

Workers Compensation Claims and Policy Services

DATE

2005

Schedule 14 – Glossary

Nominal Insurer

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Schedule 14 – Glossary

Dictionary

Note: References to Clauses and Sub-clauses are references to the terms and conditions of the Deed. References to Sections are references to Sections of the Schedule.

“**Account Management Group**” means the group performing the account management roles as set out in Schedule 4 (Commercial Management Framework).

“**Account Manager**” means the person identified as the Account Manager in Schedule 4, Attachment E (Key Personnel Register).

“**the 1987 Act**” means the *Workers Compensation Act 1987*.

“**the 1998 Act**” means the *Workplace Injury Management and Workers Compensation Act 1998*.

“**the 2003 Act**” means the *Workers Compensation Amendment (Insurance Reform) Act 2003*.

“**Additional Incentive Fee**” or “**AIF**” means a bonus that the payment of which is subject to certain conditions and is referred to in Schedule 3 (Remuneration), Section 3.15.

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

“**Agency**” means:

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

“**Annual Review Group**” means the group performing the Annual Review, set out in Schedule 4 (Commercial Management Framework).

“**Annual Review**” means the process described in Schedule 4, Attachment B (Annual Services Plan), Section 2.

“**Annual Services Plan**” means a plan provided by the Scheme Agent and described in Schedule 4, Attachment B (Annual Services Plan).

“**Applicable Standards**” means the standards specified by the Nominal Insurer in this Deed.

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“**Approve**” or “**Approval**” or “**Approved**” means written notice from the Nominal Insurer signifying that the relevant Milestone, deliverable or other item that requires the Nominal Insurer’s approval has been through the formalities for approval.

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

“**Attachment**” means an Attachment to a Schedule of this Deed.

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

“**AWE**” means the NSW Wage Price Index as reported by the Australian Bureau of Statistics in the publication 6345.0 Table 10.

“**Basic Tariff Premium**” means that part of a Premium calculated in accordance with schedule 3 of the IPO.

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

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

For avoidance of doubt, Benefits includes amounts payable to Third Party Service Provider by the Nominal Insurer.

“**Business Continuity Plan**” or “**BCP**” means the Scheme Agent’s plan to ensure that it can continue to provide the Services in accordance with the requirements of this Deed.

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

“**Business Model**” means the tools, processes, systems, resources that the Scheme Agent uses to perform the Services and other obligations under this Deed.

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

“**Case Handover**” means the transferring of a case and all associated files, Records and other necessary information to any individual within the Scheme Agent.

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

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

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

“**CDR**” is a corporate data repository, used by the Nominal Insurer as a Policy and Claims database, comprising data submitted from Scheme Agents.

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

“**Chief Executive Officer**” means the Chief Executive Officer of the Nominal Insurer or the Scheme Agent respectively (or their delegates).

“**Claim**” includes a claim for compensation or Work Injury Damages that a person has made or is entitled to make under a Policy.

“**Claim Limit**” or “**CL**” means the limit applied to the Incurred Cost of an individual Claim limited to \$1,000,000 plus 10% of the Incurred Cost in excess of \$1,000,000 for that Claim.

“**Claims Excess**” means an ‘excess’ within the meaning of the 1987 Act and instruments made under the Act.

“**Claims Incurred**” means Claims with a date of Injury during the Calendar Year (n), and includes Injuries suffered, and Injuries which were not reported or claimed, within the Calendar Year (n).

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

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

“**Commencement Date**” means the date on which the Deed is executed by both parties or, if executed on different dates, the later of the dates on which the Deed is executed.

“**Common Law Claim**” means action for common law damages brought under Part 5 of the 1987 Act.

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

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“**Competency**” means the knowledge or skill that enables a person to perform a task or to demonstrate a certain ability.

“**Complaint**” means any relevant verbal or written expression of dissatisfaction with a decision, product or service offered or provided.

“**Confidential Information**” of a party means any Information disclosed by that party to the other, whether before or after the Commencement Date, that is non-trivial and:

- (a) is by its nature confidential;
- (b) is designated as confidential; or
- (c) the other party knows or ought to know is confidential;

but does not include information which:

- (d) is or becomes public knowledge other than by breach of the Deed or other breach of obligation of confidentiality by any person to whom the Confidential Information was disclosed; or
- (e) is in the lawful possession of the other party without restriction in relation to disclosure before the date of receipt of the information;
- (f) is created independently of the disclosing party’s Confidential Information; or
- (g) the Nominal Insurer wishes to disclose to the relevant Minister, Parliament, Parliamentary committee or other person in accordance with public policy or Law.

