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**NSW Procurement – Contracting Services is a Business Unit of the
NSW Department of Commerce**

**NSW Procurement – Contracting Services invites this tender for and on behalf of the
NSW Government State Contracts Control Board**

Request for Tender 0801676

Parts A & B

**Provision of Reinsurance Services for the
NSW Self Insurance Corporation**

**For the period 1 October 2009 to 30
September 2013**

Tender Issue Date: Monday 23 March 2009

Closing Date: Wednesday 6 May 2009

Closing Time: 9:30 am Sydney Time

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For the purposes of this RFT, inquiries should be directed to the Contact Officer nominated in Part A of this RFT.

Other matters should be directed to:

Group General Manager
NSW Procurement – Contracting Services
NSW Department of Commerce
McKell Building
2-24 Rawson Place
Sydney NSW 2000
Tel: (02) 9372 7511
Fax: (02) 9372 7599

PROVISION OF REINSURANCE SERVICES FOR THE TREASURY MANAGED FUND

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PART A THE REQUIREMENT AND TENDER INFORMATION

1. OUTLINE DESCRIPTION OF THE REQUIREMENT

- 1.1** This Request for Tender seeks submissions from organisations interested in providing reinsurance services to the NSW Self Insurance Corporation (SICorp). SICorp requires a provider of reinsurance services to develop and place SICorp's reinsurance program and to provide related reinsurance services and advice. The specifications for the required services are set out in Schedule 2 (Specification of Services) to the Contract Conditions at Part D hereto (Specification). Tenderers are required to submit a fixed price for the performance of core services (as defined in the Specification) and hourly rates for non core services that may be required, from time to time, by SICorp.
- 1.2** SICorp is the principal to the agreement and is a statutory body which has the following functions with respect to Government managed fund schemes:
- a) To operate one or more Government managed fund schemes (including the function of establishing, reorganising, amalgamating, dividing or winding up such schemes),
 - b) to enter into agreements or arrangements with other persons to provide services (as agents or otherwise) in relation to the operation of any Government managed fund scheme,
 - c) to enter into insurance or other agreements or arrangements to cover the liabilities to which a Government managed fund scheme applies,
 - d) to act for the State or an authority of the State in dealing with claims under a Government managed fund scheme (including the recovery of amounts payable to the State or an authority of the State in connection with such claims).
- 1.3** The specifications for the required services are set out at Schedule 2 to the Contract Conditions being Part D hereto.
- 1.4** The State Contracts Control Board is responsible for the conduct of the tender process, assisted by NSW Procurement – Contracting Services.

2. SUMMARY INFORMATION FOR TENDERERS

2.1 Interpretation

- 2.1.1 Definitions of terms used in Parts A-C are listed at the start of Part B.

2.2 Structure of Request for Tender

- 2.2.1 This RFT is made up of Parts A to D. If submitting a Tender, retain Parts A, B and D. The completed Part C forms the Tender.
- 2.2.2 Submit Part C in accordance with instructions in Part B. Part C contains the following:
- a) Part C1 – Price Schedule and Information supplied in response to Part B
 - b) Part C2 – Acknowledgment and confirmation of Tender.

2.3 Contact Officer

- 2.3.1 Refer requests for information or advice regarding this RFT to:

For Contractual Enquiries

Name: Isabelle Stooke, NSW Procurement
Phone: (02) 9372 9155
Fax: (02) 9372 7799
Email: isabelle.stooke@commerce.nsw.gov.au

For Technical Enquiries

Name: Robert Lloyd, NSW Treasury
Phone: (02) 9228 3885
Fax: (02) 9228 3870
Email: robert.lloyd@treasury.nsw.gov.au

- 2.3.2 Any information given to a tenderer to clarify any aspect of this RFT will also be given to all other tenderers if in the Board's opinion the information would unfairly favour the inquiring tenderer.

2.4 Additional Information

- 2.4.1 Background information will be made available to tenderers subject to tenderers completing a confidentiality agreement. Please contact Robert Lloyd at the above email address if you wish to obtain the confidentiality agreement. Once a signed agreement is received the information will be forwarded to you.

2.5 Pre-Tender Briefing

- 2.5.1 A Pre-Tender Briefing will be held commencing at 10.00am, on Wednesday 1 April 2009 at the address nominated below. This briefing will discuss all aspects of this tender. It is highly desirable that all prospective tenderers attend a briefing in order that they fully acquaint themselves with the tender requirements. It is also expected that all tenderers will have thoroughly read this document prior to the briefing.

Conference Room 2
Level 4, McKell Building
2 – 24 Rawson Place
SYDNEY NSW

- 2.5.2 Tenderers should notify by Email at *isabelle.stooke@commerce.nsw.gov.au* by no later than 30 March 2009 of their intention to attend the briefing.
- 2.5.3 To enable questions to be answered to the fullest extent, potential tenderers may raise questions in writing at the above Email address, with the answers provided during the Briefing session.

2.6 Nature of agreement

- 2.6.1 The Requirement is to be met by an agreement between the Principal and the successful tenderer on the terms of Part D.

2.7 Legal Entity of Tenderer

- 2.7.1 Tenders must be submitted by a legal entity or, if a joint tender, by legal entities, with the capacity to contract. The Principal will only enter into an agreement with such legal entity or entities.
- 2.7.2 The Board may ask a tenderer to provide evidence of its legal status or capacity to contract. If tenders from entities propose to contract in their capacity as trustees, such evidence may include copies of the relevant trust deeds. Any evidence requested is to be provided within 3 working days of the request.

2.8 Financial Capability of Tenderer

- 2.8.1 The Board reserves the right to reject any Tender if the Board judges the tenderer not to have appropriate financial capability.
- 2.8.2 Where the Board forms the view that the tenderer does not have the appropriate financial capability, the Board reserves the right to make acceptance of any Tender conditional upon the tenderer entering into a bank, parent company or personal guarantee, or an unconditional performance bond in a form satisfactory to the Board.

2.9 ABN Requirements

- 2.9.1 The Principal will not enter into an agreement with a company that does not have an Australian Business Number (ABN) and is not registered for GST. Normally, tenderers must be registered for GST and state their ABN in their Tender.
- 2.9.2 Tenders from tenderers that do not have an ABN and/or are not registered for GST, such as tenderers commencing business in Australia, may be considered at the Board's discretion if the tenderer demonstrates that it will obtain an ABN and GST registration before entering into an agreement with the Principal. Such tenderers must state how and when they intend to obtain an ABN and register for GST in their Tender.

PART B THE TENDER PROCESS

3. DEFINITIONS OF TERMS USED IN PARTS A – C

- 3.1 Unless the context indicates otherwise, the following terms, where used in Parts A-C of this RFT, shall have the meanings set out below. Note that not all defined terms will appear in all RFTs.

“Addendum” means an addendum or addition to this RFT made by the Board before the Closing Date and Time.

“Alternative Tender” means a Non-Conforming Tender that is intended to offer a different method of meeting the object and intent of the Requirement.

“Board” means the State Contracts Control Board established under the *Public Sector Employment and Management Act 2002* whose responsibilities include:

- a) Inviting and accepting tenders;
- b) Determining the conditions under which tenders are invited or accepted;
- c) Entering into contracts on behalf of Departments and other public sector agencies; and
- d) On-going contract administration and management,

and includes the duly authorised delegates of the Board, including officers of NSW Procurement – Contracting Services.

“Closing Date and Time” means the Closing Date and Time for receipt of Tenders, specified on the cover sheet to this RFT or as extended by the Board in its absolute discretion.

“Code” means the NSW Government Code of Practice for Procurement as amended from time to time, together with any other codes of practice relating to procurement, including any amendments to such codes that may be applicable to the particular RFT. The code can be viewed and downloaded from:

http://www.treasury.nsw.gov.au/_data/assets/pdf_file/0015/1356/code_of_prac-curr.pdf

“Conforming Tender” means a Tender that:

- a) conforms to the Requirement;
- b) is in the prescribed form;
- c) conforms to the terms of Part D, and
- d) conforms to all of the other stated requirements of this RFT.

“Contractor” means the tenderer as a party to the proposed agreement.

“Deliverables” means the goods and/or services sought under this RFT, as detailed in the Specification.

“Government Businesses” means in general, entities which: a) have some form of public sector ownership; b) are engaged in trading goods and/or services; c) have a large measure of self sufficiency; and d) are subject to Executive control. In this context, the term Government business includes Public Trading Enterprises, State Owned Corporations and General Government Businesses.

“GST” is a goods and services tax and has the same meaning as in the GST Law.

“GST Free Supplies” and **“Input Taxed Supplies”** have the same meaning as in the GST Law.

“GST Law” means any law imposing a GST and includes *A New Tax System (Goods & Services Tax) Act 1999* (Cth) or if that Act does not exist, means any Act imposing, or relating, to a GST and any regulation made under those Acts.

“Late Tender” means a Tender received after the Closing Date and Time for tenders and includes a Tender which is only partly received by the Closing Date and Time.

“Non-Conforming Tender” means a Tender that:

- a) does not conform to the Requirement;
- b) is not in the prescribed form;
- c) does not conform to any one or more of the terms of Part D, including a Tender which seeks to qualify or amend these terms, or
- d) does not conform to any of the other stated requirements of this RFT.

“NSW Government Procurement Policy” means the policy package outlined in this RFT.

“OHS&R” means occupational health, safety and rehabilitation.

“Price” includes a price expressed as a lump sum or a rate per unit of quantity, calculated in accordance with this Part.

“Price Schedule” means the list of Deliverables offered by the tenderer, together with the corresponding pricing information.

“Principal” means the NSW Self Insurance Corporation as principal in the proposed agreement.

“Requirement” means the requirement for goods and/or services to be met by the tenderers and as detailed in the Specification.

“RFT” means the Request for Tender.

“Specification” means the specification of services being Schedule 2 to the Contract Conditions at Part D of this RFT.

“NSW Procurement – Contracting Services” means a business unit of the NSW Department of Commerce representing the Board and authorised to arrange and administer contracts on behalf of the Board.

“Tender” means the offer to supply the Deliverables submitted in response to the RFT.

“Tender Period” means the period from Tender issue to Tender Closing Date and Time.

“Tender Price” means, in respect to each Deliverable offered, the Price nominated in the Price Schedule for that Deliverable.

4. PREPARATION OF TENDER – GENERAL

4.1 Conformity of Tenders

- 4.1.1 The Board seeks Conforming Tenders.
- 4.1.2 Non-Conforming Tenders that do not include a fully completed Part C, in particular those Tenders which do not contain sufficient information to permit a proper evaluation to be conducted, or, in the case of electronic tenders, which cannot be effectively evaluated because the file has become corrupt, may at the Board's discretion be excluded from the tender process without further consideration.
- 4.1.3 Tenderers may, if they choose, submit an Alternative Tender but only in conjunction with a Conforming Tender. Tenderers are encouraged to offer options or solutions that contribute to the Principal's ability to carry out its business in a more cost-effective manner.
- 4.1.4 The Board may assess an Alternative Tender against the selection criteria where submitted with a Conforming Tender.
- 4.1.5 An Alternative Tender must be clearly marked "Alternative Tender".
- 4.1.6 The Board expressly reserves the right to accept, in its discretion, either or both of the following:
 - a) Any Alternative Tender or part of an Alternative Tender, where submitted with a Conforming Tender; and
 - b) Any other Non-Conforming Tender or part of a Non-Conforming Tender that, in the Board's opinion, is substantially a Conforming Tender.

4.2 Prescribed form of Tender

- 4.2.1 The Tender, including any Alternative Tender, must comprise a completed Part C and any attachments to Part C, as may be necessary. Any attachments should be labelled to identify those clauses of the RFT to which they relate.
- 4.2.2 The Tender will be taken to be for the supply of the Requirement on the terms and conditions stated in Part D except to the extent that these are amended by the Tender.

4.3 General instructions for completion of Tenders

- 4.3.1 Prices, responses and other information provided in the Tender are to be in writing and in English.
- 4.3.2 Tenderers must initial and date any alterations to, and deletions from, a hard copy Tender.
- 4.3.3 Tenderers must complete ALL of Part C of this RFT, as directed.
- 4.3.4 Tenderers should notify the Contact Officer in writing on or before the Closing Date and Time if they find any discrepancy, error or omission in this RFT.

4.4 Addenda to this RFT before close of Tenders

- 4.4.1 If, for any reason the Board, at its sole discretion, requires the RFT to be amended before the Closing Date and Closing Time, an Addendum will be issued.

- 4.4.2 In each case, an Addendum becomes part of the RFT.
- 4.4.3 The Board, during the Tender Period may issue Addenda altering the RFT. In such cases, it is the obligation of the tenderer to verify if any Addenda were issued prior to the Closing Date and Time, even if a Tender has already been submitted.
- 4.4.4 Tenderers must check the web site address, <https://tenders.nsw.gov.au/commerce> and download the Addendum.

4.5 Tenderers to inform themselves

- 4.5.1 Before submitting its Tender, a tenderer must:
 - a) Examine all information relevant to the risks and contingencies and other circumstances having an effect on its Tender; and
 - b) Satisfy itself:
 - i that the Tender, including the Tender Price is correct; and
 - ii that it is financially and practically viable for it to enter into and perform the proposed agreement

5. PREPARATION OF TENDER – POLICY REQUIREMENTS

5.1 Procurement Policy – Introduction

5.1.1 Tenderers should read the NSW Government Procurement Policy:

http://www.treasury.nsw.gov.au/_data/assets/pdf_file/0004/3955/tpp04-1.pdf

Other relevant policies and particular policy objectives to be implemented through this procurement are drawn to tenderers' attention in this cl.6. The requirements of this policy are reflected in the selection criteria listed in cl.9.2 and in the responses required from tenderers in Part C.

5.2 NSW Government Code of Practice for Procurement

5.2.1 Tenderers must comply with the NSW Government Code of Practice for Procurement, which is available at:

http://www.treasury.nsw.gov.au/_data/assets/pdf_file/0015/1356/code_of_prac-curr.pdf

5.2.2 Lodgement of a Tender will itself be an acknowledgement and representation by the tenderer that it is aware of the requirements of the Code, that the tenderer will comply with the Code and that the tenderer agrees to provide periodic evidence of compliance with the Code and access to all relevant information to demonstrate compliance for the duration of any agreement that may be awarded.

5.2.3 If a tenderer has failed to comply with the Code, this failure will be taken into account by the Board when considering its Tender or any subsequent Tender and may result in this or any subsequent Tender being passed over without prejudice to any other rights or action or remedies available to the Board.

5.3 Occupational Health Safety & Rehabilitation

5.3.1 Tenderers must comply with the following OHS&R requirements in the performance of any agreement awarded:

- a) The *Occupational Health and Safety Act 2000* (NSW) and any regulation made under this Act, including the OHS Regulation 2001; and
- b) Codes of Practice, approved and issued pursuant to the above Act and or regulations made under the above Act.

5.3.2 Tenderers must ensure that the Tenderer's sub-contractors will comply with the OHS&R requirements listed in 6.3.1 in the performance of any agreement awarded.

5.3.3 Tenderers must indicate compliance with OHS&R obligations in Part C.

6. PREPARATION OF TENDER - PRICE SCHEDULE AND PROJECT PLAN

6.1 Price Schedule

6.1.1 Complete the Price Schedule at Part C1

6.2 Calculating the Tender Price

6.2.1 The Tender Price must:

- a) be in Australian dollars;
- b) cover all costs of performing the agreement, including packing and delivery (if applicable);
- c) include GST if it is payable and all other applicable taxes, duties and charges at the rates applicable at the Closing Date and Time for Tenders;
- d) include all costs associated with the preparation and submission of the Tender;

6.3 Price Variation

6.3.1 The annual fixed fee tendered for core services shall remain fixed for the term of the contract. However, hourly time charge rates tendered for non core services are to be indexed by the year on year movement in the June quarter index number for Australian Original All Sectors (Private and Public) of the Australian Bureau of Statistics Labour Price Index publication (catalogue number 6345.0), on 1 October 2010, 1 October 2011 and 1 October 2012.

6.4 GST Free or Input Taxed Supplies

6.4.1 Tenderers must identify and state the value of any GST Free or Input Taxed Supplies to be made under the agreement.

6.5 Minimum Tender validity period

6.5.1 Tenders must remain open for acceptance for a period of at least six (6) months from the Closing Date and Time for Tenders. Tenderers must state in Part C if their Tenders will remain open for any longer period.

7. SUBMISSION OF TENDERS

7.1 General instructions for submission of Tenders

7.1.1 A Tender must be received by the Closing Date and Time.

7.1.2 A Tender may be submitted by ONE of the following methods:

a) by delivery into the Tender Box:

Department of Commerce.
Tender Box
Level 3 West, McKell Building
2-24 Rawson Place
Sydney.NSW

b) by facsimile to (02) 9372 8974

c) by electronic lodgement through the NSW Department of Commerce, *eTendering* website at:

<https://tenders.nsw.gov.au/commerce>

7.1.3 If a tenderer intends to submit electronically by facsimile or through the NSW Department of Commerce *eTendering* website, the following must be considered:

a) The facsimile machine and NSW Department of Commerce *eTendering* website are at peak use on the morning when Tenders close.

i Due to the limitations of these means of communication it may take longer to lodge a Tender near Closing Date and Time than at other times.

ii When lodging by facsimile or through the NSW Department of Commerce *eTendering* website, it is recommended that a Tender be lodged well in advance of the Closing Date and Time.

iii A tenderer must determine whether lodgement of a Tender by facsimile or through the NSW Department of Commerce *eTendering* website is appropriate.

b) The facsimile machine and NSW Department of Commerce *eTendering* website may experience difficulties in accepting a large Tender. A tender lodged via the NSW Department of Commerce *eTendering* website should ideally be below 7 megabytes (MB) in total file size. Responses totalling more than 7MB may experience difficulties in lodgement. A tenderer is referred to the cl. 8.2 "Electronic Tenders to the NSW Department of Commerce *eTendering* website" for instructions as to compressing electronically submitted Tenders.

i In order to comply with the above paragraph, an electronic Tender may be supported by documents in hard copy or on CD-ROM.

ii Supporting documents, to be submitted in hard copy or on CD-ROM, may be included throughout the RFT. Supporting documents may include, but are not limited to, statutory declarations, certificates and company brochures.

iii If submitting an electronic Tender with supporting documents:

- The complete Tender, including the supporting documents, must be submitted by the Closing Date and Time, and
- Supporting documents should be clearly labelled as “Supporting Documents to RFT 0801676”

7.1.4 If a tenderer provides multiple submissions, the tenderer should clearly state on the front page of the Tender whether it is:

- A “Copy.” A copy must be identical to an earlier or simultaneous submission in every respect.
- A “Variation.” A variation of an earlier Tender will be deemed as superseding a prior submission.
- An “Alternative Tender”.

