Insurer does not give the Scheme Agent written notice of its intention to exercise the right in this Sub-clause 31.7 within 12 months of the date when the payment that contained the error was made.
- 31.8 Any under or over payment claimed under Sub-clause 31.7 will be corrected:
- (a) at the time of the payment of the next Service Fee payment;
 - (b) or if the Deed has been terminated, within 20 Business Days of receipt of a Tax Invoice setting out the relevant amount; or
 - (c) by set-off by the Nominal Insurer against any other amount in accordance with Clause 39.
- 31.9 All payments made by the Nominal Insurer under this Deed will be made by electronic funds transfer into an Australian bank account nominated by the Scheme Agent.
- 31.10 The payment of an Interim Payment is made by the Nominal Insurer for convenience only and is revocable. If the total amount in respect of which an Interim Payment has been made does not become due by the date specified in the Deed the Nominal Insurer can demand immediate repayment of all related Interim Payments and/or set-off the Interim Payments against any other amount in accordance with Clause 39.

32 Pass-Through Costs

- 32.1 The Scheme Agent will pay on behalf of Nominal Insurer all Pass-Through Costs for which there is a Qualifying Invoice in accordance with this Deed.

Scheme Agent Deed

32.2 A Qualifying Invoice is an invoice which:

- (a) is for Third Party Service Provider's services that were acquired by the Scheme Agent acting as agent for the Nominal Insurer and:
 - (1) is for services that have been completed in accordance with the obligations placed on the Third Party Service Provider;
 - (2) is for an amount that is due;
 - (3) if it is for a Benefit or entitlement then that amount is properly claimable;
 - (4) is supported by the Documentation required by the Operational Document Set;
 - (5) does not include any amount that is in excess of an amount originally quoted for the service, or is for default interest or other cost associated with late or non-payment;
 - (6) is calculated in accordance with any Law;
 - (7) is supported by a valid Tax Invoice (unless Law does not require a Tax Invoice in order to be reimbursed) from a Third Party Service Provider addressed to the Nominal Insurer, its nominee (or to the Scheme Agent provided it is clear that it is in the Scheme Agent's capacity as agent for the Nominal Insurer);
 - (8) is for services which have been required by the Scheme Agent within the scope of its authority under this Deed; or
- (b) is for a Third Party Service Provider's services that were ordered by a Worker exercising its rights at Law and:
 - (1) is for an amount that is due;
 - (2) is for a Benefit or entitlement that is properly claimable;
 - (3) is not a duplicate payment;
 - (4) is properly calculated in accordance with any Law;
 - (5) is supported by a Tax Invoice (unless Law does not require a Tax Invoice in order to be reimbursed); and
 - (6) meets any requirements in the Operational Document Set.

Scheme Agent Deed

- 32.3 The Scheme Agent will procure payment of Qualifying Invoices from the Nominal Insurer by drawing on the Payment Account within the timeframes set out in Schedule 2 and the Operational Document Set.
- 32.4 Promptly following a demand from the Nominal Insurer, the Scheme Agent must reimburse the Nominal Insurer for any payment made by the Nominal Insurer for which there was not a Qualifying Invoice.

33 Payments of Benefits and Entitlements

- 33.1 The Scheme Agent will pay to the relevant Employer, Worker or Third Party Service Provider their Benefits and entitlements on behalf of the Nominal Insurer, in accordance with this Deed and the Law.
- 33.2 Promptly following a demand from the Nominal Insurer, the Scheme Agent must immediately reimburse the Nominal Insurer for any payment of Benefit which was not paid in accordance with the requirements of this Deed, even if the Scheme Agent is unable to immediately obtain repayment of the Benefit from the relevant Employer, Worker or Third Party Service Provider.
- 33.3 If the Scheme Agent has reimbursed the Nominal Insurer under Sub-clause 33.2, and subsequently obtains the correct payment as agent for the Nominal Insurer, then, by providing written notice to the Nominal Insurer, it may reconcile the amounts paid and remitted and require the Nominal Insurer to pay any overpayment back to the Scheme Agent.

34 Collection of Premiums and other Monies

- 34.1 The Scheme Agent will promptly collect any moneys from Employers and any other person from whom monies are due to the Nominal Insurer as a result of the provision of Policies or the Services, including:
- (a) Premiums;
 - (b) any amount paid by WorkCover under s175 of the 1987 Act;
 - (c) any late payment fee paid by an Employer;
 - (d) any amount repaid by an Employer under s160 of the 1987 Act;
 - (e) any money recovered under s151Z (or under s60 of the *Workers' Compensation Act 1926*); and
 - (f) any money recovered under a re-insurance contract or arrangement;
 - (g) any money authorised to be paid into the WCIF under the 2003 Act, or regulations, as Directed by the Nominal Insurer;
 - (h) any applicable GST.

Scheme Agent Deed

- 34.2 If as a result of a breach of its obligations under this Deed (including a failure to meet any relevant KPI), the Scheme Agent collects insufficient Premiums from an Employer, then the Scheme Agent must immediately pay to the Nominal Insurer the difference between the amount collected within 60 Business Days of the date when the Scheme Agent invoiced the Employer and the correct amount due as Premium, (such amount to be determined by the Nominal Insurer).
- 34.3 If the Scheme Agent has paid the Nominal Insurer an amount under Sub-clause 34.2 and subsequently collects additional funds from the Employer as agent for the Nominal Insurer, then, by providing written notice to the Nominal Insurer, it may require the Nominal Insurer to reconcile the amounts paid and remitted and pay any overpayment back to the Scheme Agent.

