

CONFIDENTIAL



Government
of South Australia

COMMERCIAL DEED

BETWEEN

**THE TREASURER AS DELEGATE OF THE MINISTER FOR TRANSPORT,
INFRASTRUCTURE AND LOCAL GOVERNMENT FOR AND ON BEHALF OF THE
CROWN IN RIGHT OF THE STATE OF SOUTH AUSTRALIA
(State)**

-AND-

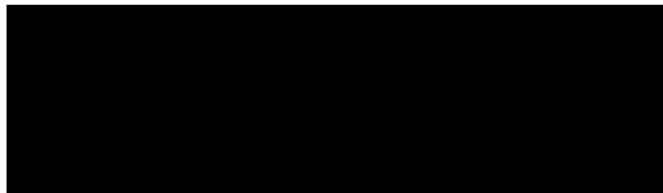


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COMMERCIAL DEED

THIS DEED is made on the 28th day of June 2019

BETWEEN

**THE TREASURER AS DELEGATE OF THE MINISTER FOR TRANSPORT,
INFRASTRUCTURE AND LOCAL GOVERNMENT FOR AND ON BEHALF OF THE CROWN
IN RIGHT OF THE STATE OF SOUTH AUSTRALIA** of State Administration Centre, 200
Victoria Square, Adelaide, South Australia 5000 (State)

AND

RECITALS:

- A The *Motor Vehicles Act 1959 (SA)* (**MV Act**) is an Act to make provision for the registration of motor vehicles, drivers' licences and third party motor insurance; and for other purposes.
- B The CTP Insurer has applied to the Minister, pursuant to section 101(1) of the MV Act, for approval to carry on the business of compulsory third party insurance under Part 4 of the MV Act (**CTP Insurance**) on and from the Effective Date (**Application**).
- C Pursuant to section 101(4) of the MV Act, before approving an insurer, the Minister may require an insurer to enter into an undertaking and an agreement by which the insurer accepts duties and obligations relating to CTP Insurance, and matters incidental to those duties and obligations.
- D The Minister has granted approval of the Application pursuant to section 101 of the MV Act, the parties have agreed to the terms of this document and the CTP Insurer Deed which together comprise a variation to the undertaking and agreement from the CTP Insurer made pursuant to section 101(4) of the MV Act.

IT IS AGREED:**1. DEFINITIONS AND INTERPRETATION****1.1 Definitions**

In this document, unless the context otherwise requires, the following words have the following meanings:

1.1.1 Accounting Records include the following:

- (a) invoices;
- (b) receipts;
- (c) orders for the payment of amounts;
- (d) bills of exchange;
- (e) cheques;
- (f) promissory notes;
- (g) vouchers and other prime entry documents;
- (h) records relating to how the CTP Insurer's third-party funds and other funds are invested; and
- (i) the working papers and other documents that are necessary to explain the methods and calculations by which accounts are made up.

1.1.2 Administration Expenses means such amounts as the Regulator may determine from time to time in accordance with section 99A(14) of the MV Act to be costs associated with CTP Insurance.

1.1.3 Allocation means the allocation of Policies to the CTP Insurer and **Allocate** has a corresponding meaning.

1.1.4 Application means an application by the CTP Insurer to the Minister, pursuant to section 101(1) of the MV Act, for approval to carry on CTP Insurance Business on and from the Effective Date.

1.1.5 Approval means a grant by the Minister of approval in response to an application by a person under section 101 of the MV Act.

1.1.6 APRA means the Australian Prudential Regulation Authority established pursuant to the *Australian Prudential Regulation Authority Act 1998* (Cth), as amended and replaced from time to time.

1.1.7 Associate of the CTP Insurer has the meaning given to that term in the Corporations Act, and **Associates** has a corresponding meaning.

1.1.8 Authorisation means any consent, registration, agreement, certificate, licence, approval, permit, authority or exemption from, by or with a Government Agency, other than the Approval.