7.1.5 In the event that a tenderer fails to indicate whether a submission is a Copy or a Variation, the latest Tender received in the NSW Department of Commerce Tender Box will be deemed as the definitive submission.

7.2 Electronic Tenders to the NSW Department of Commerce *eTendering* website

7.2.1 Electronic Tenders. A Tender submitted electronically will be treated in accordance with the *Electronic Transactions Act 2000* (NSW), and given the appropriate level of confidentiality, probity and attention.

7.2.2 A tenderer, by electronically lodging a Tender, is taken to have accepted conditions shown in the “Rules of Tendering” on the NSW Department of Commerce *eTendering* website at <https://tenders.nsw.gov.au/commerce>.

7.2.3 A tenderer must adhere to the following directions:

- A RFT for which electronic lodgement is available through the website, can be identified by the blue “Lodge a Response” link on the web pages for the RFT.
- To lodge a Tender electronically, the files containing the tenderer’s response must be up-loaded through the website to the NSW Government *eTendering* system. Access to the up-loading process is through the blue “Lodge a Response” link, then following the steps and instructions on the NSW Department of Commerce *eTendering* website and any instructions which may have been supplied with the RFT documents, advertisement or invitation.

7.2.4 A tenderer must observe the following format for lodgements:

- An electronically lodged Tender must be lodged in a file format required by the RFT.
- If a tenderer compresses files, it must be possible to decompress them using WinZip. A tenderer must not submit self-extracting (*.exe) zip files.
- A tenderer must not change pre-existing text in the RFT other than to insert the required information
- The file/s name/s must have an extension and not have invalid characters or file names/loading pathnames too long for the system, as detailed on the NSW Department of Commerce *eTendering* website.

7.2.5 Signatures are not required for an electronic tender. A tenderer must ensure that a Tender is authorised by the person or persons who may do so on behalf of the

tenderer and appropriately identify the person and indicate the person's approval of the information communicated.

7.2.6 Electronically submitted Tenders may be made corrupt or incomplete, for example by computer viruses. The Board may decline to consider for acceptance a Tender that cannot be effectively evaluated because it is incomplete or corrupt. Tenderers must note that:

- a) To reduce the likelihood of viruses, a tenderer must not include any macros, applets, or executable code or files in a Tender.
- b) A tenderer should ensure that electronically submitted files are free from viruses by checking the files with an up to date virus-checking program before submission.

7.2.7 If a tenderer experiences any persistent difficulty with the NSW Department of Commerce *eTendering* website in submitting a tender or otherwise, it is encouraged to advise the Contact Officer promptly in writing.

- a) If there is an extended defect or failure of the NSW Department of Commerce *eTendering* website or *eTendering* system and the Board is advised, the tender Closing Date and Time may be extended provided that, in the view of the Board, the RFT process will not be compromised by such an extension.
- b) Tenders must be fully received by the Closing Date and Time.

7.2.8 Tenderers may break down the lodgement of large Tenders into smaller packages if clearly identified eg. package 1 of 3; 2 of 3; 3 of 3.

7.2.9 If a tenderer provides multiple lodgements, the latest Tender received will be the Tender to be evaluated unless the tenderer provides clear directions to whether the lodgement is:

- a) an Alternative Tender,
- b) supporting information
- c) a further part of a Tender that has had previous lodgement

7.3 Custody of Tenders after receipt

7.3.1 All hard copy Tenders submitted (and any accompanying CD-ROMS or floppy disks) are kept in the NSW Department of Commerce Tender Box, which is a locked tender box, until after the Closing Date and Time.

7.3.2 Tenders lodged electronically to the NSW Department of Commerce *eTendering* website will be treated in accordance with the *Electronic Transactions Act 2000* (NSW) and given no lesser level of confidentiality, probity and attention than Tenders lodged by other means.

- a) On receipt of Tenders lodged electronically to the NSW Department of Commerce *eTendering* website, Tenders are encrypted and stored in a secure "electronic tender box".
- b) For reasons of probity and security, NSW Department of Commerce is prevented from interrogating the electronic tender box to ascertain whether tenders have been received or for any reason, until after the Closing Date and Time.

- c) The e-mail receipt that is sent to the Tenderer after successfully up-loading the Tender is the only evidence of Tender lodgement provided.

7.4 Late Tenders

7.4.1 In accordance with the requirements of the NSW Government Code of Tendering, Late Tenders will not be considered except when the Board is satisfied that the integrity and competitiveness of the tendering process will not be comprised.

7.4.2 Normally, Late Tenders will not be considered for acceptance if they are:

- a) hand delivered, including hand delivered by courier; or
- b) received through Australia Post, unless the envelope is clearly postmarked before the Closing Date and Time; or
- c) received through Australia Post with only the tenderer's own franking machine on the envelope; or
- d) received by electronic communication (facsimile or through the NSW Department of Commerce *eTendering* website) and the despatch of the electronic communication of the Tender has occurred after the Closing Date and Time, including where delay may be due to the receiving facsimile or *eTendering* system being engaged, faulty or otherwise inoperative.

7.5 Extension of the Closing Date and Time

7.5.1 The Board may, in its discretion, extend the Closing Date and Time.

8. EVALUATION OF TENDERS

8.1 General

- 8.1.1 Tenders will be assessed against the selection criteria listed below, which are not necessarily exhaustive, in order of significance or to be given equal weight.
- 8.1.2 The selection criteria for this RFT that are not related to price will account for 55% of the total evaluation score. The selection criteria for this RFT that relate to price will account for 45% of the total evaluation score.
- 8.1.3 Information supplied by the tenderer in response to Part C will contribute to the assessment against each criterion. Tenderers are advised to respond clearly to all the selection criteria listed in this RFT.
- 8.1.4 As part of the evaluation process, tenderers may be called upon at their own expense to make a presentation of their proposal to the evaluation committee.
- 8.1.5 Tenderers should note that their premises, facilities and operations may be inspected during the tender evaluation phase. Reasonable notice will be provided to tenderers of any proposed inspection. Inspections will be carried out between the hours of 9:00 a.m. to 5:00 p.m. Monday to Friday.
- 8.1.6 The evaluation committee may also review and take account of any independent performance assessments available from regulators or other clients.
- 8.1.7 At the Board's discretion any omitted detail or variation and/or qualification of any Requirement may be either evaluation and/or scored in accordance with the tenderers statement (or lack thereof) or clarified by the Board as to the intention of the tenderer.

8.2 Selection criteria

- 8.2.1 The selection criteria to be used in the evaluation of Tenders are outlined below. The criteria are not in any particular order and are not necessarily exhaustive or to be given equal weight. Tenderers should note that any terms used in the following selection criteria which are defined in Part B shall have the same meaning as in Part B.
 - a) Annual fixed fee offered for providing reinsurance services and hourly rates for non core services.
 - b) Knowledge, skills, experience and availability of the key personnel proposed to be allocated to SICorp work.
 - c) Demonstrated knowledge of the tenderer and the key personnel proposed of reinsurance markets, the tenderer's access to those markets and the tenderer's capacity to add value to the SICorp reinsurance program.
 - d) Demonstrated effectiveness of the tenderer and the key personnel proposed in providing timely reinsurance advice and specifically advising on the structure of reinsurance programs and the state of the reinsurance market.
 - e) The proven record of the tenderer and the key personnel proposed in the successful, timely and cost effective placement of large reinsurance programs.

- f) Capability of the tenderer to be able to contribute additional resources to meet peak demands, provide specialist support and meet additional requirements.
- g) Demonstrated capability to provide reports and present on results to meet SICorp needs and in a way which is readily understood by non-technical users.
- h) Proven record of fair and open dealings in the market and sound corporate governance arrangements.
- i) Demonstrated understanding of the features of government self insurance schemes and the reinsurance needs of government.
- j) Acceptable level of compliance with contract.
- k) Compliance with NSW Government procurement policies.
- l) Compliance with legislative obligations (including compliance with regulations, standards, codes of practice or other subsidiary instruments) under the following Acts:
 - i *Occupational Health and Safety Act 2000 (NSW)*
 - ii *Workers Compensation Act 1987 (NSW)*
 - iii *Workplace Injury Management and Workers Compensation Act 1998 (NSW)*
 - iv *Industrial Relations Act 1996 (NSW)*
- m) Financial stability of the tenderer.
- n) Appropriate mechanisms for avoiding and dealing with conflicts of interest.

8.3 Variation of Tenders

8.3.1 At any time before the Board accepts any Tender received in response to this RFT, a tenderer may vary its Tender:

- a) by providing the Board with further information by way of explanation or clarification ("provide an explanation");
- b) by correcting a mistake or anomaly ("correct a mistake"), or
- c) by documenting agreed changes to the Tender negotiated under this Part B.

8.3.2 Such a variation may be made either:

- a) at the request of the Board, or
- b) with the consent of the Board at the request of the tenderer, but only if,
 - i in the case of variation requested by the tenderer to provide an explanation or correct a mistake, it appears to the Board reasonable in the circumstances to allow the tenderer to provide the explanation or correct the mistake or anomaly, or
 - ii in the case of variation to document agreed changes, the Board has confirmed that the draft documented changes reflect what has been agreed.

8.3.3 If a Tender is varied to provide an explanation or correct a mistake, the Board will provide all other tenderers whose Tenders have similar characteristics with the opportunity of varying their Tenders in a similar way.

8.3.4 A variation of a Tender will not be permitted if in the Board's view:

- a) it would substantially alter the original Tender; or
- b) in the case of variation to provide an explanation or correct a mistake, it would result in the revising or expanding of a Tender in a way which would give a tenderer an unfair advantage over other tenderers.

8.4 Exchange of information between government agencies

8.4.1 Lodgement of a Tender will itself be an authorisation by the tenderer to the Board to make available, on request, to any NSW government agency information, including but not limited to, information dealing with the tenderer's performance for any agreement that may be awarded. Such information may be used by the recipient NSW Government agency for assessment of suitability for pre-qualification, selective tender lists, expressions of interest or the award of a contract or termination of a contract.

8.4.2 The provision of the information by the Board to any other NSW Government agency is agreed by the tenderer to be a communication falling within section 22(1) of the *Defamation Act 2005* (NSW), and the tenderer shall have no claim against the Board and the State of New South Wales in respect of any matter arising out of the provision or receipt of such information, including any claim for loss to the tenderer arising out of the communication.

8.4.3 In the evaluation of Tenders, the Board may take into account any information about the tenderer that the Board receives from any source.

8.4.4 To avoid doubt, information which may be collected, exchanged and used in accordance with this provision includes "personal information" about the tenderer for the purposes of the *Privacy and Personal Information Protection Act 1998* (NSW). Lodgement of a Tender will be an authorisation by the tenderer to the Board to collect such information from third parties, and to use and exchange such information in accordance with this clause.

8.4.5 The tenderer's attention is drawn to the *Freedom of Information Act 1989* (NSW) which obliges disclosure of details of contracts awarded and may confer rights, subject to the terms of that Act, to access, and to require the correction of, information held by certain agencies.

8.4.6 The successful tenderer's performance of the agreement may be monitored and assessed. Performance assessment reports, including substantiated reports of unsatisfactory performance, can be taken into account by NSW government agencies and may result in future opportunities for NSW government work being restricted or lost.

8.5 Corrupt or unethical conduct

8.5.1 If a tenderer, or any of its officers, employees, agents or sub-contractors is found to have:

- a) offered any inducement or reward to any public servant or employee, agent or subcontractor of the Board, the Client Agency, or the NSW Government in connection with this RFT or the submitted Tender,

- b) engaged in corrupt conduct within the meaning of the *Independent Commission Against Corruption Act 1988* (NSW)
- c) a record or alleged record of unethical behaviour,
- d) not complied with the requirements of the Commerce Business Ethics Statement found in the link below:

<http://www.commerce.nsw.gov.au/About+Commerce/Business+ethics+statement/Business+ethics+statement.htm#commerce>

this may result in the Tender not receiving further consideration.

- 8.5.2 The Board is under no obligation to do so, but may, in its discretion, invite a relevant tenderer to provide written comments within a specified time before the Board excludes the tenderer on this basis.

9. OUTCOMES

9.1 Negotiations before determination of outcome

- 9.1.1 Before making any determination as to the acceptance or rejection of Tenders the Board may, at its discretion, elect to conduct limited negotiation with preferred tenderers or a preferred tenderer, including those who have submitted Alternative Tenders or who have submitted substantially Conforming Tenders, to mutually improve outcomes.

9.2 Acceptance or rejection of Tenders

- 9.2.1 The Board may accept all or any part or parts of any Tender or Tenders, including, in accordance with this Part B, any Alternative Tender or other Non-Conforming Tender.
- 9.2.2 The Board is not bound to accept the lowest or any Tender.
- 9.2.3 The Board may at its absolute discretion request short-listed tenderers to submit a best and final offer at any time prior to the entry into of an agreement by the Principal.
- 9.2.4 If the Board rejects all the Tenders received it may:
- a) invite fresh Tenders based on the same or different criteria (specifications and details contained in Alternative Tenders will not be used as the basis for the calling of new Tenders), or
 - b) conduct post tender negotiations in accordance with this Part B.

9.3 Discontinuance of the Tender process

- 9.3.1 In addition to its rights in relation to acceptance and rejection of Tenders, the Board reserves the right to discontinue the tender process at any point, without making a determination regarding acceptance or rejection of Tenders.
- 9.3.2 The Board will not be liable for any losses suffered by a tenderer as a result of discontinuance of the tender process, including costs of tendering.

9.4 Notification of outcome

- 9.4.1 Following the Board's decision, all tenderers will be notified in writing of the outcome of their Tenders.

9.5 Entry into agreement

- 9.5.1 The Principal may enter into an agreement with a successful tenderer either by letter of acceptance or by execution of a formal agreement in terms of Part D. If the Principal chooses to proceed by way of formal agreement it will indicate in any notification of acceptance that such acceptance will be formalised by execution of a formal agreement.

9.6 Post Tender negotiations in the event all Tenders are rejected

- 9.6.1 If the Board rejects all Tenders on the basis that they are all Non-Conforming Tenders, but considers that conformity with the requirements of this RFT is achievable, it may enter into negotiations with any tenderer with a view to achieving a Conforming Tender and entering into an agreement. If such negotiations are unsuccessful the Board may then enter negotiations with the next most acceptable

tenderer. This process may be repeated with each of the rejected Tenders in order of potential acceptability, however, the Board is not obliged to enter into negotiations with any tenderer.

- 9.6.2 The purpose of the negotiations will be advised by the Board and made clear to the participants before the commencement of negotiation. Negotiations will not seek to play off tenderers' prices against other tenderers' prices.

9.7 Complaints

- 9.7.1 It is the NSW Government's objective to ensure that industry is given every opportunity to win Government contracts. Should any entity feel that it has been unfairly excluded from tendering or unfairly disadvantaged by the conditions in Part D or the Requirement, it is invited to write to:

The Chairperson
State Contracts Control Board
Level 22, McKell Building
2-24 Rawson Place
Sydney NSW 2000

9.8 Disclosure of information concerning tenderers and outcome of the tender process

- 9.8.1 Details of tenderers and the outcome of the tender process (including any contract entered into) will be disclosed in accordance with the NSW Government Tendering Guidelines, available at:

<http://www.dpws.nsw.gov.au/Government+Procurement/Procurement+Policy+Framework/NSW+Government+Tendering+Guidelines.htm>

9.9 Ownership of Tenders

- 9.9.1 All Tenders become the property of the Board on submission.
- 9.9.2 The Board may make copies of the Tenders for any purpose related to this RFT.

9.10 Monitoring of Contractor Performance

- 9.10.1 During the course of the agreement the Contractor's performance will be monitored and assessed.
- 9.10.2 The terms and conditions of the proposed agreement, set out in Part D, detail the performance criteria to be applied in the monitoring of Contractor performance.



**NSW Procurement – Contracting Services is a Business Unit of the
NSW Department of Commerce**

**NSW Procurement – Contracting Services invites this tender for and on
behalf of the NSW Government State Contracts Control Board**

Request for Tender 0801676

Part C Tender Response

Provision of Reinsurance Services for the NSW Self
Insurance Corporation

Closing Date: Wednesday 6 May 2009

Closing Time: 9:30 am Sydney Time

Your Company's Legal Name: _____

Your Company's Trading Name: _____

Your Company's ABN number: _____

Contact Name: _____
<insert name to whom enquiries should be directed>

Contact Phone: _____

*Note: If a tender is not submitted electronically, the tenderer must submit the original tender, plus two (2) copies of the tender. Tenders are to be marked “**Original**”, “**Copy 1**” and “**Copy 2**” accordingly.*

If submitting an electronic Tender, please answer the following and indicate Yes or No below:

- Are you providing supporting documents in hard copy or on CD-ROM?

Yes/No

- Did you clearly mark the supporting documents as “Supporting Documents to RFT 0801676”?

Yes/No

PROVISION OF REINSURANCE SERVICES FOR THE TREASURY MANAGED FUND

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PART C THE TENDER RESPONSE

PART C1 INFORMATION SUPPLIED BY TENDERERS

1. INTRODUCTION AND REQUIREMENTS

Tenderers are to read all documentation and information provided with the Request for Tender (RFT) carefully before preparing responses.

Unless a contrary intention appears, words or terms which are not defined in this document have the same meaning given to them in the Definitions of Terms at Part B of the Request for Tender No. 0801676.

The information provided by the tenderer in response to this Part will be used for the assessment of tenders. Please provide attachments where necessary, clearly labelled and cross-referenced.

References to “you” in this Part means the tenderer and all responses given will be taken to be responses of the tenderer.

References to “Services” in this Part means the services as described in Part D of the RFT.