The Nominal Insurer’s Confidential Information includes all New Contract Material, Records, Insurance Records and Personal Information that relates to individuals who are directors, officers, employees or contractors to the Nominal Insurer and its Personnel.

“**Contract Dispute**” means any difference between the parties arising under or in connection with this Deed.

“**Core Competencies**” means the competencies described in, Schedule 1 (Business Model).

“**Corrective Action Plan**” means the Scheme Agent’s proposed plan for correcting any failure to perform any obligations under this Deed created under Sub-clause 42.2(c) of this Deed, which may include one or more of the performance management interventions set out in Schedule 4, Attachment D.

“**Corporations Act**” means the *Corporations Act 2001 (Cth)*.

“**Decreasing Adjustment Method**” means the method of calculating the Input Tax Credit and GST that can be claimed by an insurer on claim payments pursuant to GST Law.

“**Deed**” means this Deed, including all its Schedules, all attachments to the Schedules and Documents in the Appendix.

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“**Demand**” includes all existing or allegations of actions, causes or action, suits, rights, claims, expenses, losses, proceedings and demands of any nature, including any claim for damages, costs, interest or indemnity, whenever and however arising, known or unknown.

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

“**Disengagement Period**” is the period stated in the Disengagement Plan during which the Scheme Agent will provide Disengagement Services.

“**Disengagement Plan**” means the plan set out in Schedule 10 (Disengagement Plan).

“**Disengagement Services**” means the Services set out in Schedule 10 (Disengagement Plan).

“**Dispute Notice**” means a written notice setting out an overview of the nature of the dispute, the alleged cause of the dispute and the preferred solution.

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

“**Domestic Policy**” means WIC Class 970000 “Private Households Employing Staff”.

“**Dust Diseases Board**” means the Workers Compensation (Dust Diseases) Board established by section 5 of the WC (DD) Act 1942 to administer the dust diseases scheme.

“**Early Contact**” means contact with the Worker, Employer and Nominated Treating Doctor, in accordance with section 43(4) of the 1998 Act.

“**Earned**” means the portion of the Premium for a Policy attributable to any period (e.g. a Calendar Year or a Quarter) within the underwriting exposure of the Policy. The basis for calculating the Earned Premium is based on the 365ths method where the Premium earned for each day of exposure is one 365th of the annual Premium.

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

“**Equipment**” means the systems, hardware, software, telecommunications systems that are subject to the control of the Scheme Agent and are used to perform or deliver the Services.

“**Event-Driven**” means a necessary review due to material events that have or will occur in the management of the Claim.

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“**Exiting Scheme Agent**” means a Scheme Agent, or Licensed Insurer, from whom a Claim or Policy is being transferred.

“**Expert**” means a specialist appointed in accordance with Clause 25 of this Deed who must act as an expert and not as an arbitrator.

“**Fatal Error**” means a major data error that is reported in the Nominal Insurer’s fatal error report.

“**File Receipt and Transfer Fee**” means the amount that may be paid per file on the completion of File Transfer or receipt in accordance with the KPI specified in Schedule 5 (KPIs), calculated in accordance with Schedule 3 (Remuneration), Section 7.

“**File Transfer**” means the movement of Claims and Policy files as Directed by the Nominal Insurer.

“**Financial Security**” means the security referred to in Clause 18 of this Deed and substantially in the form specified in Schedule 13 (Financial Security), or as otherwise agreed to by the Nominal Insurer, in its absolute discretion.

“**FOM**” means Financial Outcome Measure.

“**Force Majeure Event**” is limited to:

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

the consequence of which:

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

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“**Fraud**” includes fraud on the Workers Compensation Scheme within the meaning of section 235A of the 1998 Act, or suspected conduct that would, if proven, amount to such fraud.

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

“**GST Act**” or “**GST Law**” means *A New Tax System (Goods and Services Tax) Act 1999*.

“**Guarantor**” means [Legal name of Scheme Agent Guarantor to be inserted.]

“**Half Year**” and “**Half Yearly**” means a/each period ending 23:59:59 30 June and 23:59:59 31 December each Calendar Year.

“**Incentive Fee**” means Remuneration that is payable to a Scheme Agent for the achievement of the Incentive Fee Targets as calculated in accordance with Schedule 3 (Remuneration), Section 3.