- 1.1.9 **Business Day** means any day except Saturdays, Sundays and declared public holidays in South Australia.
- 1.1.10 **Business Plan** means a written plan that provides a detailed description of the goals, strategies and actions that the CTP Insurer will adopt to conduct CTP Insurance Business including any matters described in the Commercial Rules.
- 1.1.11 **Claim** means:
- (a) a claim for loss or damage under, asserted to be under, or capable of being validly made under, a Policy; or
 - (b) a Nominal Defendant Claim.
- 1.1.12 **Claims Register** has the meaning given to that term in CTP Insurer Deed clause 5.1 (Regulator to maintain a central register of Claims).
- 1.1.13 **Commercial Deed** or this document means this document, including any schedules and annexures to it, as amended from time to time.
- 1.1.14 **Conditions** has the meaning given to that term in clause 3.1.
- 1.1.15 **Confidential Information** has the meaning given to that term in clause 26.1.
- 1.1.16 **Commencement Date** means 1 July 2019.
- 1.1.17 **Commercial Rule** means a rule regarding the conduct of CTP Insurance Business set out in Schedule 4 to this document or issued by the Regulator in accordance with this document, as varied, revoked and replaced from time to time.
- 1.1.18 **Corporations Act** means the *Corporations Act 2001* (Cth).
- 1.1.19 **CTP Insurance** means compulsory third party insurance under Part 4 of the MV Act.
- 1.1.20 **CTP Insurance Business** means business relating to CTP Insurance.
- 1.1.21 **CTP Insurer Deed** means the document of that name between the State and the CTP Insurer, in the form annexed to this document, as amended from time to time.
- 1.1.22 **CTP Insurer Group** means the CTP Insurer together with all other persons that have received or may be the subject of an Approval.
- 1.1.23 **CTP Insurer's Representative** means the person named in Item 3.2 of Schedule 1.
- 1.1.24 **Direction** includes any approval, Authorisation, decision, demand, determination, direction, explanation, instruction, notice, notification, order, permission, rejection, request or requirement the Regulator may give or issue in accordance with this document, and **Directed** and **Direct** have corresponding meanings.
- 1.1.25 **Dispute** has the meaning given to that term in clause 27.1.
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- 1.1.26 **Dispute Notice** has the meaning given to that term in clause 27.2.1.
- 1.1.27 **Diversion** has the meaning given to that term in clause 18.1.1.
- 1.1.28 **Diversion Quantity** has the meaning given to that term in clause 18.1.2.
- 1.1.29 **Effective Date** means the effective date of the CTP Insurer's Approval.
- 1.1.30 **Ex-Gratia Payment** has the meaning given to that term in clause 16.2.1.
- 1.1.31 **Government Agency** means any State or Commonwealth government department or office or any public, statutory, governmental, semi-governmental or judicial body, local government council, instrumentality, entity or authority and any self-regulatory organisation of government.
- 1.1.32 **Insolvency Event** means an event by which a party:
- (a) is insolvent, insolvent under administration, or states that it is unable to pay its debts when they become due and payable;
 - (b) is placed in or under any form of external administration including if a party or its property is subject to the appointment of an administrator, a controller, receiver or receiver and manager, a liquidator or an official manager or other similar appointee under the Corporations Act;
 - (c) is made subject to any compromise or arrangement with any of its creditors or members or scheme for its reconstruction or amalgamation, otherwise than as a result of voluntary corporate reconstruction;
 - (d) is wound up or dissolved, or an order or resolution is made to wind up or dissolve the party;
 - (e) is or applies to be protected from any of its creditors under any applicable legislation; or
 - (f) has anything similar to any of the events in paragraphs (a) to (e) happen to it under the law of any applicable jurisdiction.
- 1.1.33 **Insurance Applicant** means an applicant for:
- (a) Registration;
 - (b) exemption from Registration; or
 - (c) a permit in respect of a motor vehicle,
- as contemplated by section 99A(1) of the MV Act.
- 1.1.34 **insured persons** has the meaning given to that term in the MV Act.
- 1.1.35 **Insurer Premium** means the component of a Premium paid or payable to a CTP Insurer (excluding GST) after deduction of Administration Expenses and exclusive of stamp duty.
- 1.1.36 **MAC** means the commission described in the *Motor Accident Commission Act 1992* (SA).
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1.1.37 **Major Breach** means a material breach by the CTP Insurer of:

- (a) any of the following provisions of this document:
 - (i) clause 8.10 (False or misleading information);
 - (ii) clause 17.1 (Sanctions payable by CTP Insurer);
 - (iii) clause 25.1 (Warranties);
 - (iv) clause 26 (Confidentiality);
 - (v) clause 32.9 (Assignment); or
- (b) any of the following provisions of the CTP Insurer Deed:
 - (i) clause 4.2 (CTP Insurer must not decline CTP Insurance Business)
 - (ii) clause 4.4 (Selective offer or acceptance of CTP Insurance Business);
 - (iii) clause 4.7 (Cancellation of Policies);
 - (iv) clause 4.8 (Sub-contracting);
 - (v) clause 7.5 (Wilful obstruction);
 - (vi) clause 7.6 (Reasonable assistance);
 - (vii) clause 8.1 (Consent required for any Disposal);
 - (viii) clause 10.1 (CTP Insurer obligations in relation to APRA);
 - (ix) clause 11.1 (Warranties);
 - (x) clause 13 (Conflicts);
 - (xi) clause 16.9 (Assignment);
 - (xii) Rule 4.1 (Incentives for CTP insurance business prohibited), or any other Rule from time to time prohibiting or restricting incentives; or
- (c) any other provision of this document (including the Commercial Rules) or the CTP Insurer Deed (including the Rules) that is deemed in the Rules or Commercial Rules (as varied, revoked and replaced by the Regulator from time to time) to be a Major Breach.

1.1.38 **Market Share** of a member of the CTP Insurer Group means, at any particular time, the market share of that member, expressed as a percentage, and determined by dividing the aggregate value of Premiums for all Policies issued by the member during the previous 12 Months, by the aggregate value of Premiums for all Policies issued by all members of the CTP Insurer Group during the previous 12 Months, as assessed by the Regulator.

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- 1.1.39 **Minister** has a meaning consistent with the usage of that term in the MV Act (as applicable).
- 1.1.40 **Minor Breach** means a breach by the CTP Insurer of a provision of this document (including the Commercial Rules) or the CTP Insurer Deed (including the Rules) other than a Major Breach. For the avoidance of doubt, a breach cannot be both a Minor Breach and a Major Breach.
- 1.1.41 **Month** means:
- (a) a calendar month; or
 - (b) if calculating a month from a certain date, the period from that date to the day prior to the same date in the next calendar month (or if the next month does not contain the same date then the last day of the next month).
- 1.1.42 **motor vehicle** has the meaning given to that term in the MV Act.
- 1.1.43 **Multi-Insurer Claim** means:
- (a) a Claim; or
 - (b) multiple Claims arising from a single event or occurrence (including multiple incidents that, although not contemporaneous, are so causally and/or temporally related as to constitute one event or occurrence for the purposes of the *Civil Liability Act 1936 (SA)*),