2. FEES

2.1 Annual Fee

- 2.1.1 Fixed annual fee for Core Services as specified at Section 3 of Schedule 2 (Specification of Services) to the Contract Conditions at Part D of the RFT.

\$_____ GST inclusive

Note this Annual Fee is fixed for the duration of the five (5) year contract and is not subject to price variation.

2.2 Hourly Time Charge Rates

- 2.2.1 List the hourly time charge rates to apply to each of the Key Personnel and otherwise, for each category of Personnel. These hourly rates are to apply for all work done under the agreement in relation to non-core Services. The hourly time charge rates provided are to be inclusive of GST.

	Name of Key Personnel	Title or Level	Hourly Rate \$/hour (incl. GST)
1.			
2.			
3.			
4.			
5.			
6.			

Note (i) Subject to Note (iii) the above rates are to cover all incidental expenditure, such as photocopying, postage and travel costs to and around Sydney. This should be particularly noted for tenderer's personnel located outside of Sydney.

Note (ii) The above hourly rates will be subject to the year on year movement in the June quarter index number for Australian Original All Sectors (Private and Public) of the Australian Bureau of Statistics Labour Price Index publication (catalogue number 6345.0) on 1 October 2010, 1 October 2011 and 1 October 2012.

Note (iii) SICorp may agree to paying travel and accommodation costs where such travel is outside of Sydney at SICorp's request. This will require the prior written approval of SICorp and travel and accommodation costs will be paid

by SICorp in accordance with the pre-set rates for Travel Allowances contained in the Crown Employees (Public Service Conditions of Employment) Reviewed Award 2006, as amended from time to time.

2.3 Settlement Discount

2.3.1 The tendered prices are subject to a settlement discount of:

- a) _____% for payment within 15 working days from the date of receipt of a tax invoice and any supporting documents in accordance with the terms of the agreement.
- b) _____% for payment within _____ working days from the date of receipt of a tax invoice and any supporting documents in accordance with the terms of the agreement.

(Note: If this condition is not completed, the prices tendered will be deemed to be NETT)

2.4 Budgeted Hours and Allocation of Key Personnel

2.4.1 Provide details of the estimated number of hours budgeted for the Core Services and the percentage of these hours to be allocated to each of the Key Personnel

3. TENDERER DETAILS

3.1 Company Details

Company Name	
ABN	
Trading Name	
Registered Business Address	
Registered Postal Address	
Telephone	
Facsimile	
Website	
Key Contact Name	
Direct Telephone	
Direct Facsimile	
Email	

3.2 Ownership Details

- 3.2.1 Tenderers are to provide details of the ownership, that is, Australian, overseas, largest shareholder(s), paid up capital and other relevant details.

4. VALIDITY

- 4.1** The tender remains valid for acceptance for six (6) months from the Closing Date and Time for the lodgement of tenders. Will your tender remain valid for acceptance beyond six (6) months from the Closing Date and Time for the lodgement of tenders?

Yes/No

If **“Yes”** please indicate below the period of time your tender will remain valid.

_____ months

5. CURRENT LEGAL PROCEEDINGS

5.1 Are you or any of your directors or close associates currently, or have you, or have your directors or close associates been at any time within the last five years, the subject of any or any pending:

- legal proceedings, including winding up or bankruptcy proceedings;
- insolvency administrations or investigations; and/or
- investigations by ICAC or any other public body?

Yes/No

If “**Yes**”, please supply full details below.
(attach further details where necessary)

[illegible]

6. REFEREES

6.1 Please provide three (3) names and contact details of previous clients for services comparable to that tendered.

7. CAPACITY TO PERFORM AGREEMENT

7.1 Years in Business

7.1.1 State the number of years you have been in business in the form in which you are presently constituted.

7.2 Resources

7.2.1 State the number of staff currently employed in the provision of similar services.

- a) Full time

- b) Part time

8. SUB-CONTRACTS

8.1 Are any part of the Deliverables to be provided through sub-contract?

Yes/No

If **“Yes”**, please give details of the type of service to be provided and the name, address and ABN of the proposed sub-contractor(s).

8.2 Provide details of proposed sub-contractors' legal status (e.g. company, partnership, individual) and their experience and qualifications in the provision of similar services.

[illegible]

9. ADDENDA TO THIS RFT AFTER ISSUE**9.1** Did you receive any Addenda to this RFT after the issue of this RFT?**Yes/No**

If “**Yes**”, indicate below how many Addenda were received (if any) and confirm that you have read and allowed for the Addenda in your Tender.

Number of Addenda: _____

Confirmation that you have read and allowed for the Addenda in your tender:

Yes/No

10. SELECTION CRITERIA

Tenderers are required to respond individually to each of the selection criteria outlined in the following pages. The information provided will be used in the assessment of tenders. Responses are to be concise and focus on key elements of the tenderer's proposal as it relates to each of the selection criteria. Attention should be paid to the relevance of the information to SICorp and the Treasury Managed Fund.

10.1 Fees

- 10.1.1 *No response is required by tenderers. Information provided at Section 2 of Part C1 will be used to assess this criterion.*

10.2 Describe the knowledge, skills, experience and availability of the key personnel proposed to be allocated to SICORP work.

[illegible]

10.3 Demonstrate the knowledge of the tenderer and the key personnel proposed of reinsurance markets, the access to those markets and the capacity to add value to the SICorp reinsurance program.

[illegible]

10.4 Demonstrate the effectiveness of the tenderer and the key personnel proposed in providing timely reinsurance advice and specifically advising on the structure of reinsurance programs and the state of the reinsurance market.

[illegible]

10.5 Detail the record of the tenderer and the key personnel proposed in the successful, timely and cost effective placement of large reinsurance programs.

[illegible]

10.6 Detail your capability to be able to contribute additional resources to meet peak demands, provide specialist support and meet additional requirements.

[illegible]

10.7 Demonstrate your capability to provide reports and present on results to meet SICorp needs and in a way which is readily understood by non-technical users.

[illegible]

10.8 Demonstrate your record of fair and open dealings in the market and sound corporate governance arrangements.

[illegible]

10.9 Demonstrate your understanding of the features of government self insurance schemes and the reinsurance needs of government.

[illegible]

10.10 Compliance with proposed conditions of agreement

Do you agree to be bound by all the conditions contained in Part D of this RFT?

Yes/No

If **“No”**, provide a full statement of all amendments sought, giving reasons.

[illegible]

10.11 Compliance with NSW Government procurement polices

10.11.1 NSW Government Code of Practice for Procurement and NSW Government Procurement Policy

- a) Have you read the NSW Government Code of Practice for Procurement (“Code”) and the NSW Government Procurement Policy and taken them into consideration in preparing and submitting your Tender?

Yes/No

- b) Will you maintain compliance with the Code for the purposes of the agreement, advise the Board of any breaches of the Code for the duration of the agreement and provide evidence of compliance when requested by the Board during the course of the agreement?

Yes/No

10.11.2 Occupational Health Safety and Rehabilitation

- a) Do you currently comply with you OHS&R statutory obligations and will you continue to do so including obligations relating to performance monitoring and sub-contractor performance for the duration of any agreement awarded?

Yes/No

If “**No**”, provide details below.

10.12 Demonstrated commitment to and capacity to comply with legislative obligations (including compliance with regulations, standards, codes and practice or other subsidiary instruments) under the following Acts:

a) *Occupational Health and Safety Act 2000 (NSW)*

b) *Workers Compensation Act 1987 (NSW)*

c) *Workplace Injury Management and Workers Compensation Act 1998 (NSW)*

d) *Industrial Relations Act 1996 (NSW)*

10.13 Financial stability of the tenderer

Tenderers are to provide a copy of the most recent available set of audited financial statements for the tendering entity and to provide the net tangible assets of the tendering entity for the past five (5) financial years.

Tenderers are to demonstrate the financial stability and capacity for the tenderer to satisfactorily fulfil the agreement over the full term of the agreement.

Note: responses to this section must relate to the legal entity that has submitted the tender and is proposed to enter into the agreement. If the tender wishes to cite financial information relating to a parent company or group of companies, the parent or group will be required to be a party to the agreement and/or provide a cross guarantee.

[illegible]

10.14 Appropriate mechanisms for avoiding and dealing with conflicts of interest.

10.14.1 Please disclose any present or potential conflict of interest

10.14.2 Please describe the mechanisms in place for avoiding or dealing with conflicts of interest as they arise.

PART C2 ACKNOWLEDGEMENT AND CONFIRMATION OF TENDER

Note to tenderers: If submitting a hard copy Tender, execute cl. 11.1. If submitting an electronic Tender, only complete cl. 11.2.

- 11.** Lodgement of a Tender will itself be an acknowledgement and representation by you that you are aware of the requirements of the Codes; that you will comply with the Codes; and that you agree to report to the Board any breaches of the Codes for the duration of the agreement.

- 11.1** I affirm that this is my Tender to supply the Deliverables sought in the RFT at the prices tendered, and in accordance with the conditions of the RFT except as expressly amended in my Tender, and that the information given in my Tender is correct:

Signature of tenderer (if an individual)

OR

Signature of authorised officer of tenderer

OR

Signature of partner completing tender on behalf of partnership

- 11.2** If submitting an electronic Tender, do you acknowledge and accept that electronic submission in accordance with the requirements of the RFT and any conditions of the Department of Commerce tenders website is sufficient to verify and affirm that this is your Tender to supply the Deliverables at the prices tendered on the conditions contained in Part C, except as expressly amended in your Tender and that the information contained in your Tender is correct?

Note that such acknowledgement and acceptance, by stating "Yes", is a necessary prerequisite to consideration of your Tender.

Yes/No

Insert name and title



**NSW Procurement – Contracting Services is a Business Unit of the
NSW Department of Commerce**

PART D – CONDITIONS OF CONTRACT

**Contract Number 0801676
PROVISION OF REINSURANCE SERVICES
FOR THE NSW SELF INSURANCE
CORPORATION**

**I V KNIGHT
Crown Solicitor
60-70 Elizabeth Street
SYDNEY NSW 2000**

**Tel: (02) 9224-5056
Fax: (02) 9224-5055
Ref: 200802870
T2 Amalia Stanizzo/Emma Essey**

PROVISION OF REINSURANCE SERVICES FOR THE TREASURY MANAGED FUND

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SCHEDULE 1	AGREEMENT DETAILS
SCHEDULE 2	SPECIFICATION OF SERVICES
SCHEDULE 3	CONFIDENTIALITY DEED
SCHEDULE 4	STATUTORY DECLARATION BY REINSURANCE SERVICE PROVIDERS

Reinsurance Services Agreement

THIS REINSURANCE SERVICE AGREEMENT is made on _____ of 2009.

Between

1. The NSW Self Insurance Corporation as described in Item 1 of the Agreement Details ("**SI**Corp"); and
2. The Reinsurance Services Provider as described in Item 2 of the Agreement Details ("**RSP**").

Background

- A. The NSW Self Insurance Corporation ("**SI**Corp") is constituted under the *NSW Self Insurance Corporation Act 2004* (NSW) and is a statutory body which holds and is responsible for all New South Wales government insurance assets and liabilities.
- B. SI Corp has the following functions with respect to Government managed fund schemes:
 - (a) to operate one or more Government managed fund schemes (including the function of establishing, reorganising, amalgamating, dividing or winding up such schemes);
 - (b) to enter into agreements or arrangements with other persons to provide services (as agents or otherwise) in relation to the operation of any Government managed fund scheme;
 - (c) to enter into insurance or other agreements or arrangements to cover the liabilities to which a Government managed fund scheme applies;
 - (d) to act for the State or an authority of the State in dealing with claims under a Government managed fund scheme (including the recovery of amounts payable to the State or an authority of the State in connection with such claims)
- C. The Treasury Managed Fund ("**TMF**") is a NSW Government managed fund scheme. The TMF covers the asset and liability risk of participating Government agencies ("**Agencies**"). The Rail Scheme, Governmental Workers Compensation Account ("**Workers Fund**"), Pre Managed Fund ("**Solvency**") and Transport Accident Compensation ("**TAC**") Fund are run-off schemes also operated by SI Corp.
- D. The Contract of Coverage dictates the New South Wales Government's response to Agencies when loss or damage to the assets and liability risk of Agencies is suffered.

- E. SICorp, through NSW Treasury and with the assistance of the NSW Government State Contracts Control Board, has issued a Tender Request for the provision of reinsurance services.
- F. The RSP has responded to this Tender Request and has been selected to provide the Services.
- G. The RSP agrees to provide, and SICorp agrees to procure, the Services in accordance with the terms of this Agreement.'

Operative provisions

1. Definitions and interpretation

- 1.1 In this Agreement, unless the context otherwise requires:

“Actuarial and Information Services Provider” means any persons appointed from time to time by SICorp to provide actuarial and information services including peer review, related advice and consultancy services;

“Agencies” means budget sector entities and agencies of the Government of New South Wales, and participating non budget sector entities, instrumentalities and agencies of the Government of New South Wales, that are named from time to time in the schedule held by SICorp;

“Agreement” means this Agreement, which includes the Schedules and Annexures that are incorporated into this Agreement by reference, (as amended from time to time in accordance with the terms of this Agreement), the Tender Request and the Tender Response;

“Agreement Details” means the details specified in Schedule 1;

“Annexure” means an annexure to this Agreement;

“Business Days” means a day which banks are generally open for normal business in Sydney and excludes Saturdays, Sundays and public holidays;

“Claims Manager” means any person appointed from time to time by SICorp to manage a Portfolio or a Scheme pursuant to a Claims Management Agreement as amended from time to time;

“Commencement Date” means the date specified in Item 3 in the Agreement Details;

“Commission” includes any brokerage, commission or other amount (whether in cash or otherwise) received in connection with or as a consequence of arranging

any reinsurance contract or otherwise in performance of the Services under this Agreement;

“Confidential Information” means any information and all other knowledge at any time disclosed (whether in writing, orally or in any other form) to the RSP by SICorp, any Agency or acquired by the RSP in performing the Services (whether disclosed before or after the execution of this Agreement) which:

- (a) is by its nature confidential;
- (b) is designated, or marked, or stipulated as confidential;
- (c) is treated by SICorp or the Agency as confidential;
- (d) the RSP knows or ought to know is confidential;

and includes but is in no way limited to:

- (e) Intellectual Property of SICorp;
- (f) information relating to the management of the TMF or any Scheme;
- (g) SICorp Data;
- (h) SICorp's Material;
- (i) New Contract Material; and
- (j) any Material which relates to any of the Agencies;

but does not include information which:

- (k) is or becomes public knowledge other than by breach of this Agreement;
- (l) is in the lawful possession of the RSP without restriction in relation to disclosure before the date of receipt of the information from SICorp or a third party;
- (m) has been developed or acquired by the RSP independently of this Agreement;
- (n) is ascertained through independent enquiries; or
- (o) is required to be disclosed pursuant to Laws, legal process or a regulatory authority.

“Contract Material” means:

- (a) New Contract Material; and

(b) any Existing Contract Material incorporated in the New Contract Material;

“Contract of Coverage” means the arrangements which dictate the New South Wales Government's response to Agencies when loss or damage to the assets and liability risk of Agencies is suffered as amended from time to time, a copy of which may be obtained from www.sicorp.nsw.gov.au;

“Core Services” means the services set out in Section 3 of Schedule 2 (Specification for Services);

“Crown” means the Crown in right of the State of New South Wales and includes its officers, employees and agents;

Existing Contract Material means:

- (a) any Material which exists at the Commencement Date; or
- (b) any Material created, written or otherwise brought into existence after the Commencement Date that was created independently of this Agreement;

and used by, or on behalf of the RSP in the performance of the Services and includes the RSP's Material;

“Fees” means the fees and payments specified in Item 6 of the Agreement Details;

“GST Law” means *A New Tax System (Goods and Services Tax) Act 1999* (Cth), related Acts which constitute the Commonwealth taxation reform, any delegated legislation made pursuant to such legislation and any ruling or advice given or published by the Commonwealth Commissioner for Taxation for the purpose of section 37 of the *Tax Administration Act 1953* (Cth);

“Health Information” has the same meaning given to this term in the *Health Records and Information Privacy Act 2002* (NSW).

“Health Privacy Principle” has the same meaning given to this term in the *Health Records and Information Privacy Act 2002* (NSW).