35 Basis for holding monies

- 35.1 The Scheme Agent holds any monies, including cheques or other form of payment, received from Workers, Employers, Third Party Service Providers, any Agency or any other person as bailee only.
- 35.2 The Scheme Agent does not have, and must not permit the creation of any general or particular security interest or other form of encumbrance over any monies, including cheques or other form of payment, that the Scheme Agent received as agent for the Nominal Insurer.
- 35.3 The Scheme Agent acknowledges and agrees that the Nominal Insurer's obligation to pay any monies to the Scheme Agent or any other person is subject to:
- (a) S154B (5) of the 2003 Act,
 - (b) S154E (2) of the 2003 Act,
- and any other Law.
- 35.4 The Scheme Agent must remit any monies received, including cheques or other forms of payment to the Revenue Account within 1 Business Day of receipt, unless otherwise stated in Schedule 2 or the Operational Document Set.
- 35.5 The Scheme Agent must follow the procedures in Schedule 2 and the Operational Document Set in respect of all payments, the handling of monies, including cheques and other forms of payment, and internal controls in respect of monies and its systems that account for or process payments.

36 Banking Arrangements

- 36.1 The Scheme Agent must only use the banking facilities Approved by the Nominal Insurer or as set out in the Operational Document Set.
- 36.2 The Scheme Agent will only be liable for bank fees to the extent set out in the Operational Document Set.

Scheme Agent Deed

37 GST

- 37.1 The amounts set out in this Deed are exclusive of GST, unless specifically stated to be inclusive of GST.
- 37.2 The Scheme Agent must perform its obligations relating to GST and any other tax, duty or charge that are set out in this Deed, (including in Schedule 2 and the Operational Document Set), including those obligations in respect of payment of Third Party Service Providers. In performing its obligations under this Deed in relation to GST and any other tax, duty or charge the Scheme Agent must comply with the requirements and timeframes prescribed by Law.

GST and other Taxes

- 37.3 For the purposes of this Deed:
- (a) "GST" and any other terms used in GST Law that are capitalised in this Deed have the meaning given to those terms by the GST Law, unless the context provides otherwise.
 - (b) any reference to this Clause 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 Clause 37, and this Deed.
 - (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 sub-clause 40.1, if GST is or becomes payable by the supplier on a supply made under or in connection with this Deed, 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.
 - (f) the Additional Amount payable under Sub-clause 37.3(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.
- 37.4 Unless specifically provided for in this Deed, 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 Sub-clause 37.337.3(e) :

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- (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 within 10 Business Days 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 within 10 Business Days after becoming aware of the occurrence of the Adjustment Event.

37.5 Notwithstanding any other provision in this Deed, if an amount payable under or in connection with this Deed (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.

37.6 The Scheme Agent will comply with any and all tax obligations of the Nominal Insurer, on behalf of the Nominal Insurer, in respect of the Scheme Agent's files, including as set out in Schedule 2 and the Operational Document Set.

37.7 Without limiting Sub-clause 37.6, the obligations referred to in that Sub-clause include:

- (a) obtaining, issuing and retaining proper and correct tax invoices in respect of all relevant transactions;
- (b) deduct Pay As You Go (PAYG) tax from payments to Workers and others (where appropriate) and;
 - (1) report these deductions to the Australian Taxation Office; and
 - (2) draw on the Payment Account of the amount of PAYG tax due and remit that amount to the Australian Tax Office;
- (c) provide Payment Summaries as required;
- (d) such other obligations as the Nominal Insurer may Direct the Scheme Agent to carry out on its behalf during the Term; and
- (e) providing other information relating to taxation matters as the Nominal Insurer may reasonably require.

Scheme Agent Deed

38 Invoices

- 38.1 The Nominal Insurer will calculate any amount due to the Scheme Agent under Clause 31, such calculation will be confirmed by the Scheme Actuary in respect of any payment under Sub-clauses 31.1(a), 31.1(b), 31.1(c) and 31.1(g) (if it affects Remuneration), and 31.1(h). The Nominal Insurer will use every effort to provide such calculations within 45 Business Days of the end of the month in which the payment became due. The Scheme Agent will then promptly provide a Tax Invoice for those amounts. The Scheme Agent will provide a Tax Invoice for any other amount payable to the Scheme Agent within 10 Business Days of the end of the month in which the payment became due. All Tax Invoices must be itemised to the level of detail set out in the Operational Document Set.
- 38.2 The Nominal Insurer will, subject to Sub-clause 35.3, procure payment of the Tax Invoice from the WCIF within 10 Business Days of receipt of the Tax Invoice.
- 38.3 Invoices will be submitted to the Nominal Insurer by post at:
Manager, Agent Contracts
92-100 Donnison Street
GOSFORD NSW 2250
Fax 02 9287 5579 or as otherwise advised
- 38.4 Incorrectly formatted Tax Invoices or insufficiently detailed supporting Documentation will be returned to the Scheme Agent for correction or clarification.

Revision of fee calculations

- 38.5 If either the Nominal Insurer or the Scheme Agent becomes aware of an error in the calculation of any fees or Remuneration paid or payable under this Deed then that party must promptly notify the other of the error. The Nominal Insurer may require the Scheme Agent to issue a further Tax Invoice, and amended Tax Invoice or Adjustment Note as the case may be and/or refunding any overpayment within 5 Business Days of the issue of the Tax Invoice or Adjustment Note.