“**Incentive Fee Pool**” or “**IFP**” means the amount of money allocated to the payment of Incentive Fees for all scheme agents, calculated in accordance with Schedule 3 (Remuneration), Section 3.

“**Incentive Fee Targets**” means the targets calculated in accordance with Schedule 3, Section 3, and this Deed and as specified in Schedule 3, Attachment A.

“**Incurred Cost**” means for Calendar Year (n) at time t being the estimated value of the Claims Incurred (subject to the Claims Limit) in Calendar Year (n) valued at time t. This is equal to the sum of Claims payments made to time t in respect of the Claims arising from Calendar Year (n) inflated to time t plus the Outstanding liability for Calendar Year (n) at time t. Inflation is in line with AWE.

“**Information and IP Deed**” means the deed set out in Schedule 9 (Information and Intellectual Property Deed).

“**Initial Assessment**” means the process described in Schedule 2 (Scheme Services), Section 2.2.

“**Injury**” means a personal injury arising out of, or in the course of employment within the meaning of section 4 of the 1987 Act.

“**Injury Management Plan**” or “**IMP**” means an Injury management plan within the meaning of section 42 of the 1998 Act.

“**Input Tax Credits**” has the same meaning as in the GST Act.

“**Insolvency Event**” means any of the following occurring to a company:

- (a) an arrangement is entered into between it and its creditors other than for purposes of reconstruction under Part 5.1 or 5.3A of the Corporations Act;
- (b) it ceases to be able to pay its debts as they become due;
- (c) a mortgagee enters into possession or disposes of the whole or part of its assets or business;

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- (d) a receiver, a receiver and manager, a trustee in bankruptcy, a liquidator, an administrator, or similar is appointed over the whole or any part of its assets or business;
- (e) a voluntary administrator is appointed; or
- (f) any similar event in any foreign jurisdiction occurs.

“Insurance Premiums Order” or **“IPO”** is an order made by the Governor of New South Wales on the recommendation of WorkCover under s168 of the 1987 Act setting out the manner in which the Premium payable by an Employer for a Policy is to be calculated.

“Insurance Records” has the same meaning as in section 7 of the 2003 Act.

“Intellectual Property Rights” includes patent, know-how, copyright, design, semiconductor or circuit layout rights, trademark, service mark, trade secret, business or company names or other proprietary rights and any rights to registration of such rights, whether created before or after the Commencement Date, in Australia or elsewhere.

“Interim Payment” means any payment made on account by the Nominal Insurer in respect of a larger amount that may become due upon the occurrence of a defined event.

“Interim Performance Fees” means a Half Yearly payment of Performance Fees on achieving Performance Fee Targets.

“Innovation Fee Pool” or **“IVFP”** means the amount of money that may be allocated to the payment of Project Services for all scheme agents each Year of Scheme Services, in accordance with Schedule 3 (Remuneration), Section 5.

“Key Performance Indicators” or **“KPIs”** means the performance measures associated with the Scheme Services that are set out in Schedule 2 (Scheme Services), and which may be varied from time to time in accordance with Sub-clause 8.3 of the Deed.

“Key Personnel” means the key personnel who have been specified in Schedule 4, Attachment E (Key Personnel Register).

“Key Subcontractor” means a Subcontractor identified in Schedule 4, Attachment B (Annual Services Plan) and that:

- (a) is remunerated more than \$250,000 per annum;
- (b) provides more than 15% of the infrastructure that supports the Scheme Agents provision of the Services or Transition Services (e.g. IT systems supplier); or
- (c) provides more than 15% of the personnel used to provide the Services.

“Key Subcontractor Register” means the register of Key Subcontractors as specified in Schedule 1, Attachment B (Key Subcontractor Register).

“Key Transitional Personnel” as specified in Schedule 11 (Transition Services), Section 6.8.

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

“**Laws**” includes:

- (a) Workers’ Compensation (Dust Diseases) Act 1942;
- (b) Workers Compensation Act 1987;
- (c) Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987;
- (d) Workplace Injury Management and Workers Compensation Act 1998;
- (e) Occupational Health and Safety Act 2000;
- (f) Workers Compensation Amendment (Insurance Reform) Act 2003;
- (g) any statute, regulation, by-law, ordinance or subordinate legislation in force in Australia, whether made by a State, Territory, Commonwealth, or a local government;
- (h) any ancillary rules, guidelines, orders, directions, directives, codes of conduct or other instruments made or issued thereunder;
- (i) common law and the principles of equity;
- (j) any Direction issued under any Law; and
- (k) any relevant industry codes of conduct (whether mandatory or voluntary in their application).

as applicable from time to time.