“Information Privacy Principle” means any or all of:

- (a) the Information Protection Principles contained in sections 8 to 19 of the *Privacy and Personal Information Protection Act 1998* (NSW); and
- (b) the Information Privacy Principles contained in section 14 of the *Privacy Act 1988* (Cth);

“Intellectual Property Rights” includes any rights in or relating to any invention, discovery or new process (whether patentable or not), patents, know-how, copyright,

rights in databases, design, semi-conductor or circuit layout rights, trade mark, trade, 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;

“Interference with Privacy” means:

- (a) an interference with the privacy of an individual as defined in section 13 of the *Privacy Act 1988* (Cth); or
- (b) a breach of any requirement of the Privacy Legislation;

“Key Personnel” means the Personnel of the RSP specified in Item 8 of the Agreement Details, required to undertake the provision of the Services or such other Personnel as SICorp agrees in writing, to perform the Services;

“Laws” means:

- (a) any applicable statute, regulation, by-law, ordinance or subordinate legislation in force from time to time in Australia, whether made by a State, Territory, Commonwealth, or local government, and includes common law and the principles of equity as applicable from time to time; and
- (b) any relevant industry standards or codes of conduct (whether mandatory or voluntary in their application);

“Material” includes information, documentation, software or data, whether or not in a material form and however stored;

“Month” means a calendar month;

“Moral Rights” means the right of integrity of authorship, the right of attribution of authorship and the right not to have authorship falsely attributed, more particularly conferred by the *Copyright Act 1968* (Cth), and rights of a similar nature anywhere in the world whether existing at the Commencement Date or which may come into existence on or after the Commencement Date;

“New Contract Material” means any Material created, written or otherwise brought into existence by or on behalf of the RSP in the course of performing this Agreement in which subsists newly created Intellectual Property Rights including:

- (a) reports, analysis, computer models, software, data, data files, data sets, data models and data model definitions, information tools, procedures, documentation, interfaces, other software scripts, macros, codes and programs, specifications, inventions, formulae, discovery, improvements, ideas, designs and/or techniques; and

- (b) any enhancements, modifications or adaptations made to SICorp's Materials and/or the RSP's Materials;

"Non Core Services" are all Services excluding Transition-In Services, Core Services and Transition-Out Services as may be agreed from time to time in writing between SICorp and the RSP;

"Payment Plan" means the timetable for payment described in or otherwise incorporated into this Agreement by reference in the Agreement Details;

"Personal Information" has the same meaning as in the *Privacy and Personal Information Protection Act 1998* (NSW);

"Personnel" of a party means:

- (a) officers, employees, agents and contractors of that party; and
- (b) in the case of the RSP includes Key Personnel and Sub-Contractors;

and where the context requires, for an Agency means the officers, employees, agents and contractors of the Agency;

"Post Renewal Report" means the report referred to in section 3 of Schedule 2 (Specification of Services) to be provided by the RSP in relation to placement of the annual TMF Reinsurance program;

"Privacy Legislation" means:

- (a) the *Privacy Act 1988* (Cth);
- (b) the *Privacy and Personal Information Protection Act 1998* (NSW);
- (c) the *Health Records and Information Privacy Act 2002* (NSW);
- (d) any legislation (to the extent that such legislation applies to SICorp, the Crown, the RSP or an Agency, or any other recipient of the Protected Information) from time to time in force or applying in New South Wales affecting privacy, Personal Information, Health Information or the collection, handling, storage, processing, use or disclosure of personal data; and
- (e) any ancillary rules, guidelines, orders, directions, directives, codes of conduct or other instruments made or issued thereunder, as amended from time to time;

“Protected Information” means:

- (a) any personal information (including Personal Information, Health Information, tax file numbers, credit information files or credit reports or any other information relating to an individual), whether in a written, oral or other form, in respect of which the RSP, SICorp or an Agency:
 - (i) has a duty not to engage in any act or practice which constitutes; or
 - (ii) is required to undertake a specified act or practice, or to provide specified protection, failure to do or provide which is;

an Interference with Privacy; or

- (b) any information which SICorp or any Agency must at law or in equity keep confidential;

“Reinsurance Premium” means any amount charged to SICorp by a reinsurer under reinsurance policies including stamp duties and any other statutory charges but not including any Fee charged by the RSP or any Commission;

“Risk Management Services Provider” means any person appointed from time to time by SICorp to provide risk management services;

“RSP’s Insolvency” means any of the following:

- (a) insolvency;
- (b) the RSP indicates that it does not have the resources to perform this Agreement or any agreement;
- (c) an application for winding up is made and not stayed within ten Business Days;
- (d) a winding up order is made;
- (e) a controller, administrator, receiver and manager, provisional liquidator or liquidator is appointed;
- (f) a mortgagee enters the possession of any property of the RSP;
- (g) notice is given of a meeting of creditors for the purpose of a deed of arrangement;
- (h) any actions of a similar effect are taken; or

- (i) where the RSP is a wholly owned subsidiary of a parent or holding company, and the parent or holding company becomes subject to paragraphs (a)-(h) of this provision;

“RSP’s Material” means any Material:

- (a) owned by, or licensed to, the RSP before the Commencement Date;
- (b) created, written or otherwise brought into existence by or on behalf of the RSP after the Commencement Date that was created independently of this Agreement; and/or
- (c) licensed to the RSP after the Commencement Date independently of this Agreement or for purposes originally unconnected with this Agreement;

and used by, or on behalf of, the RSP in the performance of the Services;

“RSP’s Representative” means the person named as such in Item 4 the Agreement Details or such other person as the RSP may, from time to time, nominate in writing.

“Schedule” means a schedule to this Agreement;

"Scheme" means a New South Wales Government managed fund scheme within the meaning of the *NSW Self Insurance Corporation Act 2004* (NSW) but does not include the TMF;

“Services” means the services as specified or referred to in Schedule 2 (Specification for Services) and includes:

- (a) Transition-In Services;
- (b) Core Services;
- (c) Non Core Services; and
- (d) Transition-Out Services;

"Settlement Discount" means the percentage discount applicable to the Fees (or any part thereof) for payment of the Fees (or any part thereof) within the specified timeframe set out in Item 6 of the Agreement Details:

"SICorp Data" means all data and information, (in whatever form and however stored or represented) which comes into the possession or control of the RSP before the Commencement Date and/or during the provision of the Services, and which relates to, or is created by or for, SICorp or an Agency and includes:

- (a) any database in which such data or information is contained;
- (b) any products resulting from the use, processing or manipulation of such data or information, including where created by or on behalf of the RSP; and
- (c) any and all copies of the above; and

for the avoidance of doubt, SICorp Data includes data and information relating to the operation, facilities, customers, Personnel, assets and liabilities, finances, transactions, policies or processes of SICorp or an Agency;

"SICorp's Material" means:

- (a) any Material owned by or licensed to SICorp, whether it exists before, at or after the Commencement Date; and
- (b) the SICorp Data;

"SICorp's Objectives" include (not expressed in any order of importance or precedence):

- (a) minimising State exposures;
- (b) reducing claims costs and budget impacts;
- (c) optimising accountability for Agencies;
- (d) efficient and cost effective delivery of services; and
- (e) maintaining full funding of liabilities;

"SICorp's Representative" means the person for the time being holding or performing the duties of SICorp as authorised by clause 7 (Management of the Services) and as specified in Item 5 of the Agreement Details;

"State Records" has the same meaning given to this term in the *State Records Act 1998* (NSW).

"Sub-Contractor" means a person engaged by the RSP in any capacity whatsoever, either directly or through another person, to provide any part or all of the Services.

"Substantial Breach" means a substantial breach of a term of this Agreement by the RSP and includes, but is not limited to, any breach of the following clauses (which will be taken in each case to be a substantial breach of this Agreement):

- (a) clause 6 (RSP's Warranties);

- (b) clause 12 (Compliance with Laws);
- (c) clause 13 (Conflict of Interest);
- (d) clause 14 (Intellectual Property);
- (e) clause 18 (Insurance);
- (f) clause 19 (Confidential Information); and
- (g) clause 20 (SICorp's Material);

“Tender Request” means the request for tender number 0801676 issued on 23 March 2009 by the Department of Commerce through State Procurement Contracting Services for and on behalf of the NSW Government State Contracts Control Board for reinsurance services for SICorp as amended, varied or augmented;

“Tender Response” means the response dated dd/mm/yyyy submitted by the RSP in answer to the Tender Request;

“Term” means the duration of this Agreement as from the Commencement Date to the date specified in Item 3 of the Agreement Details or until the date on which this Agreement is terminated, whichever occurs first;

“TMF” means the Treasury Managed Fund;

“TMF Reinsurance Program” means the TMF reinsurance program for a financial year determined and approved in accordance with Schedule 2 (Specification of Services);

“Transition-In Services” means the services to be provided by the RSP during the Term as specified in Schedule 2 (Specification of Services) or as otherwise agreed between SICorp and the RSP with respect to the effective and orderly transfer of responsibility for the management and provision of the services to be transitioned to the RSP;

“Transition-Out Period” means:

- (a) the period commencing three Months prior to the expiry of the Term in accordance with clause 2 (Term) and ending three Months from the last day of the Term, or such other period as the parties may agree in writing; or
- (b) the period commencing on the date on which this Agreement is terminated pursuant to clause 22 (Termination) and ending on the date three Months after the date of that termination unless SICorp advises the RSP in writing that it does not require the RSP to provide Transition-Out Services;

“Transition-Out Services” means the services necessary, to be provided by the RSP, for efficient and effective transfer of responsibility for the provision of the Services (or part of them) from the RSP to SICorp, or a third party designated by SICorp, and all matters related to or connected with SICorp (or a third party) assuming control of the Services, and includes without limitation those services specified in Schedule 2 (Specification of Services) and in accordance with clause 25 (Transition-Out);

1.2 Except where the context otherwise requires:

- (a) a reference to a Law will be deemed to extend to include a reference to all statutes, regulations, ordinances or by-laws amending, consolidating or replacing that Law from time to time;
- (b) a reference to a document (including this Agreement) includes any variation or replacement of it;
- (c) 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 by any other person or body in its place, shall be taken to refer to the person or body established or constituted in its place by which its said functions have become exercisable;
- (d) where any time limit pursuant to this Agreement falls on a non-Business Day then that time limit shall be deemed to have expired on the next Business Day;
- (e) if a period of time dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (f) a day is to be interpreted as the period of time commencing at midnight and ending twenty four hours later;
- (g) where a word or phrase is given a defined meaning in this Agreement, any other part of speech or other grammatical form in respect of such word or phrase shall unless the context otherwise requires have a corresponding meaning;
- (h) the words "including", "for example" or "such as" when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind;
- (i) no rule of construction operates to the detriment of a party only because that party was responsible for the preparation of this Agreement or any part of it;

- (j) where there occurs a reference to the doing of anything by SICorp including giving any notice, consent, direction or waiver, this may be done by any duly authorised officer of SICorp;
- (k) where the RSP is comprised of more than one person, each obligation of the RSP will bind those persons jointly and severally and will be enforceable against them jointly and severally;
- (l) the headings and index in this Agreement are for convenience only and do not affect the interpretation of this Agreement;
- (m) a reference to dollars or \$ means Australian dollars;
- (n) where SICorp is required to act reasonably in the performance of this Agreement, that shall be read as a requirement to act as would a party in the position of SICorp which is acting reasonably in its own best interests;
- (o) 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;
- (p) persons will be taken to include any individual, a firm, a body corporate, a partnership, a joint venture, an unincorporated body or association and any government, semi-government, administrative, fiscal, department, authority, agency or entity;
- (q) the singular includes the plural and vice versa and words importing gender include other genders;
- (r) a reference to anything (including any amount) is a reference to the whole or each part of it; and
- (s) a reference to a particular person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns.

1.3 If there is a conflict between a provision of the Agreement, then the documents shall be given the following order of priority such that the conflicting provision in the document lower in the order of priority shall be read down or severed to the extent necessary to resolve the conflict:

- (t) the terms and conditions of this Agreement;
- (u) the Attachments to this Agreement in the following order of priority;

- (i) Schedule 1 (Agreement Details);
- (ii) Schedule 2 (Specification of Services);
- (iii) Schedule 3 (Confidentiality Deed); and
- (iv) Schedule 4 (Statutory Declaration);
- (v) the Tender Request; and
- (w) the Tender Response;

and where two documents in this list have the same priority then priority shall be given to that document later in time.

2. Term

- 2.1 This Agreement commences on the Commencement Date and will continue for the Term.

3. SICorp's Objectives

- 3.1 The RSP acknowledges that SICorp is engaging the RSP to provide the Services to assist SICorp in fulfilling SICorp's Objectives.
- 3.2 The RSP will perform the Services in accordance with SICorp's Objectives and without limitation will, together with its Personnel, demonstrate the highest possible ethical standards in its, or their, dealings and conduct in the provision of the Services under this Agreement and work and communicate effectively with and maintain the confidence of all stakeholders affected by this Agreement, including Agencies, at all times during the Term and the Transition-Out Period.
- 3.3 The parties agree that the provision of the Services in accordance with SICorp's Objectives is only one requirement of the Agreement, and the nature and extent of the RSP's obligations are not to be construed or interpreted solely by reference to SICorp's Objectives or the extent of their achievement.
- 3.4 Notwithstanding clause 3.3, the parties agree that the RSP's obligations under this Agreement will be interpreted, to the greatest extent possible, consistently with SICorp's Objectives. Where there is any ambiguity in the interpretation of any of the RSP's obligations, the interpretation that furthers SICorp's Objectives will be preferred to any other interpretation.

4. Provision of Services

- 4.1 SICorp engages the RSP to provide the Services on a non-exclusive basis and on the terms and conditions of this Agreement. The RSP accepts that engagement on the terms and conditions of this Agreement.
- 4.2 Without limiting the generality of clause 4.1, the RSP must perform the Services:
- (a) in an efficient and cost effective manner with the degree of care, skill and competency expected of a reinsurance broker acting as an expert in the delivery of the Services including use of the latest technology and techniques available to provide the Services. The use of such technology and techniques is to be done in consultation with SICorp to ensure full compliance and compatibility with SICorp's technologies and systems;
 - (b) in a timely manner, completing each part of the Services within any timeframe set out for that part of the Services in Schedule 2 (Specification of Services) or as otherwise agreed between SICorp and the RSP;
 - (c) in accordance with any directions given by SICorp from time to time.
- 4.3 For the purpose of this clause 4 (Provision of Services), the word "direction" includes any agreement, approval, authorisation, certificate, decision, demand, determination, direction, explanation, instruction, notice, notification, order, permission, rejection, request or requirement which SICorp or SICorp's Representative may make, give or issue pursuant to the provisions of this Agreement.
- 4.4 SICorp may, in writing, request the RSP to vary the Services. The RSP must respond within a reasonable time and in any event no later than ten Business Days and provide a quotation in accordance with clause 4.5.
- 4.5 Before approving a variation requested under clause 4.4, SICorp must have been provided by the RSP with a written quotation of the time, cost and programming effects of the proposed variation. The quotation must be based on the hourly rates specified for Non Core Services set out in item 6 of the Agreement Details. On receipt of the quotation, SICorp, if it wishes the variation to proceed, must approve the variation in writing to the RSP.
- 4.6 Fees for varied Services will be in accordance with the quotation supplied by the RSP under clause 4.5 or as otherwise agreed in writing between the parties.
- 4.7 The RSP will ensure that all documentation, in whatever form, prepared in the course of provision of the Services including reports and presentations comply with

NSW Treasury style guides, as advised to the RSP from time to time, unless otherwise agreed by SICorp.

5. Knowledge of SICorp's Requirements and Co-operation

5.1 The RSP must:

- (a) use all reasonable efforts to inform itself of the ongoing requirements of SICorp in performing the Services; and
- (b) have, or develop, and maintain an understanding of the needs of the Agencies and an understanding of the particular circumstances, requirements and demands of the New South Wales Government and the Agencies.

6. RSP's Warranties

6.1 The RSP warrants on a continuing basis that:

- (a) it will provide the Services in accordance with the requirements of the Agreement (including without limitation any timeframes set out for specific tasks as specified in Schedule 2 (Specification of Services) or as agreed to with SICorp from time to time) and with due care and skill;
- (b) it will comply with all statements or representations as to the provision of the Services in the Tender Response;
- (c) the information contained in the Tender Response as to the structure, viability, reliability, insurance cover, capacity, experience and expertise of the RSP, the Personnel and any Sub-Contractors is complete and accurate and is not misleading in any material respect by omission or otherwise;
- (d) it will not enter into any arrangement that impedes or is likely to impede its performance of the Services in a manner, and to a standard, that is satisfactory to SICorp without first obtaining SICorp's consent;
- (e) the performance of the Services or the use of the RSP's Material and/or the Contract Material will not infringe the Intellectual Property Rights of any third party;
- (f) it is capable of validly making the assignments and granting the licences in clause 14 (Intellectual Property); and
- (g) the Services will conform to any applicable Laws.

7. Management of the Services

- 7.1 SICorp's Representative is the authorised representative of SICorp for all purposes connected with this Agreement. Any notice, information, instruction or other communication given to SICorp's Representative is deemed to have been given to SICorp if given in accordance with clause 28 (Notices). SICorp may change SICorp's Representative at any time. SICorp's Representative may delegate part or all of the day to day management and administration of the Services to another person.
- 7.2 The RSP's Representative is the authorised representative of the RSP for all purposes connected to this Agreement. Any notice, information, instruction or other communication given to the RSP's Representative is deemed to have been given to the RSP if given in accordance with clause 28 (Notices).
- 7.3 SICorp's Representative and the RSP's Representative are responsible for communicating with each other on all matters relating to the day to day management and administration of the Services.
- 7.4 SICorp's Representative and the RSP's Representative must closely and continuously liaise with each other in relation to the provision of the Services. Any matters raised by the RSP are to be directed to SICorp's Representative, unless otherwise directed in relation to a specific task or project.
- 7.5 The RSP will co-operate and liaise with other service providers who provide professional services to SICorp, including:
- (a) any persons who provided reinsurance services to SICorp immediately prior to the Commencement Date;
 - (b) any persons appointed by SICorp to provide reinsurance services following expiration of the Term or termination of this Agreement;
 - (c) the Claims Managers, the Actuarial and Information Services Providers and the Risk Management Services Provider; and
 - (d) such other third parties nominated by SICorp from time to time.
- 7.6 The RSP will co-operate and liaise as necessary with SICorp and the Agencies in the provision of the Services.

8. SICorp's Responsibilities

- 8.1 SICorp will as soon as practicable, or as required by this Agreement:

- (a) make or arrange to make available to the RSP all relevant instructions, information, documentation or data or any other Material as is necessary for the provision of the Services; and
- (b) provide assistance to the RSP, as reasonably required, so that the RSP may competently perform its duties under this Agreement.

8.2 The RSP agrees and acknowledges that SICorp's provision of information and assistance in accordance with clause 8.1 is by way of assistance only and cannot in any way be deemed to give rise to a duty of care on the part of SICorp. The RSP must rely on its own professional and personal expertise in providing the Services.

9. Fees and Premiums

9.1 SICorp will, in consideration of the RSP performing its obligations in accordance with this Agreement, pay to the RSP the Fees calculated and paid in accordance with Item 6 of the Agreement Details and subject to the terms of this clause 9 (Fees and Premiums) and the RSP's continuing compliance with its terms.

9.2 Subject to clause 9.11, SICorp will make payment of the Fees, as and when they are due and payable, within twenty Business Days of receipt of:

- (a) a valid tax invoice for that amount;
- (b) a statutory declaration in the form of Part A of Schedule 4 (Statutory Declaration) and submission of the Post Renewal Report; and
- (c) if requested, a statutory declaration in compliance with the requirements of clause 16.2 (Payment of Wages and Allowance).

9.3 A valid tax invoice complies with the requirement of GST Law.

Other matters

9.4 SICorp will not reimburse the RSP for any out of pocket expenses incurred by the RSP or any of its Personnel in the course of performing the Services including photocopying, facsimile and telephone charges, travel, accommodation, meals and parking unless SICorp has given its prior written approval.

9.5 Where SICorp has given its prior written approval to the reimbursement of travel, accommodation, meals and expenses this will be calculated and paid in accordance with the Crown Employees (Public Service Conditions of Employment) Reviewed Award 2006.