39 Set-Off

- 39.1 The Nominal Insurer may deduct from the Financial Security, the Remuneration and/or any amount payable by the Nominal Insurer to the Scheme Agent any amount which:
- (a) the Scheme Agent must reimburse the Nominal Insurer or against which it indemnifies the Nominal Insurer;
 - (b) the Scheme Agent owes to the Nominal Insurer;
 - (c) the Nominal Insurer has paid on the Scheme Agent's behalf; or
 - (d) is a liability that the Nominal Insurer believes is payable by the Scheme Agent to the Nominal Insurer;

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whether under this Deed or otherwise.

39.2 Nothing in Clause 39 will affect the right of the Nominal Insurer to recover from the Scheme Agent 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.

39.3 The Nominal Insurer will be entitled to expend any monies due to the Scheme Agent to make good any breach by the Scheme Agent of any provision of this Deed and deduct such amounts from either any amount that may be payable to the Scheme Agent under this Deed or the Financial Security, provided that:

(a) the Nominal Insurer will not be entitled to expend any monies unless the Nominal Insurer has first given the Scheme Agent not less than 20 Business Days (unless otherwise provided in this Deed) notice of the breach and of its intention to make the expenditure; and

(b) the Scheme Agent has not remedied the breach within that period.

40 Pass through of regulatory penalties

40.1 The Scheme Agent will indemnify the Nominal Insurer for any penalties imposed on the Nominal Insurer by any Agency where such penalty occurred as a result of the Scheme Agent failing to perform the obligations under this Deed.

40.2 Such penalties, if imposed, must be claimed by the Nominal Insurer on a separate Tax Invoice from the Nominal Insurer and will be payable by the Scheme Agent within 10 Business Days of receipt of the Tax Invoice.

41 Variation in Tax

41.1 Where, during the Term, a variation in government tax, duty or charges affects the fees, Remuneration or charges under this Deed, the Nominal Insurer will issue a Direction to vary those fees or charges in such a manner as to not change the amount the Scheme Agent is entitled to receive from the Nominal Insurer net of government tax, duty or charges.

Scheme Agent Deed

PART J : Remedies and Termination

42 Remedies

- 42.1 If the Scheme Agent commits a breach of any of its obligations under this Deed then the Nominal Insurer may:
- (a) exercise its rights in accordance with Sub-clauses 43.4 or 43.5 and this Deed; and
 - (b) if during the Period of Scheme Services the Scheme Agent has not remedied the breach within 20 Business Days, (or such longer period set out in any Corrective Action Plan that has been Approved) of the sooner of either the date of the report in Sub-clause 42.2(a) or receipt of a notice from the Nominal Insurer requiring it to do so, the Nominal Insurer may, in its absolute discretion, withdraw or suspend for such period determined by the Nominal Insurer, the Scheme Agents authority to:
 - (1) renew any Policy;
 - (2) effect any new Policy;and/or the Nominal Insurer may transfer any Policy and/or any Claim to an Other Scheme Agent.
- 42.2 Every time the Scheme Agent commits a breach of any of its obligations under this Deed, including failure to meet a KPI or any Quarterly Performance Fee Target, then the Scheme Agent must:
- (a) immediately, or at such other time specified in the reporting requirements in this Deed if applicable, report the failure to the Nominal Insurer; and
 - (b) provide written notice to the Nominal Insurer identifying the problem causing the failure, the status of the failure and the steps being taken to remedy the failure and remedy the breach promptly, and in any event within 20 Business Days of the sooner of either the date of the report in Sub-clause 42.2(a) or receipt of a notice from the Nominal Insurer requiring it to do so, without further reference to the Nominal Insurer; or
 - (c) remedy the breach by obtaining the Nominal Insurer's Approval of a Corrective Action Plan within 10 Business Days of the sooner of either the date of the report in Sub-clause 42.2(a) or receipt of a notice from the Nominal Insurer requiring it to do so, and completing that Approved Corrective Action Plan in accordance with its requirements.
- 42.3 If the Nominal Insurer Approves a Corrective Action Plan, this does not constitute a waiver of the breach, nor does it affect the Nominal Insurer's rights if the Scheme Agent does not meet the requirements

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of a Corrective Action Plan that has been Approved prior to receipt of any notice of breach.

- 42.4 Whilst the Nominal Insurer intends to manage the Scheme Agent's performance in accordance with the Performance Management Strategy, set out in Schedule 4, Attachment D, nothing in Schedule 4 limits any rights or obligations of the parties under this Deed.