“**Liability Under Management**” or “**LUM**” is a component of the Service Fee Pool. The Claims Limit does not apply to the calculation of LUM.

“**Licensed Insurers**” means an insurer that is the holder of a licence granted under Division 3 of Part 7 of the 1987 Act but excludes a Specialised Insurer or a Self Insurer.

“**Long-Term Claim**” includes a Claim that arises from an Injury that has occurred more than eighteen months ago and for which the injured Worker is in receipt of weekly Benefits, or there is an estimate Claim for weekly Benefits.

“**Major Injury**” means major and permanent disabilities, including paraplegia, quadriplegia, acquired brain injury, blindness, bilateral or multiple amputation, and severe burns – i.e. Full thickness to more than 30 percent of the whole body.

“**Major Injury Claim**” means a Claim arising from a Major Injury.

“**Medical Certificate**” means a certificate given by a medical practitioner as defined in section 4 of the 1998 Act.

“**Medium Employer**” means an Employer that is not a Small Employer or a Large Employer.

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“**Metric**” or “**M**” means a measurement.

“**Milestone**” means a key deliverable or event in the delivery of any Service or Transition Service that is described in any plan, including the Transition Plan, the Disengagement Plan or Project Services project plan, for which Approval is required.

“**Minimum Operational Requirements**” means the minimum capabilities that the Scheme Agent must possess before the Nominal Insurer will Approve the Scheme Agent to commence Scheme Services, as set out in Schedule 11 (Transition Services), Section 3.

“**Monitoring Tool**” means the tool provided by the Nominal Insurer for the Scheme Agent to assess its performance against certain Metrics.

“**Month**” means calendar month.

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

“**New Contract Material**” means anything that is created, written or otherwise brought into existence by or on behalf of the Scheme Agent in the course of performing the obligations under this Deed in which subsists any newly created Intellectual Property Rights, provided that New Contract Material does not include adaptations, derivatives or translations of Scheme Materials or Scheme Agent Material.

“**Nominal Insurer**” or “**Workers Compensation Nominal Insurer**” means the Nominal Insurer established by Division 1A of Part 7 of the 1987 Act, as inserted by the 2003 Act.

“**Nominal Insurer’s Principal**” means the person appointed by the Nominal Insurer who is authorised to represent the Nominal Insurer in accordance with Clause 22 of this Deed, whose identity is set out in Schedule 4, Attachment E (Key Personnel Register).

“**Nominated Treating Doctor**” means the doctor responsible for coordinating all aspects of treatment and Return to Work (as defined for all parts of the Deed other than Schedule 3) management, and is authorised by the injured Worker to provide the Employer and Scheme Agent with Information relating to the Injury and rehabilitation in accordance with Chapter 3 of the 1998 Act.

“**Non-exitable Long-Term Claims**” means a Long-Term Claims that will not, in all probability, achieve a full Return To Work (as defined for all parts of the Deed other than Schedule 3), even if specialist skills are allocated to managing the Long-Term Claim.

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

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

“**Notifier**” is the person who reports the first Notification of a workplace Injury.

“**OH & S and Workers Compensation Legislation**” includes:

(a) Workers Compensation Act 1987;

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

in relation to occupational health and safety and workers compensation.

“Operational Document Set” means Document(s) issued or Approved by the person set out in Appendix A of this Deed from time to time specifying the procedures to be followed by the Scheme Agent in providing the Services and Transition Services.

“Other Scheme Agents” means other persons with whom the Nominal Insurer has entered or will enter into agency arrangements in relation to Premium Collection and/or Claims Management services.

“Outstanding liability” means the inflated and discounted net central estimate outstanding claims reserve for Claims Incurred in Calendar Year (n) valued at time (t), as calculated by the Scheme Actuary consistent with the Australian Accounting Standards AASB1023 and AAS26 as those standards relevantly apply to the Nominal Insurer and the Institute of Actuaries of Australia Professional Standard 300 (excluding any allowance for Claims Management Expenses).