- 9.6 The RSP acknowledges that any payment made to it by SICorp will not constitute an admission by SICorp that the Services have been properly performed or a waiver or release of the RSP's obligations under this Agreement.

Reinsurance Premiums

- 9.7 The RSP will invoice SICorp for Reinsurance Premiums payable by SICorp, in accordance with the terms of this Agreement.
- 9.8 The invoices must be addressed to SICorp and where it relates to Reinsurance Premiums for policies with reinsurers registered in Australia the invoices must be in the form of a valid tax invoice that complies with the requirements of the GST Law. The invoices must be accompanied by copies of the relevant cover notes and placement slips and a statutory declaration in the form of Part B of Schedule 4 (Statutory Declarations).
- 9.9 The RSP will not accept and will ensure that no third party receives any Commission.
- 9.10 The RSP will negotiate and arrange, on behalf of SICorp, for recipient created tax invoice agreements between reinsurers registered in Australia and SICorp as and when required in accordance with the requirements of Schedule 2 (Specification of Services) and will issue recipient created tax invoices in accordance with any such agreements as and when necessary.
- 9.11 If a Settlement Discount is applicable, then SICorp may apply the relevant Settlement Discount to the amount invoiced.

10. Taxes and GST

- 10.1 Other than as provided in this Agreement, all taxes, duties and charges imposed or levied in connection with the performance of this Agreement will be borne by the RSP.
- 10.2 In this clause 10 (Taxes and GST), words or expressions which are not defined in this Agreement but which have a defined meaning in the GST Law have the same meaning as in the GST Law.
- 10.3 Unless otherwise expressly stated, all prices or other sums or consideration to be provided under this Agreement are exclusive of GST.
- 10.4 If GST is payable by a supplier or by the representative member of a GST group of which the supplier is a member, in any supply made under or in connection with this Agreement, the consideration for supply but for the application of this clause 10.4

("GST exclusive consideration") is increased by an amount equal to the GST exclusive consideration multiplied by the rate of GST prevailing at the time the supply is made.

- 10.5 Subject to clause 10.6, the recipient of a supply must pay the amount referred to in clause 10.4 in addition to, and at the same time that, the consideration for the supply is to be provided under this Agreement.
- 10.6 A party need not make a payment for a taxable supply made under or in connection with this Agreement until it receives a tax invoice for the supply to which the payment relates.
- 10.7 If an adjustment event arises in respect of a taxable supply made by a supplier under this Agreement, the amount payable by the recipient of the supply under clause 10.4 will be recalculated to reflect the adjustment event and a payment will be made by the recipient to the supplier or by the supplier to the recipient as the case requires.
- 10.8 Where a party is required under this Agreement to pay or reimburse an expense or outgoing of another party, the amount to be paid or reimbursed by the first party will be the sum of:
- (a) the amount of the expense or outgoing less any input tax credits in respect of the expense or outgoing to which the other party, or to which the representative member for a GST group of which the other party is a member, is entitled; and
 - (b) if the payment or reimbursement is subject to GST, an amount payable in accordance with clause 10.4.
- 10.9 The RSP warrants that it is registered for GST purposes as at the Commencement Date and will continue to be so for the Term and the Transition-Out Period.

11. Performance Monitoring

- 11.1 The RSP must provide:
- (a) a Post Renewal Report, after it has placed, or is deemed to have placed, the annual TMF Reinsurance Program in accordance with Schedule 2 (Specification of Services); and
 - (b) such other reports, and within such timeframes, as are reasonably required by SICorp to assess the provision of the Services and to meet its reporting and compliance obligations.

- 11.2 For the purpose of reviewing the provision of the Services and to evaluate the RSP's performance of its obligations under this Agreement, SICorp's Representative and the RSP's Representative will meet from time to time and when required by SICorp.
- 11.3 The RSP must ensure that SICorp and its Personnel (including SICorp's Representative) or agents have reasonable access at all times to the RSP's premises, Personnel, systems, documents and records to inspect, audit and review the processes and methods of the RSP to ensure compliance with this Agreement.

12. Compliance with Laws

General obligations

- 12.1 The RSP must:
- (a) comply with all Laws relevant to this Agreement and applicable to the performance of the Services by the RSP under this Agreement.
 - (b) obtain and maintain any licences, authorisations, consents, approvals and permits applicable by Laws to provide the Services and to perform the RSP's obligations under this Agreement;
 - (c) continue to comply with the requirements set out in this clause 12 (Compliance with Laws) throughout the Term and the Transition-Out Period, notwithstanding any changes to applicable Laws;
 - (d) not do anything, or omit to do something, that would cause SICorp, the Crown, or any of the Agencies to breach their obligations under any Laws; and
 - (e) immediately advise SICorp of any significant breaches by the RSP or its Personnel of any Laws which relate to this Agreement.

Privacy

- 12.2 Without limiting clause 12.1 and 12.5, the RSP must comply and ensure that its Personnel comply with the Privacy Legislation.
- 12.3 The RSP agrees:
- (a) to use, retain or disclose Protected Information obtained in the course of this Agreement only for the purpose for which the Protected Information was acquired;
 - (b) not to do any act, or engage in any practice, that would breach an Information Privacy Principle or a Health Privacy Principle, or which if done or engaged in

by SICorp, would be a breach of an Information Privacy Principle or a Health Privacy Principle;

- (c) to comply with, carry out and discharge to the maximum extent possible, the obligations contained in the Information Privacy Principles and the Health Privacy Principles as if it were SICorp carrying out those obligations;
- (d) to notify SICorp immediately of any breach or possible breach of the Privacy Legislation, whether by the RSP or its Personnel;
- (e) to notify the individuals affected, that complaints about acts or practices in relation to such individuals' Protected Information may be investigated by a Privacy Commissioner;
- (f) to comply with all reasonable directions of SICorp or a Privacy Commissioner in relation to the care and protection of Protected Information held in connection with this Agreement and in addition, take all reasonable measures to ensure that such information is protected against loss, unauthorised access or use, modification or disclosure and against other misuse;
- (g) to ensure that any Personnel of the RSP who are required to deal with the Protected Information for the purposes of this Agreement are made aware of the obligations in this clause 12 (Compliance with Laws);
- (h) to ensure that any other agreement with a Sub-Contractor, who will be fulfilling a requirement in relation to this Agreement which includes the handling of Protected Information, contains the same or equivalent obligations as this clause 12 (Compliance with Laws) which are enforceable by the RSP against the Sub-Contractor; and
- (i) to immediately notify SICorp if it becomes aware of, or receives a complaint relating to a breach of clauses 12.2 and 12.3.

State Records

12.4 Without limiting clauses 12.1 and 12.5, the RSP agrees to:

- (a) to the extent the RSP is required to, comply with the requirements of the State Records Act 1998 (NSW);
- (b) assist SICorp to comply with its obligations under the State Records Act 1998 to ensure safe custody and proper preservation of State Records;
- (c) comply with any direction of SICorp with respect to the possession, custody and control of, and the granting of access to, State Records; and

- (d) deliver all State Records to SICorp or to the State Records Authority as and when directed by SICorp and at the termination or expiry of this Agreement.

Assistance to SICorp

- 12.5 Without limiting clause 12.1, the RSP will comply with any reasonable directions of SICorp to provide information and/or documentation to enable SICorp to comply with its obligations under any Laws and/or under any government policies and guidelines and the RSP will provide such information and/or documentation in such form and within such timeframes as stipulated by SICorp.

13. Conflict of Interest

- 13.1 The RSP warrants that at the date of this Agreement it has disclosed to SICorp all conflicts of interest which exist as at the date of execution of this Agreement or are likely to arise in the performance of the Services, as specified in Item 7 of the Agreement Details.
- 13.2 The RSP will manage the conflicts of interest in clause 13.1 in accordance with the agreed mechanism to resolve such conflicts of interest set out at Item 7 of the Agreement Details. If the RSP fails to manage the conflicts of interest in accordance with the agreed mechanism then SICorp may exercise its rights of termination under clause 22 (Termination).
- 13.3 The RSP must during the Term notify SICorp, in writing, immediately upon becoming aware of the existence, or possibility, of any other conflict of interest that has not been disclosed to SICorp as referred to in clause 13.1.
- 13.4 On receipt of a notice under clause 13.3, SICorp may:
 - (a) approve the RSP continuing to perform the Services, which approval may be subject to reasonable conditions to ensure appropriate management of the conflict including the RSP managing any such conflict in accordance with the agreed mechanism to resolve the conflicts of interest set out at Item 7 of the Agreement Details; or
 - (b) where in SICorp's reasonable view the conflict of interest cannot be appropriately managed, exercise its rights of termination under clause 22 (Termination).

14. Intellectual Property

New Contract Material

- 14.1 Copyright (including future copyright) in all New Contract Material, vests in SICorp in right of the Crown in right of the State of New South Wales or is otherwise hereby assigned by the RSP to SICorp. Title to, and Intellectual Property Rights in, all New Contract Material (other than copyright) shall, on creation, vest or otherwise be assigned or transferred to SICorp, without the need for further assurance.

Existing Contract Material

- 14.2 This Agreement does not affect the ownership of Intellectual Property Rights in Existing Contract Material. However, the RSP hereby grants, and ensures relevant third parties grant to SICorp, without additional cost, a non-exclusive, irrevocable, transferable licence:

- (a) to use, reproduce, communicate to the public and adapt, modify, add to or enhance for its own purposes; and
- (b) to perform any other act with respect to copyright and to manufacture, sell or otherwise exploit a product or process, or to provide a service, or to licence any third party to do any of those things in respect of;

all those Intellectual Property Rights but only as part of the Contract Material (and any further modification, enhancement, adaptation or addition of that Material).

Perfection of rights

- 14.3 The RSP must whenever requested by SICorp and on expiry or termination of this Agreement:
- (a) provide to SICorp all necessary and associated codes, data files, scripts, macros, subprograms, details of software packages and specifications, methodologies, formulae and processes to enable SICorp to recreate, use, review, analyse, modify, adapt, add to and enhance the Contract Material and or any other Intellectual Property Rights licensed to and/or granted or vested in SICorp under this Agreement; and
 - (b) execute all documents and do all acts and things required, at its cost (unless otherwise agreed), for the purposes of giving effect to the provisions of this Agreement dealing with Intellectual Property Rights.
- 14.4 The RSP must ensure that in any contracts with third party suppliers for the development of any customised software and/or macros, subprograms or codes for use in any commercially available software, the RSP has the right to assign the

Intellectual Property Rights to, or licence or sub-licence the use of the software and/or macros, subprograms or codes to SICorp as required by this Agreement.

Use of Contract Material

- 14.5 The RSP must ensure that the Contract Material and SICorp's Material is used, copied or supplied only for the purposes of this Agreement and subject to its terms.

SICorp's Material

- 14.6 SICorp grants to the RSP a non-exclusive, non-transferable licence to use SICorp's Material solely for the purpose of performing the Services, subject to the confidentiality provisions of this Agreement.

Moral Rights

- 14.7 The RSP must:
- (a) hold, or obtain (without cost to SICorp) consents:
 - (i) to any acts or omissions of SICorp in exercise of its rights granted under this clause 14 (Intellectual Property) that might otherwise constitute infringement of the RSP's or any third party's Moral Rights;
 - (ii) from all authors of New Contract Material to its use and adaptation by the RSP or SICorp, without restriction and without any requirement to attribute the New Contract Material and RSP's Material to its authors; and
 - (b) provide copies of these consents referred to in clause 14.7(a) to SICorp immediately upon request.

15. Personnel

- 15.1 The RSP must engage the Key Personnel to perform the Services and must ensure that the Key Personnel do not engage in other activities which affect their ability to perform the Services.
- 15.2 If any Key Personnel is unable to provide the Services, for any reason, the RSP must:
- (a) notify SICorp immediately; and
 - (b) provide replacement Personnel with comparable skill and experience, approved by SICorp, at the earliest opportunity and at no cost to SICorp.

- 15.3 The RSP recognises and acknowledges the importance to SICorp of ensuring the highest possible standards and level of integrity on the part of any persons entrusted with handling public monies and the RSP will assist SICorp in proactively ensuring that the Personnel engaged in providing the Services under this Agreement will be of good repute and character.
- 15.4 The RSP will implement and maintain systems and procedures to prevent the possibility of any form of fraud or malpractice on the part of any of its Personnel in relation to the performance of this Agreement.
- 15.5 The RSP will give SICorp immediate notice, to be confirmed in writing, of any of its Personnel who become the subject of investigation, by any person, in connection with alleged fraud or malpractice.
- 15.6 SICorp may, in its absolute discretion, require the immediate removal of such Personnel from the provision of the Services and the RSP will, if so required, immediately remove the Personnel. The RSP will co-operate with SICorp in managing any impact of that removal upon the performance of this Agreement, including without limitation the provision of replacement Personnel at no additional cost to SICorp.

16. Payment of Wages and Allowances

- 16.1 The RSP must ensure that all Personnel employed or engaged by it in connection with the Services are paid wages and allowances of every kind required to be paid by or under any relevant award, determination or order of New South Wales or by or under any industrial agreement that is in force in New South Wales and that all such persons are employed under the conditions contained in any such award, judgment, order or industrial agreement.
- 16.2 Notwithstanding any other provision of this Agreement, payment of any moneys due to the RSP under this Agreement is conditional upon the RSP giving SICorp's Representative, on request, a statutory declaration to the effect that in respect of work undertaken by its Personnel pursuant to this Agreement:
- (a) no wages are due and owing by the RSP;
 - (b) no payroll tax is due and owing by the RSP; and
 - (c) there are no unpaid workers compensation premiums due.
- 16.3 SICorp is not liable for any of the RSP's employee "on-costs", including wages, salaries, holiday pay or allowances, sick pay, workers' compensation, PAYE tax,

payroll tax, fringe benefits tax, training levy or any other tax or levy voluntarily undertaken by or imposed (either by statute or otherwise) on the RSP.

17. Indemnity and Liability

Indemnity by RSP

- 17.1 Subject to this clause 17 (Indemnity by the RSP), the RSP indemnifies and will keep indemnified SICorp, the Crown and the Agencies and their Personnel ("**those indemnified**") against all claims for damages, loss or expenses (including legal fees on a full indemnity basis, defence and settlement costs and claims by Personnel of SICorp, the Agencies or members of the public which may be brought against SICorp or the Agencies, as the case may be), arising directly or indirectly out of or in connection with:
- (a) any default by the RSP and/or its Personnel in the performance of its obligations under this Agreement;
 - (b) any negligent, wilful or reckless act, default or omission on the part of the RSP and/or its Personnel in the course of performing the Services;
 - (c) a breach of any Law (including for the avoidance of doubt, any penalty imposed for breach of any Law) by the RSP and/or its Personnel;
 - (d) any claim for any infringement or alleged infringement of any Intellectual Property Rights (including Moral Rights) arising out of the supply or use of the Services or any Material provided under this Agreement; and
 - (e) any act or omission of the RSP and/or its Personnel resulting in personal injury to or the death of, any person or loss of, or damage to, property;
- 17.2 The RSP's liability to indemnify those indemnified under this clause 17 (Indemnity by the RSP) will be reduced proportionally to the extent that a knowing and wilful default of those indemnified has contributed to the liability, loss, damage or costs of those indemnified.
- 17.3 SICorp accepts the full benefit of any indemnities in this clause 17 (Indemnity by the RSP) in favour of the Crown and each and every Agency as agent for the Crown and each of these entities and these are indemnities on behalf of the Crown and each of the Agencies. The RSP agrees that the Crown and each Agency may enforce such indemnities directly or alternatively, if SICorp so elects, SICorp may enforce such indemnities on behalf of the Crown, Agencies, or any one or more of them.

- 17.4 This indemnity contained in this clause 17 (Indemnity by the RSP) is a continuing obligation of the RSP separate and independent of any other responsibility of the RSP and any other power or remedy provided by law.

Limit on liability

- 17.5 The liability of a party arising out of or in connection with this Agreement (whether the claim is based in contract and/or tort including negligence or statute) is limited to one hundred million dollars in respect of each claim.

18. Insurance

- 18.1 The RSP must take out and maintain the following policies of insurance during the Term and the Transition-Out Period (collectively referred to as the "**Insurance Term**"):

- (a) workers' compensation insurance for its workers as required by legislation in all states of Australia;
- (b) professional indemnity insurance limited in the aggregate to at least one hundred million dollars for any one period of cover during the Insurance Term. Coverage must be extended to all agents and Sub-Contractors delivering the Services on behalf of the RSP in accordance with the Agreement. The RSP must maintain cover equivalent to the insurance in place for a period of not less than six years after the expiry or termination of this Agreement unless otherwise agreed by SICorp;
- (c) public liability insurance to the value of at least twenty million dollars in respect of each and every occurrence and unlimited in the aggregate for any one period of cover during the Insurance Term. Coverage must be extended to all agents and Sub-Contractors delivering the Services on behalf of the RSP in accordance with the Agreement. If the policy is on a claims made basis, the RSP must maintain cover equivalent to the insurance in place for a period of not less than six years after the expiry or termination of this Agreement unless otherwise agreed by SICorp.

- 18.2 Within ten Business Days after the Commencement Date and then within ten Business Days of the anniversary of the renewal date for each policy, for every year for which the RSP is required to maintain the policy under the Agreement, the RSP must produce such documentary evidence to SICorp as SICorp reasonably requires that the insurance required under this Agreement is current and in effect.

The effecting of insurance shall not limit the liability or obligations of the RSP under the provisions of this Agreement.

19. Confidential Information

19.1 The RSP must keep the Confidential Information of SICorp, the Crown, the Agencies, the Claims Managers, the Risk Services Provider and the Actuarial and Services Providers ("the Protected Parties") in confidence and secure and must not disclose any such information to any person without the prior written consent of SICorp, other than as provided in this Agreement.

19.2 The RSP may disclose Confidential Information of the Protected Parties to:

- (a) the RSP's Personnel, if the disclosure is necessary for the purposes of this Agreement;
- (b) a reinsurer and then only to the extent necessary to enable the RSP to perform this Agreement ;
- (c) the RSP's legal and professional advisers;
- (d) a Sub-Contractor and then only to the extent necessary to enable that Sub-Contractor to perform its part of the Services;

provided that the RSP ensures that the recipient:

- (e) keeps the Confidential Information confidential; and
- (f) does not use the Confidential Information except for the purposes of this Agreement.