43 Termination

Termination Without Cause

- 43.1 The Nominal Insurer may in its absolute discretion immediately terminate this Deed for any reason by giving not less than 120 Business Days notice in writing to the Scheme Agent.
- 43.2 If the Nominal Insurer terminates this Deed under Sub-clause 43.1, the Nominal Insurer will only pay the following:
- (a) the Service Fee for the period between that last day of the Quarter prior to receipt of the TOC Notice and the last day of the notice period for the TOC Notice; and
 - (b)
 - (1) if the last day of the Scheme Services is in 2006:
 - (A) the Performance Fee; and
 - (B) the Incentive Fee;as if the Scheme Agent had achieved 100% performance for the Year 2006, pro rata for the period between 1 January 2006 and the last day of the notice period of the TOC Notice; or
 - (2) if the last day of the Scheme Services is in any Year other than 2006:
 - (A) the Performance Fee as if the Scheme Agent had achieved 100% performance for the relevant Year; and
 - (B) the Incentive Fee and any Additional Incentive Fee using the same level of achievement (i.e. the same percentage of the actual target, not the same target number) of the relevant Fee as was achieved in the previous Year;pro rata for the period between 1 January in the Year in which the last day of the notice period in the TOC Notice occurred and that last day in the period of the TOC Notice (and taking into account any Interim Payments); and
 - (c) if the last day of the notice period under the TOC Notice is within:

Scheme Agent Deed

- (1) the first year of the Scheme Services; an amount equal to the last amount paid as a Quarter's Service Fee; or
 - (2) the second year of the Scheme Services; an amount equal to two thirds of the last amount paid as a Quarter's Service Fee;
 - (3) the third year of the Scheme Services; an amount equal to one third of the last amount paid as a Quarter's Service Fee; or
 - (4) after the third year of the Scheme Services; nil; and
- (d) the fee for Disengagement Services set out in Schedule 3.

43.3 The payment of the amounts set out in Sub-clauses 43.2(b) and 43.2(c) will only become due and payable following the Nominal Insurer's Approval of the Disengagement Services. This provision is the sole right to receive any compensation or remedy for any Demand that arises out of or in connection with the Nominal Insurer exercising its rights under Sub-clause 43.1.

Termination for Cause

- 43.4 The Nominal Insurer may immediately terminate this Deed, by notice in writing to the Scheme Agent:
- (a) where the Scheme Agent 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 the Nominal Insurer materially affects this Deed;
 - (b) where legal or licensing proceedings are commenced by the Australian Competition Consumer Commission, Australian Prudential Regulation Authority, Australian Securities Investment Commission, the Independent Commission Against Corruption, the Police, WorkCover (in its role as regulator) or similar investigative body against the Scheme Agent alleging corrupt conduct, collusive pricing, collusive tendering or breach of any related Laws;
 - (c) subject to Sub-clause 43.6, where the Scheme Agent commits a material breach of the Deed that is not capable of remedy.
 - (1) For the purpose of this Deed a material breach in respect of a failure to meet KPIs is either:
 - (A) for KPIs that are measured monthly; where the Scheme Agent is not within 5% of the same KPI on each occasion in any rolling 6 month period; or
 - (B) for KPIs that are measured Quarterly; where the Scheme Agent is not within 5% of the same KPI twice in any rolling 12 month period.

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- (2) For the purpose of this Deed a material breach in respect of a failure to meet the Quarterly Performance Fee Targets is when at any date for the measurement of a Quarterly Performance Fee Target the Scheme Agent has achieved a level of performance which had that level of performance been achieved at the date for measurement of Quarterly Performance Fee Targets two Quarters previously would have been less than 100% performance of that previous Quarterly Performance Fee Target.
- (d) where the Scheme Agent commits a breach of the Deed that is capable of remedy and the Scheme Agent does not remedy the breach within 20 Business Days (or such longer period set out in any Corrective Action Plan that has been Approved) of the sooner of either the date of the report in Sub-clause 42.2(a) or receipt of a notice from the Nominal Insurer requiring it to do so;
- (e) the Scheme Agent commits a breach (whether material or not) of any of its obligations in any of the following clauses;
- (1) Clause 3 (Scope of Agency) which was not ratified by the Nominal Insurer;
 - (2) Not used
 - (3) Sub-clause 13.1(a) – 13.1(e) (Warranties);
 - (4) Sub-clauses 13.5 and 13.6 (Disclosures);
 - (5) Clause 17 (Performance Guarantee);
 - (6) Clause 18 (Financial Security);
 - (7) Sub-clauses 21.5, 21.6 and 21.7, (IP Licences);
 - (8) Clause 46 (Insurance) (except Sub-clauses 46.9 and 46.10);
 - (9) Sub-clause 49.8(Assignment);
- (f) in the case of any Insolvency Event occurring in respect of the Scheme Agent or the Guarantor;
- (g) if in the Nominal Insurer's view a conflict of interest exists for the Scheme Agent which in the Nominal Insurer's absolute opinion prevents the proper performance of the Deed; or
- (h) there is a change of control (as defined in the *Corporations Act*) of the Scheme Agent, or the Guarantor, that has not been Approved by the Nominal Insurer.

43.5 If the Nominal Insurer terminates this Deed for cause the Nominal Insurer may do any or all of the following:

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- (a) enter into an agreement with any other person to complete the provision of the Services or Transition Services;
- (b) deduct any loss or damages (which may be as ascertained and certified by the Nominal Insurer) and any Interim Payment from any money due, or which may become due, to the Scheme Agent (arising out of or in connection with this Deed or otherwise) or from the Financial Security or otherwise set-off the amount in accordance with Clause 39; and/or
- (c) recover in an appropriate Court the balance of any outstanding loss or damage or Interim Payment remaining unpaid as a debt due and payable by the Scheme Agent to the Nominal Insurer.

43.6 The Nominal Insurer waives its right to terminate this Deed if the Scheme Agent is in material breach of its obligations to meet the KPIs based on the measurements of the KPIs and the first two Quarterly Performance Fee Targets in respect of the period up to and including 30 June 2006.