involving more than one member of the CTP Insurer Group.
- 1.1.44 **MV Act** means the *Motor Vehicles Act 1959 (SA)*, as amended and replaced from time to time.
- 1.1.45 **Nominal Defendant** means a person appointed by the Minister to be the nominal defendant and for the time being holding that appointment, as described in the MV Act.
- 1.1.46 **Nominal Defendant Claim** means a claim for loss or damage:
- (a) against, or capable of being validly made against the Nominal Defendant as contemplated by Part 4 of the MV Act; or
 - (b) in relation to a self-propelled wheelchair or other motor vehicle that is taken to be subject to a Policy, as described in section 12A of the MV Act.
- 1.1.47 **Nominated Manager** has the meaning given to that term in clause 27.3.1.
- 1.1.48 **Other Schemes** has the meaning given to that term in clause 16.1.1.
- 1.1.49 **Policy** has an equivalent meaning to the term "policy of insurance" as used in the MV Act.
- 1.1.50 **Premium** means the premium appropriate to the motor vehicle insured under a Policy as determined by the Regulator from time to time, which premium, for the avoidance of doubt, includes Administration Expenses and the Insurer Premium.
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- 1.1.51 **Pre-1 July 2016 Claims Manager** means the person responsible for the management of Claims arising prior to the Scheme Start Date.
- 1.1.52 **Registrar** has the meaning given to that term in the MV Act.
- 1.1.53 **Registration** means the registration of a motor vehicle for the purposes of the MV Act.
- 1.1.54 **Regulator** means the State acting through its designated agent the CTP Regulator established under the *Compulsory Third Party Insurance Regulation Act 2016* (SA).
- 1.1.55 **Related Body Corporate** has the meaning given to the term in the Corporations Act, and **Related Bodies Corporate** has an equivalent meaning.
- 1.1.56 **Remediation Plan** means a plan in writing signed by the Accounts Manager of the CTP Insurer nominated under the Commercial Rules (or a person acting in that person's position) detailing:
- (a) the nature and extent of any breach of a Scheme Document to which the plan relates;
 - (b) the actions that the CTP Insurer has taken to date and proposes to undertake to remedy the breach as soon as reasonably practicable (but in any event within six Months);
 - (c) the actions that the CTP Insurer has taken to date and proposes to undertake going forward to prevent the breach re-occurring; and
 - (d) a project plan detailing the timing of completion of each action proposed to be undertaken by the CTP Insurer.
- 1.1.57 **Rule** means a rule regarding the conduct of CTP Insurance Business set out in Schedule 1 to the CTP Insurer Deed or issued by the Regulator in accordance with the CTP Insurer Deed or pursuant to law, as varied, revoked and replaced from time to time.
- 1.1.58 **Sanction** means the liquidated damages amount relevant to a breach as set out in Schedule 2.
- 1.1.59 **Scheme Documents** means the documents which regulate the conduct of CTP Insurance Business by a CTP Insurer, to which the CTP Insurer is a party, including:
- (a) the CTP Insurer Deed;
 - (b) this document;
 - (c) the Rules; and
 - (d) the Commercial Rules.
- 1.1.60 **Scheme Start Date** means 1 July 2016.
- 1.1.61 **Security Interest** means an interest or power:
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- (a) reserved in or over an interest in any asset, including any retention of title; or
- (b) created or otherwise arising in or over any interest in any asset under a bill of sale, mortgage, charge, lien, pledge, trust or power, by way of security for the payment of a debt or any other monetary obligation or the performance of any obligation, including any agreement to grant or create any of the above.

1.1.62 **Sharing Agreement** has the meaning given to that term in the CTP Insurer Deed.

1.1.63 **State's Representative** means the Chief Executive, Department of Treasury and Finance.

1.1.64 **Term** has the meaning given to that term in clause 4.1.

1.1.65 **Trading Name** means the CTP Insurer's trading name set out in Item 3.2 of Schedule 1.

1.1.66 **Transfer** means the assignment or novation of any Policy by the CTP Insurer to another person in accordance with clause 12, and **Transferred** and **Transferee** have corresponding meanings.

1.2 Interpretation

In this document, unless the contrary intention appears:

- 1.2.1 a reference to the State includes a reference to the Crown in Right of the State of South Australia, a Minister of the State, or any other agency or instrumentality of the South Australian Crown as the context requires;
- 1.2.2 no reference in this document to an obligation of a party to comply with a statutory provision derogates from the State's power under law to require or enforce compliance with such a provision;
- 1.2.3 words denoting the singular include the plural and vice versa;
- 1.2.4 a reference to a party making an election or exercising a discretion will be taken to mean that party making such election or exercising such discretion at its sole and absolute discretion;
- 1.2.5 a reference to a person or entity includes a natural person, a partnership, corporation, trust, association, unincorporated body, authority or other entity;
- 1.2.6 headings and the table of contents (if any) are for convenience only and do not affect interpretation;
- 1.2.7 where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- 1.2.8 a reference to any document is a reference to that document (and, where applicable, any of its provisions) as amended, novated, supplemented or replaced from time to time;