19.3 Upon request by SICorp, the RSP must ensure that permitted recipients of the Confidential Information execute a confidentiality deed in favour of the Protected Party (in a form set out in Schedule 3 (Confidentiality Deed)) or in such other form as may be required from time to time by SICorp relating to the Confidential Information of the Protected Parties and promptly provide these executed deeds to SICorp.

19.4 Prior to any disclosure necessary to comply with any Laws, or any government policy, the RSP must give notice to SICorp, and full details of the circumstances of the proposed disclosure and of the relevant Confidential Information to be disclosed. The RSP must give SICorp, a reasonable opportunity, and must provide such reasonable assistance as SICorp may require to:

- (a) challenge the proposed disclosure in a court of competent jurisdiction or other appropriate body;

- (b) minimise the amount of Confidential Information which is disclosed; and/or
- (c) request that the Confidential Information only be disclosed on confidential terms.

19.5 The RSP and its Personnel must not furnish any information, make any statement or issue any document or other written or printed Material concerning this Agreement or the Services for publication in any media without the prior written approval of SICorp.

20. SICorp's Material

20.1 Nothing in the Agreement transfers to the RSP any rights in any SICorp's Material. SICorp's Material and all Intellectual Property Rights in SICorp's Material are owned by SICorp, the Crown and/or the Agencies and held by the RSP as custodian only.

20.2 The RSP must not:

- (a) use SICorp's Material for any purpose other than directly in relation to the provision of the Services;
- (b) where SICorp's Material consists of Confidential Information, make any of SICorp's Material available to any third party other than in accordance with clause 19 (Confidential Information): and/or
- (c) commercially exploit SICorp's Material.

20.3 The RSP does not have, and must not permit the creation of, any lien, security interest or other form of encumbrance over SICorp's Material, whether for the RSP's benefit or for the benefit of any third party.

20.4 The RSP must use its best endeavours to implement and maintain appropriate security measures relating to the Services for the purpose of the prevention of unauthorised access to SICorp's Material and the Confidential Information of SICorp, the Crown and Agencies ("**Protected Parties**") including:

- (a) implementing and maintaining appropriate measures to maintain the confidentiality and integrity of SICorp's Material and the Confidential Information of the Protected Parties;
- (b) ensuring that all software deployed in the delivery of the Services incorporates industry best practice in relation to the implementation of encryption systems, anti-virus protection, patches, updates and upgrades for security purposes;

- (c) complying with all Laws and government policy and/or guidelines applicable from time to time to the RSP's use and custody of SICorp's Material;
- (d) complying at all times during the Term and the Transition-Out Period with all applicable Privacy Legislation relating to the keeping, processing, use and disclosure of any Protected Information contained or referred to in SICorp's Material;
- (e) implementing, maintaining and following an appropriate business recovery plan (including disaster recovery, data back up, alternate power supply and so on);
- (f) taking such steps as may be necessary to prevent its Personnel from making copies of any Materials which may enable access to SICorp's Material and the Confidential Information of the Protected Parties;
- (g) addressing any specific security needs of SICorp, the Crown and/or an Agency in relation to the Services, as notified to the Actuary in writing from time to time.

20.5 Without limiting any other clause under this Agreement on the expiration or earlier termination of this Agreement, the RSP must give SICorp or SICorp's Representative a complete copy of all SICorp's Material then in the RSP's possession, custody, or control, in such format as SICorp may reasonably require.

21. Assignment and Sub-contracting

- 21.1 The rights and obligations of the RSP under this Agreement may not be assigned in whole or in part and this Agreement may not be novated without the prior written consent of SICorp.
- 21.2 The RSP may sub-contract some, but not all, of the Services provided it has received the prior written consent of SICorp.
- 21.3 All agreements between the RSP and any Sub-Contractor must include all the relevant terms of this Agreement. If there is any difficulty in achieving acceptance of these terms, the RSP should inform SICorp's Representative, who will provide the RSP with such assistance as SICorp's Representative considers reasonable to obtain the Sub-Contractor's agreement.
- 21.4 The RSP is responsible for ensuring the suitability of a Sub-Contractor for the Services being sub-contracted to it and that all work performed by a Sub-Contractor meets the requirements of this Agreement. This obligation subsists even if the terms of the sub-contract do not include the relevant terms of this Agreement.

- 21.5 Nothing contained in this Agreement should in any way be construed as relieving the RSP of its responsibility for the performance of its obligations under this Agreement or of its liability for the performance of any Sub-Contractor whose services it has utilised in the performance of the Services.

22. Termination

Termination for Convenience

- 22.1 SICorp may terminate this Agreement, or any part thereof, for any reason by giving not less than twenty Business Days written notice to the RSP.
- 22.2 The RSP must do everything possible to mitigate any losses that it may suffer as a result of SICorp terminating this Agreement in accordance with clause 22.1.
- 22.3 If SICorp gives notice under clause 22.1 terminating the Agreement, then:
- (a) SICorp will pay the RSP any unpaid Fee which relates to Services properly performed up to the date of termination; and
 - (b) SICorp will reimburse the RSP its unavoidable costs and expenses directly incurred as a result of termination provided that any claim by the RSP:
 - (i) does not exceed the sum of one hundred thousand dollars, being the agreed cap on reimbursable unavoidable costs in the event of termination for convenience;
 - (ii) is supported by satisfactory written evidence of the costs claimed; and
 - (iii) will be in total satisfaction of the liability of SICorp to the RSP in respect of this Agreement.

Termination for Cause

- 22.4 SICorp may terminate this Agreement (in whole or part) immediately by written notice to the RSP:
- (a) if the RSP commits a Substantial Breach of this Agreement that is not capable of remedy;
 - (b) where the RSP commits a Substantial Breach of this Agreement in a manner that is capable of remedy and does not remedy the breach within ten Business Days of receiving a notice from SICorp requiring it to do so (**"Notice of**

Breach”), or such further time, having regard to the nature of the breach and a reasonable time to remedy it, as SICorp may reasonably allow;

- (c) if the RSP assigns its rights and obligations under this Agreement or sub-contracts the whole or any part of the Services, other than in accordance with clause 21 (Assignment and Sub-contracting);
- (d) if the RSP novates this Agreement other than in accordance with clause 21 (Assignment and Sub-contracting);
- (e) in the case of the RSP's Insolvency;
- (f) if the RSP abandons or refuses to proceed with any of the Services after having commenced the same;
- (g) where the RSP makes any statement, provides any information, makes any representation or provides Material in the Tender Response which is false, untrue, or incorrect in a way which in the absolute opinion of SICorp materially affects this Agreement;
- (h) 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, or similar investigative body against the RSP alleging corrupt conduct, collusive pricing, collusive tendering or breach of any relevant Law;
- (i) if the RSP fails to manage the conflicts of interests in accordance with the agreed mechanism under clause 13 (Conflict of Interest);
- (j) if in SICorp's reasonable view a conflict of interest exists for the RSP which prevents the proper performance of the Agreement;
- (k) if the RSP, its Personnel or any third party receives a Commission; or
- (l) if the RSP otherwise fails to comply with the provisions of this Agreement.

23. Consequences of Termination

- 23.1 All the respective rights and obligations of the parties except under this clause 23 (Consequence of Termination) and clauses 6 (RSP's Warranties), 9 (Fees and Premiums), 11.3 (access to records), 14 (Intellectual Property), 16 (Payment of Wages and Allowances), 17 (Indemnity by the RSP), 18 (Insurance), 19 (Confidential Information), 20 (SICorp's Material), 24 (Money Recoverable by

SICorp), 25 (Transition-Out), 26 (Dispute Resolution) and 28 (Notices) and any other provision of this Agreement which contemplates performance or observance following any termination of this Agreement or the provision of the Services will automatically cease.

23.2 The RSP will fully co-operate with SICorp and any other party nominated by SICorp to arrange for the Services to be provided by another party nominated by SICorp and will provide the Transition-Out Services in accordance with clause 25 (Transition-Out).

23.3 The RSP must promptly deliver to SICorp or any third party nominated by SICorp:

- (a) all SICorp's Material (including SICorp Data);
- (b) all other Confidential Information;
- (c) all Contract Material; and
- (d) all copies of (a), (b) and (c) above, in whatever form (including written, graphic or electromagnetic form)

which are in the possession, custody or control of the RSP and/or its Personnel.

23.4 Where any of the information specified in clause 23.3 is to be provided in an electronic form the RSP must provide the Material in a form which is readily accessible to SICorp, and where necessary, comply with the requirements of clause 14.3.

23.5 The provision dealing with the return of Material upon termination or expiry of this Agreement does not prevent the RSP from keeping a bona fide copy of the Contract Material for its records subject to the confidentiality and privacy requirements contained in this Agreement.

23.6 Termination of this Agreement by SICorp will not release the RSP from liability in respect of any breach or non-performance of any obligation by the RSP pursuant to this Agreement.

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

24. Money recoverable by SICorp

- 24.1 Any damages, costs and expenses recoverable by SICorp from the RSP in consequence of the RSP's breach of this Agreement may be deducted from money then due to the RSP and if that money is insufficient for that purpose, the balance remaining unpaid will be a debt due by the RSP to SICorp and may be:
- (a) set off against any other money due to the RSP by SICorp under this Agreement or any other contract between the RSP and SICorp; and/or
 - (b) recovered from the RSP by SICorp in any court of competent jurisdiction.

25. Transition-Out

- 25.1 The RSP acknowledges it is critical that there is continuity of the Services and, for that reason, SICorp relies significantly on the RSP fulfilling the Transition-Out Services. The RSP must ensure that Transition-Out Services are performed in a timely and orderly manner and by carrying out the Transition-Out Services during the Transition-Out Period.
- 25.2 If SICorp appoints a third party to take over the Services, the RSP must provide all reasonable co-operation and assistance to that third party.
- 25.3 The RSP must:
- (a) continue to undertake the Services in accordance with the terms of this Agreement during the Transition-Out Period or as otherwise directed by SICorp; and
 - (b) ensure that there is no degradation of quality of the Services during the Transition-Out Period unless otherwise agreed with SICorp.
- 25.4 During the Transition-Out Period SICorp must provide all reasonable co-operation and assistance to the RSP as reasonably required by the RSP in relation to Transition-Out Services.

26. Dispute Resolution

- 26.1 The parties must attempt to settle any dispute in relation to this Agreement in accordance with this clause 26 (Dispute Resolution) before resorting to court proceedings or other dispute resolution processes.

- 26.2 A party claiming that a dispute has arisen must give written notice of the dispute to the other party. On receipt of this notice the parties must within ten Business Days of receipt seek to resolve the dispute.
- 26.3 If the dispute is not resolved within this ten Business Day period (or within such further period as the parties agree in writing) then the dispute is to be referred to the Australian Commercial Dispute Centre ("**ACDC**") for mediation.
- 26.4 The mediation shall be conducted in accordance with the ACDC Mediation Guidelines which set out the procedures to be adopted, the process of selection of the mediator and the costs involved.
- 26.5 If the dispute is not settled within twenty Business Days (or such other period as agreed to in writing between the parties) after appointment of the mediator, or if no mediator is appointed within twenty Business Days of the referral of the dispute to mediation, the parties may pursue any other procedure available at law for the resolution of the dispute.
- 26.6 If SICorp requests it, the RSP must continue performing this Agreement while a dispute is being dealt with in accordance with this clause 26 (Dispute Resolution), other than such Services (or part thereof) the subject of the dispute, to the extent practicable to do so.
- 26.7 Nothing in this clause 26 (Dispute Resolution) will prevent any party from seeking urgent interlocutory relief.

27. Causes beyond the control of the parties

- 27.1 A party is not liable for failure to perform, or delay in performing, an obligation under this Agreement if each of the following is satisfied:
- (a) the failure or delay arose from a cause beyond the control and without the fault or negligence of that party. Such causes include acts of God or the public enemy, acts of any government in its sovereign capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather, but in every case the delay must be beyond the control and without the fault or negligence of the RSP or any Sub-Contractor. If the delay is caused by the default of a Sub-Contractor and arises out of causes beyond the control of both the RSP and Sub-Contractor and without the fault or negligence of either of them, the RSP shall not be liable for damages for the delay, unless the supplies or services to be furnished by the Sub-Contractor were obtainable from other sources in sufficient time to permit the RSP to meet the required performance schedule.

- (b) the party took all reasonable precautions against that cause and did its best to mitigate its consequences. This does not require the party to settle a labour dispute if, in the party's opinion, that is not in its best interests.
- (c) the party gave the other party notice of the cause as soon as practicable after becoming aware of it.

27.2 If the cause and the resulting failure or delay lasts for more than twenty Business Days, either party is entitled to terminate this Agreement immediately by giving the other party written notice.

28. Notices

28.1 A notice, consent, information, application or request that must or may be given or made to a party under this Agreement is only given or made if it is in writing and:

- (a) delivered or posted to the representative of that party at its address as specified in the Agreement Details;
- (b) faxed to the representative of that party at its fax number as specified in the Agreement Details;
- (c) sent to the email address of the representative of that party at the e-mail address as specified in the Agreement Details.

28.2 If a party gives the other party three Business Days' notice of a change of its address, fax number or e-mail address, a notice, consent, information, application or request is only given or made by that other party if it is delivered, posted, faxed or e-mailed to the latest address, fax number or e-mail address.

28.3 A notice, consent, information, application or request is to be treated as given or made at any of the following times:

- (a) if it is delivered, when it is left at the relevant address;
- (b) if it is sent by post, two Business Days after it is posted;
- (c) if it is sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number;
- (d) if it is sent by email, on receipt of confirmation by the sender that the recipient has received the email.

- 28.4 If a notice, consent, information, application or request is delivered, an error free transmission report or confirmation by the sender in relation to it is received, after the normal business hours of the party to whom it is sent, it is to be treated as having been given or made at the beginning of the next Business Day.

29. Miscellaneous

- 29.1 The RSP and its Personnel must comply at all times with all security regulations as advised in writing as being in effect from time to time at SICorp's premises or any other premises to which access is provided to enable performance of the RSP's obligations under this Agreement.
- 29.2 Except as otherwise agreed by the parties in writing, each party must pay its own costs in relation to preparing, negotiating and executing this Agreement and any document related to this Agreement.
- 29.3 This Agreement contains everything the parties have agreed on in relation to the matters it deals with. No party can rely on an earlier agreement, or anything said or done by another party, or by a director, officer, agent or employee of that party, before this Agreement was executed, save as permitted by Law.
- 29.4 The parties will promptly do and perform all acts and things and execute all documents as may from time to time be required, and at all times will act in good faith, for the purposes of or to give effect to this Agreement.
- 29.5 No failure or delay by a party in exercising any right, power or remedy under this Agreement and no cause or 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 in this Agreement must be in writing and will not be construed as a waiver of any further breach of the same or any other provision.
- 29.6 No party is an agent, representative, partner of any other party by virtue of this Agreement.
- 29.7 No party has any power or authority to act for, or to assume any obligation or responsibility on behalf of another party, to bind another party to any agreement, negotiate or enter into any binding relationship for or on behalf of another party or pledge the credit of another party except as specifically provided in this Agreement or by express agreement between the parties.
- 29.8 Except as expressly provided in this Agreement, the rights and remedies of a person under this agreement do not exclude any other right of remedy provided by law.

- 29.9 If a clause or part of a clause of this Agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Agreement, but the rest of this Agreement is not affected.
- 29.10 This Agreement is governed by the law of the State of New South Wales. The parties submit to the exclusive jurisdiction of its courts. The parties will not object to the exercise of jurisdiction by those courts on any basis.

This agreement is executed on _____ **20**_____.

Execution by SICORP:

Signed for and on behalf of the **NSW SELF**
INSURANCE CORPORATION by the
Honourable Eric Michael Roozendaal, MLC,
Treasurer but not so as to incur personal
liability in the presence of

.....
(insert signature of witness)

.....
(print name of witness)

)
)
)
)
)
)
)
) The Honourable Eric Michael
) Roozendaal, MLC
)
)

Execution by the RSP:

Signed for and on behalf of
.....
(insert name of RSP as per the Agreement Details)

A.C.N:
(insert RSP A.C.N.)

by
(insert name of Director)

and by
(insert name of Director or Company Secretary)

)
)
)
)
)
)
)
) (signature of Director)
)
)
)
) (signature of Director or Company Secretary)
)
)
)

SCHEDULE 1

AGREEMENT DETAILS

This attachment forms part of the Agreement between SICorp and the RSP for reinsurance services.

Item 1 NSW SELF INSURANCE CORPORATION ("SICORP")

Name: The NSW Self Insurance Corporation

ABN: [insert A.B.N.]

Address Level 17, 201 Elizabeth Street, SYDNEY NSW 2000

Item 2 REINSURANCE SERVICES PROVIDER ("RSP")

Name: *[insert name of company or individual]*

A.B.N: *[insert A.B.N.]*

Address: *[insert street address]*

Item 3 TERM

(Clause 2)

Commencement 1 October 2009
Date:

Term: From the Commencement Date until 30 September 2013.

Item 6**FEES AND PAYMENT**

(Clause 9)

1. Fees and Payment

- 1.1 The RSP will be entitled to a fix lump sum in the amount of \$ [*insert the fixed lump sum*] (**the Annual Fixed Fee**) for the performance of the all Services other than the Non Core Services.

The Annual Fixed Fee will be payable in a lump sum on placement of the TMF Reinsurance Program or deemed placement of the Program as set out in clause 3 below and in accordance with clause 9.2 of the Agreement.

- 1.2 In addition to the Annual Fixed Fee, the RSP will be entitled to payment of fees for any Non Core Services. Payment of fees for any Non Core Services is subject to and conditional upon SICorp and the RSP reaching prior written agreement on the nature of the Non Core Services to be provided and the fees to be paid for these services. Any agreed fees must be calculated based on the hourly rates set out below.