No Right for Scheme Agent to Terminate for any Reason

43.7 The Scheme Agent may not terminate this Deed for any reason and the Scheme Agent expressly waives any rights it has to terminate this Deed.

Upon Termination

43.8 Termination of this Deed by the Nominal Insurer will not release the Scheme Agent from liability in respect of any breach or non-performance of any obligation by the Scheme Agent under this Deed.

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

43.10 Unless otherwise Directed by the Nominal Insurer, on and from the date of notice of termination the Scheme Agent must commence the Disengagement Services in accordance with its obligations under Clause 9 and the Disengagement Plan.

Cumulative Remedies

43.11 The rights, remedies, powers, entitlements or privileges of the Nominal Insurer in this Clause 43 and in this Deed are cumulative with, without prejudice to and not exclusive of any other right, remedy, power, entitlement or privilege granted or given anywhere in this Deed or the Law, (unless expressly stated otherwise in Sub-clause 43.3 of this Deed).

Scheme Agent Deed

PART K : General Provisions

44 Scheme Agent's General Obligations

Scheme Agent to be a body corporate

- 44.1 The Scheme Agent must be, and remain throughout the Term, a body corporate established under the *Corporations Act*.
- 44.2 The Scheme Agent must notify the Nominal Insurer within 10 Business Days of any of the following occurring to the Scheme Agent, 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 exceeding 20% of the voting shares; or
 - (c) any change of Control (as defined by the *Corporations Act*).

Conflict of Interest

- 44.3 The Scheme Agent represents and warrants that throughout the Term:
- (a) it will not have;
 - (b) and it will use every effort to ensure that:
 - (1) none of its Related Bodies Corporate will have;
 - (2) neither its 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 appointed as an Other Scheme Agent or Third Party Service Provider, without prior Approval.

- 44.4 The Scheme Agent 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 a Related Body Corporate, any service which is to be paid for by the Nominal Insurer as a Pass-Through Cost;
- without prior Approval.

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45 Subcontracting by Scheme Agent

- 45.1 The Scheme Agent must not enter into any subcontract with a Key Subcontractor for any part of the Services or Transition Services except with the prior Approval of the Nominal Insurer, such Approval not to be unreasonably withheld.
- 45.2 The Scheme Agent must not obtain legal services in relation to the Scheme without the service provider complying with the provisions of the *Legal Profession Act 2004 (NSW)*.
- 45.3 Where the Scheme Agent makes a request for the Nominal Insurer to Approve to the subcontracting to Key Subcontractors, the Scheme Agent must provide to the Nominal Insurer any details pertaining to the Key Subcontractor that are requested by the Nominal Insurer, including providing the Key Subcontractor's:
- (a) name, address, and ABN;
 - (b) scope of work to be performed;
 - (c) identity of its directors and key personnel; and
 - (d) qualifications to perform the work.
- 45.4 The Scheme Agent must provide to the Nominal Insurer such other information as the Nominal Insurer requests, including the proposed contract with the Key Subcontractor.
- 45.5 The Scheme Agent must ensure that any Subcontractors are qualified and competent to perform their responsibilities.
- 45.6 The Scheme Agent, and not the Nominal Insurer, will be the sole point of contact for all Subcontractors, including in regard to payment.
- 45.7 If any Key Subcontractor is used to perform part of the Services, then at the time of submission of each invoice to the Scheme Agent, the Key Subcontractor will 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.

Key Subcontractor Register

- 45.8 The Scheme Agent must maintain an up-to-date register of Key Subcontractors in accordance with Schedule 1, Attachment B whether current or expired, in connection with the delivery of the Services.

Scheme Agent Deed

Scheme Agent not relieved after subcontract

- 45.9 The Nominal Insurer's Approval to allow the Scheme Agent to subcontract any part of the Services or Transition Services will not relieve the Scheme Agent from any of its liabilities or obligations under this Deed. The Scheme Agent will be liable to the Nominal Insurer for the acts, defaults, and omissions of any Subcontractor as if they were the acts, defaults, or omissions of the Scheme Agent.

Application of this Deed must be made to Subcontracts

- 45.10 The Scheme Agent must make all the terms and conditions of this Deed (as far as they are capable of application) a part of the terms and conditions of any subcontract with a Key Subcontractor. The Scheme Agent may include in the subcontract a limitation of liability and lower levels of insurance coverage with the Approval of the Nominal Insurer.
- 45.11 The Scheme Agent must ensure that a Key Subcontractor is aware of all the terms and conditions of this Deed relevant to the Key Subcontractor's part in the performance of this Deed.
- 45.12 The Scheme Agent must ensure that each subcontract entered into with a Subcontractor contains clauses requiring the Subcontractor upon receipt of a Direction from the Nominal Insurer to immediately:
- (a) assign, transfer or novate the subcontract to the Nominal Insurer on the same terms and conditions;
 - (b) execute such Documents and do such things as are required by the Nominal Insurer for the purposes of Sub clause 45.12. For the purposes of Sub-clause 45.12 only, the Scheme Agent hereby irrevocably appoints the Nominal Insurer to be the Scheme Agent's attorney with authority to execute such Documents as are necessary to give effect to the assignment, transfer or novation and to bind the Scheme Agent accordingly; and
 - (c) return any Documents, assets and property owned by the Nominal Insurer to the Scheme Agent.
- 45.13 The Scheme Agent must ensure each subcontract entered into with a Subcontractor includes an obligation to comply with Laws.