- 1.2.9 a reference to a party to this document includes that party's executors, administrators, successors and permitted assigns;
- 1.2.10 a reference to (\$) or (Dollars) is a reference to Australian currency;
- 1.2.11 a reference to a recital, clause, schedule or annexure is to a recital, clause (including sub-clause, paragraph, sub-paragraph or further subdivision of a clause), schedule or annexure of or to this document and a reference to a paragraph is to a paragraph in a schedule;
- 1.2.12 a reference to any books or records or writing includes a reference to such documents or writing in all formats including electronic, disk, magnetic or written format;
- 1.2.13 a reference to any legislation or legislative provision includes any regulations or other delegated legislation or instruments made or issued under it and any consolidations, amendments, re-enactments or replacements of it and them and any of them;
- 1.2.14 the word (**including**) is not to be treated as a word of limitation;
- 1.2.15 a reference to time is a reference to the time in Adelaide, South Australia;
- 1.2.16 if the time prescribed or allowed by this document for doing any act or thing falls or expires on a day which is not a Business Day, such time is extended so as to fall or expire on the next succeeding Business Day after that day; and
- 1.2.17 no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this document.

1.3 Paramountcy

To the extent there are any inconsistencies between:

- 1.3.1 the body of this document;
- 1.3.2 any schedules and annexures to this document; or
- 1.3.3 the CTP Insurer's CTP Insurer Deed, including any schedules and annexures,

the earlier named document or part of a document under this clause 1.3 will prevail to the extent of the inconsistency.

1.4 No unlawful restriction or fettering of discretion

The parties acknowledge and agree that no provision of a Scheme Document in any way unlawfully restricts or otherwise unlawfully affects the unfettered discretion of the State to exercise any of its functions or powers pursuant to any legislation and to the extent that any such unlawful restriction or fettering would otherwise occur that provision will be ineffective to the extent of the unlawful restriction or fettering without invalidating the remaining provisions of the Scheme Document.

1.5 Recitals

The parties acknowledge and agree that the recitals are accurate and form part of this document.

1.6 Schedule and annexures

The schedule and annexures form part of this document.

1.7 Manner of payment

All moneys payable under this document or the CTP Insurer Deed must be paid by electronic transfer or such other form agreed by the parties.

1.8 CTP Regulator

1.8.1 The CTP Insurer acknowledges that the Regulator is an agent of the Crown in Right of the State of South Australia.

1.8.2 The State must procure that the Regulator performs obligations expressed to be binding on the Regulator under the Scheme Documents, provided that such obligations cannot be inconsistent with the provisions of the *Compulsory Third Party Insurance Regulation Act 2016 (SA)*.

1.8.3 Except as otherwise stated in a Scheme Document, it is intended that obligations of the State arising under the Scheme Documents will be performed by, and rights of the State arising under the Scheme Documents will be performed and exercised by the State through, the Regulator.

1.8.4 For the avoidance of doubt, this clause 1.8 does not preclude the State from performing its obligations, or exercising its rights, other than through the Regulator at the State's discretion.

2. EXECUTION OF AGREEMENTS**2.1 Execution**

The parties acknowledge and agree that they will execute the CTP Insurer Deed contemporaneously with the execution of this document.

2.2 Delivery

2.2.1 The CTP Insurer will deliver to the State the CTP Insurer Deed duly executed by the CTP Insurer at the time of execution of this document.

2.2.2 The State will deliver to the CTP Insurer the CTP Insurer Deed duly executed by the State at the time of execution of this document.

3. CONDITIONS PRECEDENT**3.1 The Conditions**

This document will not enter into force or become binding on either party unless:

3.1.1 an Approval granted to the CTP Insurer remains in effect; and

3.1.2 the CTP Insurer and the State have entered into and executed the CTP Insurer Deed,

(Conditions).

3.2 Execution by the State is not Approval

For the avoidance of doubt, the execution of this document or the CTP Insurer Deed by the State does not constitute, nor imply, the Minister's Approval of the CTP Insurer.

3.3 Termination if Conditions not satisfied

The State may terminate this document with immediate effect upon notice in writing to the other party if the Conditions are not satisfied upon the commencement of the Commencement Date.

4. TERM AND TERMINATION

4.1 Commencement and Term

This document commences on the date that the Conditions set out in clause 3.1 are satisfied, and continues in effect until this document is terminated by the State (Term).