[hourly rates for Non Core Services to be set out below]

2. Indexation of hourly rates

- 2.1 The hourly rates set out in clause 1 of this Item 6 will be indexed on each anniversary of the Agreement with the first indexation to occur on 1 October 2010 based on the Labour Price Index issued by the Australian Bureau of Statistics (catalogue number 6345.0). The agreed dollar amount is to be indexed by the year on year movement in the June quarter index number for Australian Original All Sectors (Private and Public) of the Australian Bureau of Statistics Labour Price Index publication – catalogue number 6345.0. For example, the new hourly rate for a particular task referred to in clause 1.2 of this Item 6 for the second year of the Agreement will equal the June 2010 index number divided by the June 2009 index number multiplied by the Fee for the particular task set out in clause 1 of this Item 6. The calculation is to be rounded to the nearest dollar.

3. Deemed placement of the TMF Reinsurance Program

- 3.1 In the event that the RSP is unable to place the entire TMF Reinsurance Program as approved by SICorp within the timeframe specified in Schedule 2 (Specification of Services) or as otherwise agreed with SICorp, (**“the Due Date”**) the RSP must advise SICorp as

soon as reasonably practicable and in any event by no later than the Due Date of its inability to place the TMF Reinsurance Program as approved and provide a report to SICorp setting out:

- (a) what aspects of the TMF Reinsurance Program, have been or can be placed, with whom and the terms of such placement;
- (b) what aspects of the TMF Reinsurance Program cannot be placed, the reasons why these aspects cannot be placed and all attempts made by the RSP to place these aspects in accordance with the TMF Reinsurance Program;
- (c) if requested by SICorp, any recommendations as to options or alternatives available to SICorp in relation to placements of the TMF Reinsurance Program;
- (d) any other matter which SICorp may request be included in the Post Renewal Report.

3.2 SICorp on receipt of the Post Renewal Report may:

- (a) direct the RSP to take such further action and/or steps as SICorp, in its absolute discretion, considers reasonable towards placement of the entire TMF Reinsurance Program; or
- (b) deem the placement of the TMF Reinsurance Program, as placed as that time, to be complete for that year.

3.3 Where SICorp directs the RSP to take further action or steps, the RSP must take such action and steps within any timeframe stipulated by SICorp and will, after taking such action and steps, report back to SICorp in accordance with the requirements of clause 3.1 of this Item 6 and clause 3.2 of this Item 6 will apply.

3.4 Where SICorp deems the placement of the TMF Reinsurance Program to be complete then the RSP will be entitled to be paid the Annual Fixed Fee in accordance with clause 9 (Fees and Premiums) of this Agreement and this Item 6.

4. Settlement Discount

The Annual Fixed Fee and any fees payable for Non Core Services (or any part of these fees) are subject to a settlement discount as follows:

(a) [insert] %	For payment within 15 Business Days from the date of receipt of a tax invoice and any supporting documents in accordance with the terms of this Agreement.
(b) [insert] %	For payment within [insert] Business Days from the date of receipt of a tax invoice and any supporting documents in accordance with the terms of this Agreement.

Item 7 CONFLICT OF INTEREST

(Clause 13)

Item 8 KEY PERSONNEL

(Clause 15)

Title

Name

[List Key personnel]

SCHEDULE 2 SPECIFICATION OF SERVICES

This attachment forms part of the Agreement between SICorp and the RSP for reinsurance services.

Specification of Services
for the
Reinsurance Services Provider
to the
NSW Self Insurance Corporation

2009

NSW Self Insurance Corporation – Specification for Reinsurance Services

1. Introduction

NSW Treasury is seeking submissions from organisations interested in providing reinsurance services to the NSW Self Insurance Corporation ("**SiCorp**").

Unless a contrary intention appears, words or terms, which are not defined in this document, have the same meaning given to them in the terms and conditions of this Agreement to which this document is Schedule 2 (herein referred to as "**the Agreement**"). The purpose of this document is to specify the Services required to be delivered under the Agreement.

2. Background

2.1 History

SiCorp is the principal to the Agreement and is a statutory body representing the Crown constituted under the *NSW Self Insurance Corporation Act 2004* (NSW).

SiCorp has the following functions with respect to Government managed fund schemes:

- (a) to operate one or more Government managed fund schemes (including the function of establishing, reorganising, amalgamating, dividing or winding up such schemes);
- (b) to enter into agreements or arrangements with other persons to provide services (as agents or otherwise) in relation to the operation of any Government managed fund scheme;
- (c) to enter into insurance or other agreements or arrangements to cover the liabilities to which a Government managed fund scheme applies;
- (d) to act for the State or an authority of the State in dealing with claims under a Government managed fund scheme (including the recovery of amounts payable to the State or an authority of the State in connection with such claims).

The Treasury Managed Fund ("**TMF**") is a NSW Government managed fund scheme. The scheme covers the assets and liability risk of participating Government agencies ("**Agencies**"). The Rail Scheme, Governmental Workers Compensation Account ("**Workers Fund**"), Pre Managed Fund ("**Solvency**") and Transport Accident Compensation ("**TAC**") Fund are run off schemes also operated by SiCorp.

Since its introduction in 1989, the TMF has operated under the following principles:

- a commitment to risk management to focus on risk prevention and post-loss control;
- devolution of responsibilities for performance to Agencies with financial incentives to promote effective risk and claims management, and;
- a commitment to full funding of liabilities whereby full financial provision is made for the cost of claims and expenses in the year in which the incident causing the claim occurs.

On the expiry of the management contracts for the TMF on 30 June 2005, NSW Treasury reformed the arrangements by which insurance services are provided to Government entities in NSW. Specifically, the Government created a contestable market for the provision of such services.

In reforming the management of the TMF and developing a contestable market, the Government had the following objectives for the management of the TMF:

- improve scheme performance to minimise overall claims costs and budget impacts;
- generate management cost savings and efficiency gains and introduce service and process innovations;
- reduce the systemic risk associated with exposure to just one provider; and
- effectively manage contract risk, as competition and repeated tendering instil performance discipline and enable monitoring by facilitating comparisons between providers.

2.2 Objectives

SICorp, as the statutory body responsible for the TMF, has the objectives of:

- minimising State exposures;
- reducing claims costs and budget impacts;
- optimising accountability of Agencies;
- efficient and cost effective delivery of all services; and
- maintaining full funding of liabilities.

SICorp will minimise State exposures by:

- maintaining an all-inclusive insurance program for Agencies;
- maintaining a comprehensive reinsurance program;

- encouraging strong risk management capability, practice and culture within Agencies and relevant stakeholders;
- devising strategies to reduce the effect of key risk exposures to the TMF; and
- retaining actuarial capability with the right knowledge, skills and experience to support decision making.

SICorp will reduce claims costs and budget impacts through:

- encouraging active management of incidents within Agencies to reduce the impact on all parties and includes sound incident management and reporting, business continuity and emergency management planning;
- case management of claims; and
- engaging specialised resources and encouraging process innovation.

SICorp will optimise accountability of Agencies by:

- increasing levels of awareness and engagement of Agencies toward improving individual performance;
- maintaining an effective accountability framework for Agencies;
- rewarding Agencies for sound performance through viable financial incentives; and
- providing a transparent, reliable and valued performance reporting and benchmarking regime.

SICorp will ensure the efficient and cost effective delivery of services:

- promoting and facilitating knowledge sharing between Agencies and service providers;
- maintaining high levels of service through effective performance monitoring and measurement;
- ensuring the delivery of quality first time data;
- securing value for money services from all service providers; and
- case managing claims to cost effective outcomes.

SICorp will maintain full funding of liabilities by:

- prudent financial provision for the cost of claims and expenses in the year in which the incident causing the claim occurs;
- ensuring Claims Managers and Agencies maintain case estimates that accurately reflect the full cost of the future liabilities of claims;
- ensuring that accurate data is maintained in SICorp Data Warehouse; and
- maintaining an appropriate investment strategy.

2.3 Structure

The management of the TMF and other schemes was restructured from 1 July 2005 and a number of distinct roles created:

- Actuarial and Information Services
- Reinsurance Services
- Risk Management Services
- Claims Management Services, including:
 - Workers Compensation Claims No. 1
 - Workers Compensation Claims No. 2
 - Workers Compensation Claims No. 3
 - Health Liability Claims
 - Other Claims (including non-Health liability, property, motor vehicle and miscellaneous)

The following matrix shows the importance of roles for SICorp and service providers to meet SICorp's goals.

Goal	SICorp	Actuarial & Information Services	Risk Management Services	Reinsurance Services	Claims Managers
Minimise State Exposures	Critical	Critical	Critical	Important	Supporting
Reduce Claims Costs and Budgets Impacts	Critical	Important	Critical	Supporting	Critical
Optimise Accountability of Agencies	Critical	Critical	Important	Supporting	Important
Efficient & Cost Effective	Critical	Important	Important	Important	Critical

Delivery of Services					
Maintaining Full Funding of Liabilities	Critical	Critical	Supporting	Supporting	Important

2.4 Current Agreements

Under the current agreement, Benfield provides reinsurance placement and advisory services primarily to minimise State exposures and assist in the efficient and cost effective delivery of services to reduce claim costs and impacts on the NSW Government budget, but the role also supports the accountability of Agencies and maintaining full funding of liabilities.

3. Specification of Requirements for the Reinsurance Services Provider – Core Services

The responsibilities of the Reinsurance Services Provider ("**RSP**") to SICorp are part of the overall management infrastructure described in Section 2 of this document.

3.1 Overview of Requirements for Core Services

3.1.1 Introduction

The TMF has an annual reinsurance program with a commencement date of 30 June each financial year. The RSP's primary responsibility is the placement of the TMF's annual reinsurance program. The RSP is also required to advise on the development of the TMF reinsurance program, compile and lodge claims against the appropriate reinsurance policy or policies and provide advice on reinsurance matters.

The RSP is required to work cooperatively with SICorp and other providers contracted to SICorp to deliver on the requirements of SICorp. The RSP is expected to assemble a team of appropriately skilled staff to support and assist SICorp and complete the work specified.

3.1.2 Transition and Implementation

3.1.2.1 2009/10 Renewal: The placement of the 2009/10 TMF reinsurance program will be the responsibility of the current reinsurance services provider (Benfield), who will complete this renewal cycle.

3.1.2.2 2010/11 Renewal: The RSP will be responsible for all aspects of the placement of the 2010/11 TMF reinsurance program.

3.1.2.3 Transition: The transition from the current reinsurance broking arrangements to the RSP will occur at the completion of the 2009/10 renewal cycle (estimated to be

approximately 30 September 2009). Tasks commenced prior to 30 September 2009 will be completed by the current provider (Benfield) or handed over on 31 December 2009. The RSP is to meet with SICorp, GIO and Benfield prior to 30 September 2009 to resolve final transition arrangements.

3.1.2.4 Handover of Documents: The current provider (Benfield) will provide all relevant documentation to the RSP together with a briefing on the current reinsurance arrangements prior to 31 December 2009. This documentation will include:

- Cover Notes and Placement Slips
- Premium Invoices
- Renewal Information including templates and historical information
- Recipient Created Tax Invoice Agreements
- Reinsurance Agreements
- Risk Management Survey documentation and reports
- Reinsurance Claims Files

3.1.2.5 A complete list of tasks and responsibilities around the handover period are set out in Appendix A to this document.

3.2 Reinsurance Services Required – Core Services

3.2.1 Reinsurance Strategy and Advice

3.2.1.1 Reinsurance Strategy and Advice: Advise and report to SICorp on reinsurance options for SICorp taking account of SICorp's risk management philosophy, capacity for loss (individual and in the aggregate), maximum probable loss (by line of business) and prevailing market conditions and capacity. The RSP will work with the Actuarial and Information Services Providers ("**A&ISP**") to obtain information to develop a draft TMF reinsurance program for the forthcoming financial year. The RSP is to work with SICorp to develop a TMF reinsurance program with a scope of cover and structure that meets SICorp's needs.

The RSP is to provide a draft report for consultation with SICorp detailing their analysis, options and draft recommended reinsurance program structure. The RSP is to consult with SICorp and to accommodate any issues raised prior to finalising the report. The scope of cover and structure of the TMF reinsurance program is to be approved by SICorp.

Report on Reinsurance Options and Draft Program due: 15 January

Approved TMF Reinsurance Program due: 31 January

- 3.2.1.2 **Budget Projections:** Provide SICorp with draft and final 5 year budget projections of reinsurance premiums consistent with the most recently approved TMF reinsurance program and adjusted for any recent developments (in the case of the October draft projections).

Draft Budget Projections due: 31 October

Budget Projections due: 7 February

- 3.2.1.3 **Risk Management Survey:** The RSP is to oversee the completion of a risk management site survey focusing on property loss control. The site survey is to be conducted by a reinsurer selected by the RSP and approved by SICorp. A sample of up to 15 sites is to be selected each year for the survey by SICorp in consultation with the RSP and reinsurers. Selection will be biased to large and high risk sites. The RSP is to provide a report detailing the results of the survey and including recommendations for improving risk management.

Survey to be complete by: 15 February.

Report complete by: 15 March

- 3.2.1.4 **Risk Management Assistance and Advice:** The RSP is to follow up, in conjunction with SICorp, recommendations from the Risk Management Survey with Agencies and provide advice in relation to implementation of the recommendations as required. To provide other advice on risk management issues relating to reinsurance as required.

Advice and assistance to be provided by the RSP as agreed by SICorp

- 3.2.1.5 **General Advice:** Provide SICorp with advice on matters relating to reinsurance as and when requested.

Advice to be provided by the RSP as agreed by SICorp

3.2.2 Reinsurance Program

- 3.2.2.1 **Prepare Reinsurance Submissions:** Prepare underwriting submissions for reinsurers to place the TMF reinsurance program each year. The submissions will include exposure details, claims histories and risk management information. The RSP will be required to work with the A&ISP and Claims Managers to compile the submissions (the raw exposure and claim information will be compiled by the A&ISP and provided to the RSP).

The underwriting submissions must include all information reasonably required (and available) by reinsurers and must be presented in a form suitable for marketing to reinsurers. A copy of the submissions is to be provided to SICorp for approval prior to release to reinsurers.

Reinsurance Submissions due for approval by SICorp by: 15 April

3.2.2.2 Marketing and Placement of the TMF Reinsurance Program: Develop and implement a strategy (including appropriate promotional material) for marketing the approved TMF reinsurance program to Australian and international reinsurers (including any special risks that may arise from time to time). Placement of the reinsurance program will be with reinsurers with a minimum credit rating determined by SICorp and within the parameters approved by SICorp as part of the approved program and/or as specifically approved by SICorp from time to time.

The RSP will have the objective of completing the placement of the program by 30 June or by such later date or dates determined by SICorp from time to time ("**the Due Date**"). The RSP is to provide a progress report (including details of elements of the program that are placed and those that are not), in a form agreed by SICorp, to SICorp immediately prior to the Due Date. SICorp may also require progress reports at other times.

If the placement of the program is not complete (or not expected to be complete) by any Due Date the RSP shall either:

- if it considers it appropriate, propose SICorp extend the Due Date for completing placement of the program; or
- if it considers an extension would serve no purpose, propose SICorp considers that the placement of the program be deemed complete. If deemed completion is proposed, the RSP is to provide reasons supporting their position in accordance with clause 3 of item 6 of Schedule 1 to the Agreement.

SICorp may in its absolute discretion either:

- (a) determine a new date (which becomes the Due Date) for completing the placement of the program including directing the RSP to take such further action and/or steps as SICorp considers reasonable towards placement of the entire TMF reinsurance program; or
- (b) deem the placement of the program to be complete.

Where a new Due Date is determined for completing placement of the program the RSP is to make all reasonable efforts to complete placement of the program within the revised timeframe and in accordance with any SICorp directions and as set out in clause 3 of item 6 of Schedule 1 to the Agreement.

TMF Reinsurance Program placed by: 30 June unless otherwise agreed with SICorp in writing.

3.2.2.3 Post Renewal Report: Provide a post renewal report detailing the RSP results in placing the TMF reinsurance program including the details of program structure, reinsurers participating in each layer, scope of coverage, premiums applying, and

levels of co-reinsurance (if any) together with commentary on the state of the market and outlook for the future.

Post Renewal Report due: 31 August (or within 10 business days of completion or deemed completion of placement of the program, whichever is the later).

- 3.2.2.4 **Verification of Policy Documents and Submission of Invoices:** Check and verify that the cover notes, policy documents and premiums invoiced for the reinsurance contracts conform to the negotiated and agreed terms and scope of cover before forwarding to SICorp for endorsement. Submit invoices for reinsurance premiums to SICorp for approval and payment. Invoices must be in the form of a valid tax invoice and must be exclusive of any commission.

Contracts and Invoices submitted for approval by: 30 September.

- 3.2.2.5 **Adjustments to the TMF Reinsurance Program:** Process adjustments to the TMF reinsurance program as required from time to time by SICorp. These adjustments may include but are not limited to:

- Adjustments for Fine Art Exhibitions
- Adjustments for substantial changes in exposure
- Adjustments for actual workers compensation exposure (at the end of the policy term).

Adjustments are to include the verification of the amended or updated cover notes, related policy documentation and the provision of amended tax invoices (exclusive of any commission).

3.2.3 Reinsurance Claims

- 3.2.3.1 **Coordinate the Submission and Settlement of Claims:** Liaise with all relevant parties including SICorp, the relevant Agency(s), Claims Manager(s), and the A&ISP to compile all necessary material for a reinsurance claim and to submit the claims. Negotiate settlement with the reinsurer(s) subject to approval by SICorp. Provide regular reports to SICorp (at least monthly) on the status of any reinsurance claim(s).

Due: Claims to be lodged to a timeframe agreed with SICorp on a case by case basis.

- 3.2.3.2 **Quarterly Reports of Large Claims:** Compile and lodge quarterly reports to reinsurers on large claims (claims that exceed a specified incurred cost either on an individual basis or in aggregate for an incident as determined by SICorp from time to time) which have or may result in a reinsurance claim. These reports are to meet all reinsurer requirements which may from time to time be requested by a reinsurer and approved by SICorp and are to be compiled from reports provided to the RSP by the

Claims Managers. The RSP may also be required to consult with SICorp, Claims Managers and/or Agencies to ensure information is complete and accurate.

Large Claim Report Due: 15 business days after the end of the quarter

3.2.4 Transition Out

At the end of the contract term the RSP will be required to complete the placement of the 20013/14 TMF reinsurance program under the terms of this Agreement. In addition the RSP is required to complete the processing of any claims on foot as at 30 September 2013 by 31 December 2013 and compile and lodge the September 2013 Quarterly Large Claim Report.