Nominal Insurer not bound to pay any Subcontractor

- 45.14 The Nominal Insurer will not be under any obligation to make payment for any monies due by the Scheme Agent to any Subcontractor.

Scheme Agent Deed

46 Insurance to be Maintained by the Scheme Agent

Types of insurance

- 46.1 On or prior to the Commencement Date, the Scheme Agent must effect, or be the beneficiary of, the following insurances:
- (a) public and product liability insurance;
 - (b) professional indemnity insurance;
 - (c) fidelity insurance; and
 - (d) workers compensation insurance.

Term of insurance – general

- 46.2 The Scheme Agent must maintain each of the insurances that it is required to effect throughout the provision of the Services, or for such longer period as is either:
- (a) specified below; or
 - (b) required by Law.

Term of insurance – specific

- 46.3 The Scheme Agent must maintain each of the following insurances for a period ending six years after the date of provision of the last of the Services such policies to continue to cover those matters covered by the policies that arise in respect of events or conduct occurring on or prior to the date of the provision of the last of the Service, subject to the insurance market offering such cover:
- (a) public and product liability insurance; and
 - (b) professional indemnity insurance.

Cover required – general

- 46.4 All insurances affected and maintained by the Scheme Agent under this Clause 46 must, to the extent possible or permitted by Law:
- (a) name each of the following as an interested party:
 - (1) the Nominal Insurer;
 - (2) WorkCover;
 - (3) not used;
 - (4) any Subcontractor; and
 - (5) the Guarantor.
 - (b) 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;

Scheme Agent Deed

- (c) be maintained with an insurer or insurers Approved by the Nominal Insurer (such Approval must not be unreasonably withheld). Approval will not be given for insurers who are not independent of any member of the Scheme Agent Group, nor who are captive insurance companies of any member of the Scheme Agent Group; and
- (d) be underwritten by an insurer with “A” (or higher) credit rating awarded by a recognised industry – rating organisation such as: Standard and Poors, AM Best or Mood’s Investor Services.

Cover required – public and product liability

- 46.5 The public and product liability insurance affected and maintained by the Scheme Agent under this Clause 46 must:
- (a) cover each insured party for that party’s liability to any other party for:
 - (1) loss or damage to property; and
 - (2) death or injury to any person;
 - (3) arising out of or in any way connected with the performance of this Deed or of the functions the subject of this Deed;
 - (b) provide insurance cover for an amount in respect of any one occurrence of not less than \$20,000,000 with a deductible/excess of no more than \$1,500,000.

Cover required – professional indemnity

- 46.6 The professional indemnity insurance affected and maintained by the Scheme Agent under this Clause 46 must:
- (a) cover each insured party:
 - (1) 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;
 - (2) for any claim against that party for breach or alleged breach of any statutory prohibition against misleading or deceptive conduct;
 - (3) for any claim against that party for breach or alleged breach of an obligation imposed by this Deed or any cognate document (including any Subcontract);
 - (4) for its costs of investigating, settling or defending any claim made against that insured party of a kind referred to in this Sub-clause 46.6;
 - (5) arising out of or in any way connected with the performance of this Deed or of the functions the subject of this Deed;

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- (b) provide insurance cover for an amount in respect of any one claim of not less than \$10,000,000 with a deductible/excess of no more than \$1,500,000 with provision for automatic reinstatement of cover following any claim.

Cover required - fidelity insurance

- 46.7 The fidelity insurance affected and maintained by the Scheme Agent pursuant to this Clause 46 must:
 - (a) 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, or any person associated with such employee, agent or contractor; and
 - (b) provide insurance cover for an amount in respect of any one claim of not less than \$20,000,000 per claim with a deductible/excess of no more than \$1,500,000.

Cover required – workers compensation

- 46.8 The workers compensation insurance affected and maintained by the Scheme Agent under this Clause 46 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.

Cover required – general requirements

- 46.9 On the Commencement Date the Scheme Agent must provide to the Nominal Insurer, and within 20 Business Days of a request in writing by the Nominal Insurer or any interested party, the Scheme Agent must provide to that party satisfactory evidence of the currency of the insurance policies specified in this Clause 46,
 - (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.
- 46.10 The Scheme Agent must produce such certificates of currency and associated renewal certificates to the Nominal Insurer within 20 Business Days of each anniversary of the Commencement Date.
- 46.11 The Scheme Agent must not do or omit to do, and must ensure that its Personnel do not do or omit to do, anything that results in any insurance referred to in this Clause 46 being void or voidable, or results in any liability for payment under that policy being reduced.
- 46.12 All deductibles/excess payable under the policies of insurance maintained under this Deed must be paid by the Scheme Agent.

Scheme Agent Deed

- 46.13 The Scheme Agent must immediately notify the Nominal Insurer's Principal if:
- (a) any of the insurance policies required under this Clause 46 are cancelled; or
 - (b) any matter or event occurs that adversely affects the amount or availability of the Scheme Agent's cover under the policy.

47 Force Majeure

- 47.1 A party will not be liable for any failure or delay:
- (a) in the case of the Scheme Agent, in the performance or discharge of its obligation to provide the Services or Transition Services under this Deed;
 - (b) in the case of the Nominal Insurer, in the performance or discharge of its obligations under this Deed;
- to the extent that such failure or delay is caused, directly or indirectly, by a Force Majeure Event.