“Overpayment” is a payment to a person, purportedly made pursuant to an obligation arising under the 1987 or 1998 Acts, to which the person is not entitled under the Act, or a payment is a result or partly as a result of an act that constitutes a contravention of sections 235A or 235C of the 1988 Act (whether or not the person has been proceeded against or convicted for an offence in respect of the contravention).

“Pass-Through Cost” means an amount which is payable to a Third Party Service Provider, and which does not form any component of the Remuneration.

“Payment Account” is the Nominal Insurer’s, or its nominee’s (e.g. WCIF) bank account that is funded on a periodic basis by the Nominal Insurer to meet the Scheme Agent’s cash payment needs for Benefits and Third Party Service Providers.

“Performance Fee” means Remuneration payable to a Scheme Agent for the achievement of Performance Fee Targets as calculated in accordance with Schedule 3 (Remuneration), Section 2.

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“Performance Fee Pool” or **“PFP”** means the amount of money allocated to the payment of Performance Fees for all scheme agents, calculated in accordance with Schedule 3 (Remuneration), Section 2, and this Deed.

“Performance Fee Targets” means the targets calculated in accordance with Schedule 3, Section 2 and this Deed, and as specified in Schedule 3, Attachment A.

“Performance Guarantee” means a guarantee of performance, including financial obligations, from a Related Body Corporate of the Scheme Agent, substantially in the form of Schedule 12 (Performance Guarantee), or as otherwise agreed to by the Nominal Insurer, in its absolute discretion.

“Performance Management” means a Core Competency that demonstrates the Scheme Agent’s ability to manage, monitor, and evaluate the performance of their infrastructure, such as people, processes, systems and technology.

“Performance Management Strategy” means the strategy described in Schedule 4, Attachment D (Performance Management Strategy).

“Period of Scheme Service” means the initial period described in Sub-clause 1.3 of the Deed (or such extended period if any under Sub-clauses 1.4, 1.5 and 5.9 of the Deed) following the Scheme Service Commencement Date.

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

- (a) the Scheme Agent, includes its Key Personnel and Subcontractors, but not any Third Party Service Provider;
- (b) the Nominal Insurer, includes WorkCover acting for the Nominal Insurer, but not any Scheme Agent.

“Personal Information” has the same meaning as in the Privacy Act (Cth) 1988.

“Policy” means a policy of insurance that an Employer obtains under the 1987 Act or the former Workers Compensation Act 1926.

“Policyholder” means an Employer with a Policy with the Nominal Insurer.

“Policy Number” means the number allocated to a Policy by the Scheme Agent.

“Portfolio” means the Claims or Policies and Claims managed or administered by the Scheme Agent on behalf of the Nominal Insurer at any one time.

“Premium” means the premium calculated in accordance with the Insurance Premium Order made pursuant to Section 168 of the Act.

“Premium Calculation” means determining the amount of Premium to be paid in accordance with the IPO.

“Premium Collection” means the physical collection of the Premium from a Policyholder.

“Premium Compliance” means the process that ensures Employers are paying the correct levels of Premiums.

“Premium Compliance Audit” means a WorkCover-requested or Nominal Insurer Premium Compliance audit.

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“Premium Demand” means notice to a Policyholder from the Scheme Agent accompanied by information demonstrating the calculation of Premium and demanding payment of the Premium, as governed by the Workers Compensation Regulation 2003.

“Principal” means the person who will represent a party in accordance with Clause 22 of this Deed.

“Project Services” means a service that is designated by the Nominal Insurer as a Project Service, and which will generally relate to a discrete project or series of tasks that substantially improves the quality or increases or decreases the quantity of the Services and for which a separate payment may be made by the Nominal Insurer.

“Provisional Liability” means the requirement to commence provisional payments to a Worker following the initial notification of an Injury, within the meaning of section 267 of the 1998 Act.

“Qualifying Invoice” means a Tax Invoice for a Third Party Service Provider’s services that meets all the criteria set out in Sub-clause 32.2 of this Deed.

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

“Quarterly Performance Fee Targets” means the targets calculated in accordance with Schedule 3 (Remuneration), Section 2.13.7-9, and this Deed.

“Quarterly Review Group” means the group performing the quarterly review set out in Schedule 4 (Commercial Management Framework).

“Receiving Scheme Agent” means a specific Scheme Agent to which responsibility for a particular Claim or Policy has been, or may be, transferred under the Direction of the Nominal Insurer.

“Records” means all information that is made or kept, or received and kept, by the Scheme Agent in the exercise of its functions on behalf of the Nominal Insurer.