4.2 Termination during the Term

If at any time during the Term the CTP Insurer does not hold a current Approval, then, provided that the State is satisfied that the CTP Insurer has discharged or procured the assumption by another person of all outstanding liabilities of the CTP Insurer under Part 4 of the MV Act and the Scheme Documents, the State may terminate this document at its sole and absolute discretion by notice in writing to the CTP Insurer.

4.3 Rights on termination

If this document is terminated then, in addition to any other rights, powers or remedies provided by law or in equity:

4.3.1 each party is released from its obligations and liabilities under or in connection with this document, except for clauses 1 (Definitions and interpretation), 9.3 (Timing of payment of Insurer Premium), 9.4 (Refunds), 17 (Sanctions for Breach of a Scheme Document), 18 (Exercise of Diversion Power in Response to Breach), 22.1 (Right to set-off), 25 (CTP Insurer's warranties and acknowledgements), 26 (Confidentiality), 27 (Dispute Resolution), 28 (Costs and stamp duty), 29 (GST), 30 (Authorised Representative), 31 (Notices) and 32 (General), which are intended to survive termination; and

4.3.2 each party retains the rights, remedies and powers it has in connection with any breach or any claim that has arisen before termination.

5. GOVERNMENT POLICY

The parties acknowledge and agree that nothing in this document or the CTP Insurer Deed in any way unlawfully restricts or otherwise unlawfully affects the unfettered discretion of the Minister to exercise her/his rights, powers and functions under Part 4 of

the MV Act. For the avoidance of doubt, but without limiting the preceding, this means the Minister may grant an Approval to any person at any time in her/his absolute discretion.

6. REGULATION OF CTP INSURER GROUP

6.1 Power to issue and vary Commercial Rules

The parties acknowledge and agree that, from time to time, by notice in writing to the CTP Insurer, subject to clause 6.4 and subject to law:

- 6.1.1 the Regulator may unilaterally vary, revoke and/or replace any Commercial Rule set out in a Schedule to this document;
- 6.1.2 the Regulator may unilaterally issue new Commercial Rules by the insertion of one or more additional Schedules to this document, in accordance with clause 6.2; and
- 6.1.3 the Regulator may unilaterally issue confidential guidelines. Such guidelines are not binding, but it is the State's expectation that the CTP Insurer will consider and apply these guidelines in good faith and consistently with good practice of CTP Insurance Business.

6.2 Subject matter of Commercial Rules

- 6.2.1 Subject to law, the Regulator may issue Commercial Rules in respect of the following matters:
 - (a) the determination of Premiums;
 - (b) the management of Claims;
 - (c) dispute resolution;
 - (d) the provision of information to consumers; and
 - (e) any other relevant matter.
- 6.2.2 A reference to a matter in a Scheme Document that may be subject to a Rule or Commercial Rule does not limit or exclude the issue of a Rule or Commercial Rule on the same subject matter.

6.3 Directions

The Regulator may, from time to time by notice in writing, subject to clause 6.4 and subject to law, issue Directions regarding the manner in which the CTP Insurer must comply with the Commercial Rules. The CTP Insurer must comply with any Directions so issued unless and until they are revoked or amended by the Regulator by notice in writing.

6.4 Consultation

- 6.4.1 The Regulator must consult with the CTP Insurer prior to:
 - (a) issuing, varying, revoking or replacing any Commercial Rule; or
 - (b) issuing any Direction,

that may have a material adverse impact on the costs to be incurred, resourcing to be deployed, or time to be spent, by the CTP Insurer to comply with such issuance, variation, revocation or replacement. In all other cases, the Regulator may, but is not obliged to, consult with the CTP Insurer prior to issuing, varying, revoking or replacing any Commercial Rule or issuing any Direction.

6.4.2 The CTP Insurer will have 10 Business Days from the date of receipt of a consultation notice from the Regulator under clause 6.4.1 to provide a written response to the Regulator, after which time:

- (a) the Regulator will be deemed to have complied with its consultation obligation under clause 6.4.1; and
- (b) the CTP Insurer will be bound by the determination of the Regulator as set out in the consultation notice.

6.5 CTP Insurer to comply with Commercial Rules

The CTP Insurer must comply with the Commercial Rules.