This Clause 47 does not apply if any Force Majeure Event is caused or contributed to by a breach of this Deed by the party claiming the Force Majeure Event. The Nominal Insurer is not liable to pay any Remuneration to the Scheme Agent during any period during which the Scheme Agent has failed to perform any Services or Transition Services due to a Force Majeure Event.

- 47.2 A party whose performance or discharge of its obligations referred to in Sub-clause 47.1 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 Deed, and which Services or obligations can continue to be performed.
- 47.3 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.
- 47.4 The Scheme Agent agrees that the Nominal Insurer may terminate this Deed for cause by notice to the Scheme Agent if any Force Majeure Event has the result that the Scheme Agent fails to be able to provide complete normal operational capacity and meet its obligations under this Deed, including the KPIs, within 15 Business Days of the Force Majeure Event.

Scheme Agent Deed

48 Notices

- 48.1 A notice, Approval, Direction, consent, or other communication under this Deed must be in writing and must be either:
- (a) left at the property address of the addressee:
The property address for the Nominal Insurer is:
92-100 Donnison Street, Gosford NSW 2250

FAO: Nominal Insurer Principal
Fax: TBA

The property address of the Scheme Agent is:
«CoName»
«CoAddress»
«CoAddress2»
«Suburb» «State» «PCode»
Phone: «Ph»
Fax: «Fax»
 - (b) sent by prepaid ordinary post (airmail if posted to or from a place outside Australia) to the property address of the addressee, or
 - (c) sent by facsimile machine to the facsimile number of the addressee, or if the addressee notifies another address or facsimile number, then to that address or facsimile number; or
 - (d) hand delivered to the Account Manager or Principal.
 - (e) unless a later time is specified in it or in this Deed, a notice, Approval, Direction, consent, or other communication takes effect from the time it is received.
- 48.2 A notice, Approval, Direction, consent, or other communication is taken to be received:
- (a) if left at the property address, on the first Business Day after leaving it;
 - (b) if posted, on the second (seventh if posted to or from a place outside Australia) Business Day after posting;
 - (c) if sent by a facsimile machine, on production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the recipient notified for the purpose of this Sub-clause 48.2; and
 - (d) if given or served by hand, at the time of delivery.
- 48.3 A party may notify the other party of a change to the property address by notice in accordance with Sub-clause 48.2.

Scheme Agent Deed

49 General

Writing

- 49.1 All amendments to this Deed and all consents, Approvals, ratifications, waivers, and Variations made under this Deed must be in writing.

Scheme Agent Deed

Perfection of Rights

- 49.2 The Scheme Agent 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 Deed (including dealing with Intellectual Property Rights and Moral Rights).

Consents

- 49.3 A party may give its consent or Approval conditionally or unconditionally or may withhold its consent or Approval, in its absolute discretion, unless this Deed specifically provides otherwise.

Non-waiver

- 49.4 No failure or delay by a party in exercising any right, power or remedy under this Deed 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 Deed must be in writing and will not be construed as a waiver of any further breach of the same or any other provision.

Severability

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

Relationship

- 49.6 The legal relationship created by this Deed, other than in respect of Transition Services, is that of principal and limited agent. Nothing in this Deed creates a partnership, joint venture or contract of employment. Nothing in this Deed creates any relationship of agency for the purpose of providing Transition Services.
- 49.7 The Nominal Insurer may freely transfer this Deed 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 the Nominal Insurer or any other Agency made by Law. The Nominal Insurer must give the Scheme Agent as much notice of such transfer as it reasonable in the circumstances.
- 49.8 The Scheme Agent must not assign, novate or transfer the whole or part of this Deed or any payment or other right benefit or interest under this Deed without obtaining the prior Approval of the Nominal Insurer, which may be denied or given in its absolute discretion.
- 49.9 In carrying out its obligations under this Deed other than in respect of Transition Services and as set out in Sub-clause 7.5, the Scheme Agent must represent itself as an agent of the Nominal Insurer in all dealings with, Policyholders and any other third parties only to the extent of the scope of its agency as set out in Clause 3.

Entire Agreement

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

Scheme Agent Deed

Legal advice and costs

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

Stamp Duties and Taxes

49.12 All stamp duties (including fines, penalties and interest) that may be payable on or in connection with this Deed and any instrument executed under it must be borne by the Scheme Agent.

49.13 All taxes, duties, charges imposed or levied in Australia or overseas in connection with the performance of this Deed will be borne by the Scheme Agent.

49.14 The Scheme Agent must indemnify the Nominal Insurer on demand against any liability for breach of Sub-clauses 49.12 and 49.13.

Counterparts

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

Applicable Law

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

Governing jurisdiction

49.17 Each party submits to the exclusive jurisdiction of the courts exercising jurisdiction in the State of New South Wales and the courts of appeal there from.