“Recovery” means an entitlement to seek compensation from another party that is liable for the injury of the Worker as defined in section 151Z of the 1987 Act.

“Recovery Panel” means a panel of solicitors engaged by WorkCover (in its role as regulator) to manage recoveries.

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

“Relationship Values Charter” refers to the charter in Section 2.3 of Schedule 4, Attachment A (Relationship Values Charter).

“Relationship Values Survey” is the survey described in Schedule 4, Attachment A (Relationship Values Charter).

“Remuneration” means payments to the Scheme Agent for performing Scheme Services as defined in Schedule 3 (Remuneration).

“Remuneration Fee pools” means the SFP, the PFP, the IFP, and IVFP.

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“Request for Proposal” or **“RFP”** means the document number 0401681 issued on behalf of the Nominal Insurer for the appointment of scheme agents.

“Response” means the Scheme Agent’s response to the Request for Proposal, and any subsequent clarifications or amending or updating Documentation provided to the Nominal Insurer or its Personnel.

“Return To Work” or **“RTW”** in all parts of the Deed other than Schedule 3, means the safe, durable return to work, in suitable employment within the meaning of section 43A of the 1987 Act, of a Worker who has sustained a work related Injury, and includes Suitable Duties.

“Return to Work” or **“RTW”** in Schedule 3 only, means return to work, and is used as a Metric in Schedule 3.

“Return to Work Assessment” is the process by which the Return to Work (as defined for all parts of the Deed other than Schedule 3) requirements of an injured Worker are established.

“Return to Work Outcomes” is when an injured Worker successfully re-enters employment.

“Revenue Account” means the Nominal Insurer’s or its nominee’s (eg WCIF) bank account that will receive all premiums collected by Scheme Agents as agent of the Nominal Insurer.

“Review Groups” means the Annual Review Group, Quarterly Review Group and the Account Management Group set out in Schedule 4 (Commercial Management Framework).

“Risk Premium” or **“RP”** means the amount of Premium, estimated in the actuarial valuation as at 31 December of Year n sufficient to fund the expected claims cost resulting from Claims Incurred during Calendar Year n for the Scheme Agent.

“Schedules” means the Schedules attached to this Deed.

“Scheme” means the part of NSW workers compensation system which is administered by the Nominal Insurer.

“Scheme Actuary” or **“SA”** means the person appointed by the Nominal Insurer from time to time to perform the functions required of a scheme actuary including but not limited to any calculation, estimate or assessment for the payment of any fees to the Scheme Agent in accordance with this Deed.

“Scheme Agent” means «CoName», «ABN», «CoAddress» «CoAddress2» «Suburb» «State» «PCode» whether or not that entity is a ‘scheme agent’ under the 2003 Act.

“Scheme Agent Group” means [Insert definition of entire group of companies to which the Scheme Agent belongs].

“Scheme Agent Materials” means any Intellectual Property Rights that:

- (a) were created, written or otherwise brought into existence before the Commencement Date; or

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- (b) were created, written or otherwise brought into existence after the Commencement Date, by the Scheme Agent or any third party, and either:
- (1) were created, written or otherwise brought into existence by any person other than any member of the Scheme Agent Group (or their respective Personnel); or
 - (2) if created, written or otherwise brought into existence by any member of the Scheme Agent Group (or their respective Personnel), then the Scheme Agent must be able to prove to the Nominal Insurer's satisfaction that the individuals that created, wrote or otherwise brought the Intellectual Property Right into existence did so without access to, or using:
 - (A) any of the Nominal Insurer's Confidential Information or property;
 - (B) any Intellectual Property Rights that were licensed to the Scheme Agent by the Nominal Insurer; or
 - (C) any resources that the Scheme Agent Group (or their Personnel) has used in connection with the performance of the obligations under this Deed;
- (c) are adaptations, translations or derivatives of the Intellectual Property Rights described in sub-paragraphs (a) and (b) of this definition;

Provided Always that in respect of each of sub-paragraphs (a) – (c) in this definition, the Nominal Insurer determines, in accordance with Sub-clause 21.9, that the Intellectual Property Right falls into one or more of the following categories:

- (1) claim and/or policy management application software and related user manuals;
- (2) customer relationship management application software and related user manuals;
- (3) office automation software (e.g. MS Office) and related user manuals;
- (4) readily available commercial off-the shelf software;
- (5) software that is available from the internet without charge;
- (6) any item submitted by the Scheme Agent in its Response as Intellectual Property Rights in which Intellectual Property Rights subsist at the date of submission of the Response;
- (7) Intellectual Property Rights that the Nominal Insurer considers could NOT be used more generally for purposes associated with any Workers Compensation Scheme.