7. CTP INSURER OBLIGATIONS AND MARKET PRACTICES

7.1 CTP Insurer Trading Name

7.1.1 Subject to clause 7.1.2, for the purpose of the Approval, the CTP Insurer undertakes that it will carry on its CTP Insurance Business under the Trading Name.

7.1.2 The CTP Insurer acknowledges and agrees that it may not change its Trading Name or conduct its CTP Insurance Business under any additional or other trading name without the express written approval of the Regulator.

7.2 Standards for the CTP Insurer

The CTP Insurer must not, by any act or omission (and must procure that its Related Bodies Corporate and Associates do not, by any act or omission):

- 7.2.1 contravene any provision of the MV Act;
- 7.2.2 act inappropriately or undertake any action which brings the CTP Insurance scheme into disrepute;
- 7.2.3 act with dishonesty, fraud, wilful disobedience or misconduct in relation to CTP Insurance Business;
- 7.2.4 be convicted of a criminal offence in relation to CTP Insurance Business, including, without limitation, in relation to the Corporations Act, the *Competition and Consumer Act 2010* (Cth), the *Insurance Act 1973* (Cth), the *Insurance Acquisitions and Takeovers Act 1991* (Cth), or the *Financial Sector (Shareholdings) Act 1998* (Cth);
- 7.2.5 cease to hold, under section 12 of the *Insurance Act 1973* (Cth) or by virtue of the determinations made by APRA under items 4 and 5 of Schedule 2 of the *General Insurance Reform Act 2001* (Cth), a current

authorisation to conduct, as a general insurer, new and renewal insurance business in Australia;

- 7.2.6 cause the Regulator to be of the opinion that the CTP Insurer has failed to comply at any time with a condition imposed on its authority to conduct, as a general insurer, new and renewal insurance business in Australia;
- 7.2.7 allow an Insolvency Event to occur in relation to it;
- 7.2.8 be (or allow any of its Related Bodies Corporate or Associates to be) the subject of an adverse court judgment resulting from proceedings initiated by the Australian Securities and Investments Commission in relation to its CTP Insurance Business;
- 7.2.9 enter into (or allow any of its Related Bodies Corporate or Associates to enter into) an enforceable undertaking with the Australian Securities and Investments Commission in relation to its CTP Insurance Business;
- 7.2.10 be (or allow any of its Related Bodies Corporate or Associates to be) the subject of an adverse court judgment resulting from proceedings initiated by the Australian Competition and Consumer Commission in relation to its CTP Insurance Business;
- 7.2.11 enter into (or allow any of its Related Bodies Corporate or Associates to enter into) an enforceable undertaking with the Australian Competition and Consumer Commission in relation to its CTP Insurance Business;
- 7.2.12 default in the payment of principal or interest in excess of \$1,000,000 under any debenture, or series of debentures, issued by the CTP Insurer (except where default occurs because the CTP Insurer genuinely disputes its liability to make payment);
- 7.2.13 fail to pay the demand of a person claiming to be a creditor for an amount of more than \$1,000,000 claimed to be due within three weeks of notice being served to the CTP Insurer's registered office (except where failure to pay occurs because the CTP Insurer genuinely disputes its liability to make payment);
- 7.2.14 fail to satisfy any execution or other process issued from a judgment, decree or order of any court in favour of a creditor of the CTP Insurer where the amount unsatisfied exceeds \$1,000,000; or
- 7.2.15 cause the Regulator to be of the opinion that the CTP Insurer is, or is likely to become, unable to meet its liabilities under the CTP Insurance scheme or the Policies taken to have been issued by it.

7.3 Access to State's information systems

To the extent that the State permits or requires the CTP Insurer to:

- 7.3.1 access information residing in information systems administered by the Regulator or the State; or
- 7.3.2 input information into information systems administered by the Regulator or the State,

in connection with the conduct of CTP Insurance Business, the Regulator may issue Commercial Rules specifying the terms upon which the CTP Insurer is permitted to access or input (as applicable) such information.