Survival

49.18 Without limiting any other provision of this Deed relating to survival, the following Clauses survive any termination or expiration of this Deed:

- (a) Clause 13 (Warranties, Indemnities and Liabilities);
- (b) Clause 15 (Indemnity);
- (c) Clause 16 (Nominal Insurer's Limit of Liability);
- (d) Clause 17 (Performance Guarantee);
- (e) Clause 18 (Financial Security);
- (f) Clause 20 (Confidentiality);
- (g) Clause 21 (Intellectual Property);
- (h) Clause 24 (Scheme Actuary);
- (i) Clause 25 (Dispute Resolution);
- (j) Clause 29 (Records, Inspection and Audits);
- (k) Clause 43 (Termination);

Scheme Agent Deed

- (l) Clause 46 (Insurance); and,
- (m) any other provision of this Deed which contemplates performance or observance following any termination or expiration of this Deed by the passing of time or the provision of any Services.

49.19 The parties acknowledge that amendments listed in Schedule 15, if any, operate to vary the operation of this Deed, where so specified.

PART L : Interpretation

50 Interpretation within the Deed

Glossary

50.1 The terms used in this Deed have the meanings set out in Schedule 14, unless the context, or this Deed, requires otherwise.

Interpretation

50.2 In this Deed except where the context otherwise requires:

- (a) A reference to this Deed includes any Variation, and includes where the Deed has been assigned, novated, or otherwise transferred, in accordance with this Deed;
- (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 Deed are for convenience only and do not affect the interpretation of this Deed;
- (j) In the construction and interpretation of this Deed, no rule of construction applies to the disadvantage of the Nominal Insurer on the basis that the Nominal Insurer initiated or drafted the Deed or any part of it;

Scheme Agent Deed

- (k) Direction(s) and requirements given by the Nominal Insurer are not to be construed as the Nominal Insurer participating in the supervision or control of the Services or Transition Services or the Scheme Agent and do not infer any release of Scheme Agent obligations to appropriately carry out supervision and control function;
- (l) Any Approval given by the Nominal Insurer does not release the Scheme Agent from performing its obligations in accordance with this Deed;
- (m) 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;
- (n) Any time limit under this Deed falls on a non-Business Day then that time limit will be deemed to have expired on the next Business Day;
- (o) Where a word or phrase is given a defined meaning in this Deed, any other part of speech or other grammatical form in respect of such word or phrase will have a corresponding meaning;
- (p) Where a reference occurs to the doing of anything by the Nominal Insurer including giving any notice, Approval, direction or waiver, this may be done by a duly authorised officer of the Nominal Insurer;
- (q) Where there is a reference to WorkCover that reference is to WorkCover in its capacity as acting for the Nominal Insurer only, unless expressly stated otherwise;
- (r) Where the Scheme Agent is comprised of more than one person, each obligation of the Scheme Agent will bind those persons jointly and severally and will be enforceable against them jointly and severally;
- (s) 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;
- (t) The Glossary and the Definitions do not apply to the Operational Document Set issued on the Commencement Date, however they will apply to each updated Document which subsequently replaces or updates the Operational Document Set during the Term.

Order of Priority

- 50.3 If there is a conflict between a provision of this Deed and Schedule 14, as varied by Schedule 15, the other Schedules and the Operational Document Set, then the Documents will be given the following order of

Scheme Agent Deed

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:

- (a) the terms and conditions of this Deed and Schedule 14 as varied by Schedule 15;
- (b) the other Schedules to this Deed;
- (c) Operational Document Set in Appendix A.

50.4 If there is a conflict between any right or obligation in the 2003 Act and other OH&S and Workers Compensation Legislation, or this Deed (in accordance with Sub-clause 50.3 and subject to Sub-clause 49.5), then they will be given the following order of priority 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:

- (a) the 2003 Act and other OH&S and Workers Compensation Legislation;
- (b) this Deed (in accordance with Sub-clause 50.3 and Sub-clause 49.5).

Scheme Agent Deed

Deed Schedules

- Schedule 1 – Business Model
- Schedule 2 – Scheme Services
- Schedule 3 – Remuneration
- Schedule 4 – Commercial Management Framework
- Schedule 5 – KPIs
- Schedule 6 – IP Register
- Schedule 7 – Variation Framework
- Schedule 8 – Statutory Declaration
- Schedule 9 – Information and IP Deed
- Schedule 10 – Disengagement Plan
- Schedule 11 – Transition Services
- Schedule 12 – Performance Guarantee
- Schedule 13 – Financial Security
- Schedule 14 – Glossary
- Schedule 15 – Scheme Agent Specific Amendments (as required)

Appendix A – Operational Document Set

Scheme Agent Deed

EXECUTED AS A DEED

SIGNED FOR AND ON BEHALF)
OF THE WORKERS)
COMPENSATION NOMINAL)
INSURER by the Chief Executive)
Officer of WorkCover [or)
authorised person with delegation)
authorised to sign on behalf of)
the Nominal Insurer] in the)
presence of:)

.....
Witness Signature

.....
Print Full Name of Witness

.....
Position

.....
Dated

Execution by the Scheme Agent:

Guide Note: Use the following execution Clause where the Scheme Agent is a corporation and that corporation has a common seal. Where the Scheme Agent is a corporation but does not have a common seal, use the appropriate alternate execution Clause, as provided below.

Scheme Agent Deed

The **COMMON SEAL** of.....

.....

(insert name of Scheme Agent)

A.C.N:

(insert Scheme Agent's A.C.N.)

was duly affixed hereto at

(insert name of City/ Town)

in the State of

(insert name of State / Territory)

)

)

(Corporate Seal)

.....

(signature of Director)

in the presence of.....

(insert name of Secretary or other permanent officer)

)

)

)

.....

(signature of Secretary or other permanent officer)

.....

Dated