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“Scheme Agent Operational Data” means information that relates to, or is created by or for, the Nominal Insurer or its Personnel relating to, the operation, facilities, customers, employees, assets, finances, transactions, policies or processes of the Nominal Insurer and/or an Agency.

“Scheme Materials” means all Intellectual Property Rights that the Nominal Insurer has determined do not fall into any of the categories in sub-paragraphs (1)-(7) in the definition of Scheme Agent Material, and:

- (a) that were created, written or otherwise brought into existence before the Commencement Date; or
- (b) that were created, written or otherwise brought into existence after the Commencement Date, by the Scheme Agent or any third party, that:
 - (1) were created, written or otherwise brought into existence by any person other than any member of the Scheme Agent Group (or their respective Personnel); or
 - (2) if created, written or otherwise brought into existence by any member of the Scheme Agent Group (or their respective Personnel), then the Scheme Agent must be able to prove to the Nominal Insurer that the individuals that created, wrote or otherwise brought the Intellectual Property Rights into existence did so without access to, or using, any of the Nominal Insurer’s Confidential Information or property, any Intellectual Property Rights that were licensed to the Scheme Agent by the Nominal Insurer, or any resources that the Scheme Agent Group (or their Personnel) has used in connection with the performance of the obligations under this Deed;
 - (3) are adaptations, translations or derivatives of the Intellectual Property Rights described in Sub-paragraphs (1) or (2) in this definition; and
- (c) which the Scheme Agent will use in connection with the performance of its obligations under this Deed.

“Scheme Objectives” means the Scheme objectives detailed in Sub-clause 4.1 of this Deed.

“Scheme Outcomes” means improved service delivery for Employers and Workers, improved Return To Work (as defined for all parts of the Deed other than Schedule 3) outcomes and improved financial performance of the Scheme.

“Scheme Services” means:

- (a) all services and requirements described in Schedule 2 (Scheme Services);
- (b) all obligations to provide deliverables or outputs in the clauses of the Deed or in any Schedule; and
- (c) any service or work that is necessary or incidental to the provision of the Scheme Services, and any Variations implemented to the Scheme Services under Clause 10 of this Deed, or by virtue of the Law;

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but excludes Transition Services, Disengagement Services and Project Services.

“Scheme Risk Premium” or “SRP” means the amount of Premium, estimated in the actuarial valuation as at 31 December of Year n sufficient to fund the expected Claims cost resulting from Claims Incurred during Calendar Year n for the Scheme.

“Scheme Services Commencement Date” means the date set out in the Transition Plan (which is after the date when the Minimum Operational Requirement Milestone has to be Approved by the Nominal Insurer, subject to Sub-clause 2.5) when the Nominal Insurer requires the Scheme Services to commence. This date must be before 1 March 2006.

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

“Service Fees” means Remuneration payable to the Scheme Agent in accordance with Schedule 3 (Remuneration), Section 1.

“Service Fee Pool” or “SFP” means the amount of money allocated to the payment of Service Fees for all scheme agents, calculated in accordance with Schedule 3 (Remuneration), Section 1.

“Services” means the work required to be performed by the Scheme Agent in accordance with the Deed, including the:

- (a) Project Services;
- (b) Scheme Services;
- (c) Disengagement Services;

and all other services necessary or incidental to the provision of the Services, including any Variations implemented to the Services under Clause 10 of this Deed, or by virtue of the Law; but excludes Transition Services.

“SFPQ” means Service Fee Pool Quarterly instalments.

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

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

“Specialist Domestic Workers Compensation Insurer” means an insurer licensed under Division 3 of Part 7 of the 1987 Act as a Specialised Insurer to provide domestic workers compensation insurance.

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

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

“Strata Title Policy” means WIC Class 771110 “Residential Strata Schemes”.

“Subcontractor” means any subcontractor or agent and their respective directors, officers, employees, engaged by the Scheme Agent to fulfil some of the Scheme Agent’s obligations to perform the Services or Transition Services, and which is Approved in accordance with Clause 44 of this Deed, but is not a Third Party Service

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Provider. A Related Body Corporate may be included in the definition of a Subcontractor.