The RSP will also be required to make all reasonable efforts to ensure a smooth transition to the incoming reinsurance services provider/s. This is to include but is not limited to:

1. The provision of all documentation and material relating to this agreement to SICorp or the incoming reinsurance services provider (as determined by SICorp) including:
 - Cover Notes;
 - Placement Slips
 - Policy Documentation;
 - Premium Tax Invoices;
 - Renewal Information including templates and historical information;
 - Recipient Created Tax Invoice Agreements;
 - Reinsurance Agreements,
 - Risk Management Survey documentation and reports; and
 - Reinsurance Claims Files, Recovery Documentation and Correspondence.
2. Briefing SICorp and the incoming reinsurance services provider/s on the documents and material provided, the current status of the reinsurance program and any other relevant issues
3. Meeting with SICorp and the incoming reinsurance services provider/s from time to time (as required by SICorp) to assist in coordinating a smooth transition and resolving any problems or issue that may arise.

4. Consultancy Services – Non Core Services

Provide SICorp with advice on matters relating to non core services as and when requested by SICorp. Advice to be provided as agreed by SICorp in writing. Non core services are services (excluding the transition-in services, core services and transition-out services as specified in this document) as may be agreed between SICorp and the RSP from time to time.

For the avoidance of doubt advice on the reinsurance requirements of a new Agency joining the TMF with a premium exceeding \$1 million is a non core service.

Appendix A to Schedule 2 – Specification of Services for Reinsurance Services Provider

Reinsurance Transition Tasks and Responsibilities

Handover

To facilitate a smooth handover and transition the following steps will occur:

1. SICorp, the RSP, GIO and Benfield will meet in September 2009 to:
 - Update SICorp and RSP on current status of the placement of 2009/10 TMF reinsurance program;
 - Update SICorp and RSP on status of any reinsurance claims on foot or claims likely to become reinsurance claims and to resolve specific strategies for dealing with those claims; and
 - Finalise details of handover and resolve any outstanding issues.

Further meetings may be called by SICorp as (and if) required.

2. Benfield will handover all relevant documentation relating to the TMF Reinsurance Program to the RSP or SICorp (as determined by SICorp), including (but not limited to):
 - Cover Notes;
 - Placement Slips
 - Policy Documentation;
 - Premium Tax Invoices;
 - Renewal Information including templates and historical information;
 - Recipient Created Tax Invoice Agreements;
 - Reinsurance Agreements,
 - Risk Management Survey documentation and reports; and
 - Reinsurance Claims Files, Recovery Documentation and Correspondence.

The documentation will be provided by 31 December 2009 together with a briefing by Benfield on the material provided. If the RSP requires access to some of this documentation prior to 31 December 2009 then Benfield will provide copies of the material (together with a briefing) at a time determined by SICorp. The need for the

provision of documentation in advance of December 2009 and the timetable for provision will be resolved at the September 2009 meeting.

3. Site selection for the 2009 Risk Management Survey is to be jointly undertaken by SICorp, the RSP, Benfield and the reinsurer undertaking the survey (currently ACE and AFM).
4. Workers compensation reinsurance premiums for 2009/10 will be paid in one lump sum by Benfield (as opposed to the normal arrangement of quarterly instalments).

Table of Reinsurance Tasks – Transition Responsibilities

(Appendix A continued)

Reinsurance Program		
Task	Responsibility	Timeframe for completion of Task
Placement of 2009/10 TMF reinsurance program	Benfield	1 April 2009 to 30 June 2009
Verifying cover notes and checking invoices for 2009/10 Renewal	Benfield	1 July 2009 to 30 September 2009
Payment of reinsurance premiums for 2009/10 Renewal	Benfield	1 September 2009 to 1 October 2009
Endorsements to 2009/10 TMF reinsurance program for Fine Art Exhibitions prior to 31 December 2009	Benfield	31 December 2009
Endorsements to 2009/10 TMF reinsurance program for Fine Art Exhibitions after 31 December 2009	RSP	31 January 2010
Adjustments to 2009/10 TMF reinsurance program for Workers Compensation actual exposure	RSP	1 June 2010 to 30 July 2010

Claims		
Task	Responsibility	Timeframe
Claims on foot at 30 September 2009	Benfield to continue processing with a view to finalising prior to 31 December 2009	Up to 31 December 2009
Claims on foot at 31 December 2009 and not finalised by Benfield	RSP	1 January 2010 onwards

Claims to be lodged after 30 September 2013	RSP	1 October 2009 onwards
June Quarter Large Claims Report	Benfield	1 June 2009 to 31 July 2009
September Quarter Large Claims Report	Benfield	1 September 2009 to 1 October 2009
December Quarter Large Claims Report	RSP	1 December 2009 to 31 January 2010

Risk Management Survey		
Task	Responsibility	Timeframe
Site selection for the 2009/10 survey and completion of the surveys	SICorp, ACE/AFM and RSP	1 January 2010 to 31 March 2010
Oversight of the 2009/10 surveys and implementation of recommendations. Obtaining responses from Agencies.	ACE/AFM, SICorp/RSP	1 January 2010 onwards

Appendix B to Schedule 2 – Reinsurance Renewal Tasks and Timeline for each year of the Term

Task	Due Date
RSP receives information from Claims Managers	1 March
Preparation of Reinsurance submission	30 April
Presentation to markets	1 June
Terms received - Property	15 June
Terms received - Liability	15 June
Terms received – D&O	15 June
Terms received – Workers Compensation	15 June
Terms received – Contract Works	15 June
Terms received – Marine	15 June
Terms received – Aviation	15 June
Firm Order – All Classes	20 June
Placement complete - Property	30 June
Placement complete - Liability	30 June
Placement complete – D&O	30 June
Placement complete - Workers Compensation	30 June
Placement complete - Contract Works	30 June
Placement complete - Marine	30 June
Placement complete - Aviation	30 June
PCIP Works	31 July

SCHEDULE 3 CONFIDENTIALITY DEED

Between

1. The Principal as described in the attached schedule ("Principal"); and
2. The Confidant as described in the attached schedule ("Confidant").

Background

- A. In the course of the Confidant performing certain services for the Principal (whether directly or indirectly), the Confidant may become aware of information belonging to or in the possession of the Principal that is confidential.
- B. Improper use or disclosure of that information would severely damage the Principal's ability to perform its governmental/statutory functions.
- C. The Principal requires, and the Confidant agrees, that it is necessary to take all reasonable steps (including the execution of this Deed) to ensure that the Principal's Confidential Information is kept confidential and that the Confidant performs those services faithfully and without any conflicting interest.

Operative provisions

1. Definitions and interpretation

- 1.1 In this Deed, unless the context otherwise requires:

"Confidential Information" means any information that is disclosed to the Confidant in connection with the services by the Principal, whether directly or indirectly, that:

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

and includes, but is not limited to, the Specified Information, but does not include information which:

- (a) is or becomes public knowledge other than by a breach of this Deed;
- (b) is in the lawful possession of the Confidant without restriction in relation to disclosure before the date of receipt of the information; or
- (c) is required to be disclosed pursuant to law, government policy or legal process.

“Deed” means this deed and includes the attached schedule.

“Express Purpose” means the purpose described in the attached Schedule.

“Services” means any services and any other work performed by the Confidant for the Principal (whether directly or indirectly).

“Specified Information” means the specified information described as such in the attached schedule.

1.2 Except where the context otherwise requires:

- (a) Reconstitution of a party. 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 by any other person or body in its place, shall be taken to refer to the person or body established or constituted in its place by which its said functions have become exercisable.
- (b) Rules of construction. No rule of construction operates to the detriment of a party only because that party was responsible for the preparation of this Deed or any part of it.
- (c) Headings. The headings and index in this Deed are for convenience only and do not affect the interpretation of this Deed.
- (d) References to gender. Words importing a gender include any other gender.
- (e) References to persons. Persons will be taken to include any natural or legal person.
- (f) Grammatical forms. 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 shall unless the context otherwise requires have a corresponding meaning.

2. Non disclosure

The Confidant must keep the Confidential Information secure and in confidence and must not disclose the Confidential Information to any person without the prior written consent of the Principal.

3. Consent

- 3.1 The Principal may grant or withhold its consent in its absolute and unfettered discretion and may impose conditions on that consent, as the Principal sees fit.
- 3.2 If the Principal grants consent subject to conditions, the Confidant must comply with those conditions.

- 3.3 Without limiting the generality of the preceding clause (Non-disclosure), the Principal may require that the Confidant procure the execution of a deed by the person to whom the Confidant proposes to disclose the Confidential Information, on terms substantially similar to the terms of this Deed.

4. Restriction on use

4.1 The Confidant:

- (a) may use the Confidential Information for the Express Purpose only and must not use the Confidential Information for any other purpose;
- (b) must not copy or reproduce the Confidential Information without the prior approval of the Principal;
- (c) must take all necessary precautions to prevent unauthorised access to or copying of the Confidential Information; and
- (d) must comply with any direction of the Principal regarding the safekeeping and storage of Confidential Information.

5. Departing employees

- 5.1 If any person, being any partner, officer, agent, consultant, subcontractor or employee of the Confidant, who has had access to the Confidential Information in accordance with this Deed leaves the service or employ of the Confidant then the Confidant will procure that that person does not do or permit to be done anything which, if done or permitted to be done by the Confidant, would be a breach of the obligations of the Confidant under this Deed.

6. Survival

- 6.1 This Deed will survive termination of the Services and the expiry or termination of any agreement providing for the performance of the Services by the Confidant (whether directly or indirectly).

7. Return of Confidential Information

- 7.1 Immediately upon request, the Confidant must deliver to the Principal all documents and any material in the possession or control of the Confidant containing Confidential Information.
- 7.2 If the Principal makes a demand for the return of documents or any material containing Confidential Information, and the Confidant is aware that documents containing the Confidential Information are beyond his or her possession or control, then the Confidant must provide full details of where the documents containing the Confidential Information are, and the identity of the person in whose custody or control they lie.

- 7.3 A reference to “documents” or “materials” in this clause (Return of Confidential Information) includes any form of storage of information, whether visible to the eye or not.

8. Conflict of interest

- 8.1 The Confidant warrants that before entering into this Deed it has disclosed to the Principal all the past, current and anticipated interests of the Confidant which may conflict with or restrict the Confidant in performing Services to the Principal fairly and independently.
- 8.2 The Confidant shall not during the course of this Deed engage in any activity or obtain any interest likely to conflict with or restrict the Confidant in providing Services to the Principal fairly and independently and shall immediately disclose to the Principal such activity or interest.

9. Notices

- 9.1 A notice under this Deed must be in writing and forwarded to the address, facsimile number or the email address of the intended recipient as specified in the attached schedule or the address last notified by the intended recipient to the sender.
- 9.2 A notice under this Deed will be deemed to be served:
- (a) in the case of delivery in person - when delivered to the recipient's address for service and a signature received as evidence of delivery.
 - (b) in the case of delivery by post - within three business days of posting.
 - (c) in the case of delivery by facsimile – at the time of dispatch if the sender receives a transmission report which confirms that the facsimile was sent in its entirety to the facsimile number of the recipient.
 - (d) in the case of delivery by email, on receipt of confirmation by the recipient that the recipient has received the email.
- 9.3 Notwithstanding the preceding clause (Delivery), if delivery or receipt of a communication is on a day which is not a business day in the place to which the communication is sent or is later than 5 pm (local time in that place) it will be deemed to have been duly given or made at 9 am (local time at that place) on the next business day in that place.

10. Miscellaneous

- 10.1 The rights and obligations of the Confidant under this Deed may not be assigned and/or novated in whole or in part.

- 10.2 This Deed must not be construed to exclude the operation of any principle of law or equity intended to protect and preserve the confidentiality of the Confidential Information.
- 10.3 The rights and remedies provided under this Deed are cumulative and not exclusive of any rights or remedies provided by law or any other such right or remedy.
- 10.4 No failure or delay by the Principal in exercising any right, power or remedy in relation to this Deed and no course of dealing or grant by the Principal to the Confidant of any time or other consideration, will operate as a waiver of the breach or a default by the Confidant. Any waiver by the Principal of a breach of this Deed will not be construed as a waiver of any further breach of the same or any other provision.
- 10.5 All amendments to this Deed must be in writing, signed by both parties and executed in the form of a deed.
- 10.6 All consents, approvals and waivers given under this Deed must be writing.
- 10.7 This Deed is governed by, and must be construed in accordance with, the laws in force in the State of New South Wales.
- 10.8 Each party submits to the exclusive jurisdiction of the Courts exercising jurisdiction in the State of New South Wales and the courts of appeal therefrom.

The agreement is executed as a Deed on _____ **20**_____.

Execution by the Principal:

Signed, sealed and delivered for and on)

behalf of)

(insert full name of Principal as per Agreement Details))

)

)

by.....)

(insert name of person signing on the Principal's behalf))

.....
(signature of Principal's representative)

)

)

in the presence of.....)

(insert name of witness))

.....
(signature of witness)

Execution by the Confidant:

Guide Note: Use the following execution clause where the Confidant is a corporation and that corporation has a common seal. Where the Confidant is a corporation but does not have a common seal, or where the Confidant is a natural person or a partnership, use the appropriate alternate execution clause, as provided below.

The **COMMON SEAL** of.....)
.....)
(insert name of Confidant as per the Agreement Details)) (Corporate Seal)
)
)
A.C.N:)
(insert Confidant A.C.N.))
)
)
was duly affixed hereto at)
(insert name of City/ Town))
)
)
in the State of)
(insert name of State / Territory)) (signature of Director)
)
)
in the presence of.....)
(insert name of Secretary or other permanent officer)) (signature of Secretary or other permanent officer)
)

**[ALTERNATE – Where Confidant is a corporation -
execution by two directors:]**

Signed, sealed and delivered for and on)

behalf of)

.....)

(insert name of Confidant as per the Agreement Details))

)

)

)

A.C.N:)

(insert Confidant A.C.N.))

)

)

by)

(insert name of Director))

)

)

in the presence of.....)

(insert name of witness not a party to this Agreement))

)

)

)

and by)

(insert name of Director or Company Secretary))

)

)

in the presence of.....)

(insert name of witness not a party to this Agreement))

.....

(signature of Director)

)

)

.....

(signature of witness)

)

)

.....

(signature of Director or Company Secretary)

)

)

.....

(signature of witness)

[ALTERNATE – Where Confidant is a natural person:]

Signed, sealed and delivered by)
.....)
(insert name of Confidant as per Agreement Details))
)
)
at)
(insert name of City/ Town)) (signature of Confidant)
)
)
in the State of)
(insert name of State / Territory)) (signature of witness)
)
)
in the presence of.....)
(insert name of witness not a party to this Agreement)

[ALTERNATE – Where Confidant is a partnership:]

Signed, sealed and delivered by)

.....)

(insert name of partner authorised to sign on behalf of the)
partnership))

)

)

for an on behalf of)

(insert name of Confidant as per Agreement Details))

)

)

at)

(insert name of City/ Town))

)

)

in the State of)

(insert name of State / Territory))

)

)

in the presence of.....)

(insert name of witness not a party to this Agreement))

)

.....

(signature of Partner)

.....

(signature of witness)

SCHEDULE

This schedule forms part of the Deed of Confidentiality between the Principal and the Confidant.

Principal	Name	[insert name of Government party]
	Representative	[insert name of representative]
	Address	[insert street address]
	Telephone	[insert fax number]
	Facsimile	[insert fax number]
	Email	[insert email address]
Confidant	Name	[insert name of company or individual]
	A.B.N	[insert A.B.N, if applicable]
	Address	[insert street address]
	Telephone	[insert fax number]
	Facsimile	[insert fax number]
	Email	[insert email address]
Specific Confidential Information	Types or examples of Confidential Information.	[insert types or examples of Confidential Information]
Express Purpose	For the purpose of providing the Services to the Principal.	

SCHEDULE 4

STATUTORY DECLARATION BY REINSURANCE SERVICE PROVIDERS

Part A – Fees (Clause 9.2)

I,
(insert name)

of.....

do solemnly and sincerely declare as follows:

1. I hold the position of [insert the declarant's position within RSP] with [insert name of the RSP] and I am duly authorised to make this declaration on behalf of [insert the name of the RSP].
2. [insert name of the RSP] has not from [insert the relevant date i.e. either the commencement of this agreement or the date of the last statutory declaration] to the date of this declaration received any brokerage, commission or other amount (whether in cash or otherwise) in connection with or as a consequence of arranging any reinsurance contract or otherwise in the performance of the services under the agreement between the NSW Self Insurance Corporation the [insert the name of the RSP] dated [insert the date of the agreement] ("**the Agreement**").
3. To the best of my knowledge and having made every reasonable enquiry, no other person or entity has during the relevant period received any brokerage, commission or other amount (whether in cash or otherwise) in connection with or as a consequence of arranging any reinsurance contract or otherwise in the performance of the services under the Agreement.

AND I make this declaration conscientiously believing the same to be true by virtue of the provisions of the *Oaths Act 1900* (NSW).

Subscribed and declared at)	
This.....day of.....200....)	
before me:)	
.....)
(Signature of Justice of Peace/Solicitor)		(Signature of person making the declaration)
.....		
(Print name)		

Part B – Premium (Clause 9.8)

I,
(insert name)

of.....

do solemnly and sincerely declare as follows:

1. I hold the position of [insert the declarant's position within RSP] with [insert name of the RSP] and I am duly authorised to make this declaration on behalf of [insert the name of the RSP].
2. The reinsurance premium(s), the invoice(s) for which is/are attached to this declaration do not include any brokerage, commission or other amount (whether in cash or otherwise) in connection with or as a consequence of arranging any reinsurance contract or otherwise in the performance of the services under the agreement between the NSW Self Insurance Corporation and [insert the name of the RSP] dated [insert the date of the agreement] (**"the Agreement"**).

AND I make this declaration conscientiously believing the same to be true by virtue of the provisions of the *Oaths Act 1900* (NSW).

Subscribed and declared at)	
This.....day of.....200....)	
before me:)	
.....)
(Signature of Justice of Peace/Solicitor)		(Signature of person making the declaration)
.....		
(Print name)		