“Suitable Duties” means the partial, temporary Return to Work (as defined for all parts of the Deed other than Schedule 3) of a Worker who has sustained a work related Injury, to suitable employment within the meaning of section 43A of the 1987 Act. Suitable Duties is a stage in the transition to Return to Work of the Worker.

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

“Term” means the period from the Commencement Date until the later of:

- (a) the date the Deed is terminated in accordance with Clause 2 or 43 of the Deed; or
- (b) the last day of the provision of any Services.

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

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

A Third Party Service Provider may be appointed by either:

- (a) the Scheme Agent; or
- (b) where prescribed by Law, a Worker.

A Subcontractor cannot be a Third Party Service Provider.

“TOC Notice” means a notice issued by the Nominal Insurer under Sub-clause 43.1.

“Transition Commencement Date” means the first day of the Transition Plan.

“Transition Completion Date” means the last day for the Scheme Agent to receive final Approval of all the Transition Services and is set out in the Transition Plan.

“Transition Fee” means \$750,000 payable for Transition Services in accordance with Schedule 3 (Remuneration), Section 6.

“Transition Period” means the period commencing on the Commencement Date that the Scheme Agent must provide the Transition Services, as set out in the Transition Plan.

“Transition Plan” means the plans and other conditions contained in Schedule 11 (Transition Services).

“Transition Services” means those Services described in Schedule 11 (Transition Services).

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“**Triage**” means a Claims management activity that involves the classification and segmentation of notifications and claims into groups according to specific requirements of the Claim.

“**Unique Identifier**” means an identifier that is formatted in accordance with the Nominal Insurer’s Direction that uniquely identifies a Notification, Claim or Policy across the Scheme and has the following characteristics:

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

“**Urgent Direction**” means a Direction which the Nominal Insurer requires, in its absolute discretion, to be implemented urgently.

“**Variation**” means a change, substitution, addition, or removal of any part of:

- (a) the terms and conditions of this Deed,
- (b) the Services,
- (c) the Transition Services;
- (d) the Remuneration;
- (e) the KPIs; or
- (f) any other requirements in relation to this Deed, the Schedules, the attachments or Appendices.

“**Variation Notice**” means a Document that sets out a Variation, and is in the form of Schedule 7 (Variation Framework), unless the parties agree otherwise in writing. A Variation Notice is binding on the parties when stated in accordance with Sub-clauses 10.6, 10.9 or 10.10.

“**Virus**” includes any ‘Trojan horse’, ‘worm’, ‘drop dead device’, virus or other hardware or software designed or intended to:

- (a) disable, damage, erase, disrupt or impair the normal operation of any hardware, software or system; or
- (b) permit unauthorised access or use of hardware, software or systems.

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

“**WCC**” means the Workers Compensation Commission.

“**WIC**” means a WorkCover Industry Classification as set out in Table A of the Insurance Premiums Order.

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“**WIC Rate**” means the percentage rate specified in Column 4 of Table A of the “Insurance Premiums Order (Year n)” that corresponds with a class applicable to the Employer, being a class appearing in Column 2 of Table A opposite the percentage rate there appearing.

“**WorkCover Database**” includes all data and information, in whatever form, owned, created, collected or collated by or which comes into the possession of or control of or is held or stored by WorkCover whether or not such data or information was or is provided to WorkCover by a Scheme Agent or was or is provided by a Licensed Insurer or Self Insurer and which relates to and/or is created by or for WorkCover or the Nominal Insurer or otherwise that relates to or is required for the management or administration of the Scheme.

“**Work Injury Damages**” means a claim for damages made under Part 5 of the 1987 Act.

“**WorkCover**” or ‘**WCA**’ means the WorkCover Authority of New South Wales as constituted by the 1998 Act.

“**Worker**” means a worker within the meaning of the 1987 Acts and includes a deemed Worker within the meaning of the 1998 Act, and an injured Worker who is or may be entitled to Benefits under the 1987 Act and the 1998 Act.

“**Workers Compensation**” means the scheme of insurance regulated by the 1987 and 1998 Acts that provides Benefits to Workers who sustain work-related Injuries.

“**Workers Compensation Insurance Fund**” or “**WCIF**” means the fund established by the under section 154D of the 2003 Act.

“**Workers Compensation Schemes**” means the Scheme, or any arrangement that includes Self Insurers, Specialised Insurers, or the Treasury Managed Fund.