7.4 Insurance

7.4.1 The CTP Insurer must maintain in force at its own expense:

- (a) public and products liability insurance in the name of the CTP Insurer, with such coverage and liability limits and other policy conditions as a reasonable, prudent person in the CTP Insurer's position conducting CTP Insurance Business would procure;
- (b) professional indemnity insurance in the name of the CTP Insurer, with such coverage and liability limits and other policy conditions as a reasonable, prudent person in the CTP Insurer's position conducting CTP Insurance Business would procure; and
- (c) workers compensation insurance in accordance with applicable worker's compensation legislation.

7.4.2 Each policy referred to in clause 7.4.1 must be maintained at all times during the conduct of CTP Insurance Business by the CTP Insurer, except for professional indemnity insurance which must also be maintained for a period of seven years after the CTP Insurer ceases to conduct CTP Insurance Business.

7.4.3 The State accepts no liability for the completeness of the insurances listed in clause 7.4.1, the adequacy of any sum insured, limit of liability, scope of coverage, conditions or exclusions of those insurances in respect to how they may or may not respond to any loss, damage or liability. The CTP Insurer acknowledges and agrees that it is the CTP Insurer's responsibility to assess and consider the risks and scope of insurances required to be held by it.

7.4.4 Upon written request by the Regulator, the CTP Insurer will, in respect of any insurance required to be effected by it pursuant to clause 7.4.1, produce a certificate of currency evidencing all matters required by clause 7.4.1 including the name of the insurer, the expiry date and evidence that applicable premiums have been paid.

8. PROVISION OF INFORMATION AND REPORTING TO REGULATOR

8.1 Regulator may request information

8.1.1 The Regulator may, by written notice to the CTP Insurer, require the CTP Insurer to give to the Regulator, within a time and in a manner stated in the notice (which must be reasonable), information in the possession of the CTP Insurer or any of its Related Bodies Corporate or Associates or sub-contractors that the Regulator reasonably requires for the performance of the Regulator's functions, including (for example) such evidence of the CTP Insurer's financial position as may be required in the notice. Upon receipt of such a notice, the CTP Insurer must comply with the notice.

8.1.2 If the CTP Insurer, when giving information to the Regulator in response to a notice issued under clause 8.1.1, claims that the information is

confidential information, the Regulator must, before disclosing the information otherwise than as permitted under clause 26, give the person written notice of the proposed disclosure and the reasons for that disclosure.

8.2 CTP Insurer must report to the Regulator

Without limiting section 128 of the MV Act, the CTP Insurer must report to the Regulator:

- 8.2.1 financial information;
- 8.2.2 a Business Plan;
- 8.2.3 periodic returns;
- 8.2.4 information about proceedings initiated by the Australian Securities and Investments Commission and/or the Australian Competition and Consumer Commission against the CTP Insurer in relation to its CTP Insurance Business; and
- 8.2.5 such other information related to CTP Insurance Business as the Regulator may specify,

at such times as may be required by the Commercial Rules, and in compliance with the content, format and processes specified in the Commercial Rules.

8.3 CTP Insurer must maintain Accounting Records

The CTP Insurer must keep and maintain Accounting Records and other records about its business and financial position as required by:

- 8.3.1 the Scheme Documents;
- 8.3.2 any Rule or Commercial Rule; and
- 8.3.3 the Regulator, by written notice served on the CTP Insurer.

8.4 Commercial Rules may be made for the maintenance of records

The Regulator may issue Commercial Rules that:

- 8.4.1 identify records the CTP Insurer must maintain;
- 8.4.2 set out processes the CTP Insurer must follow in keeping such records; or
- 8.4.3 prescribe accounting or other standards with which the records must comply.

8.5 CTP Insurer must supply a Business Plan

The CTP Insurer must:

- 8.5.1 prepare and give to the Regulator a Business Plan for its CTP Insurance Business; and
- 8.5.2 revise its Business Plan whenever it departs significantly from the plan and at the regular intervals specified in the Commercial Rules.

8.6 CTP Insurer must comply with Business Plan

- 8.6.1 The CTP Insurer must, as far as practicable, conduct CTP Insurance Business in accordance with its current Business Plan.
- 8.6.2 If the CTP Insurer becomes aware that it may or will depart significantly from, or departs significantly from the Business Plan it must notify the Regulator in writing of the departure as soon as possible, and in any event no later than two Months after the occurrence of any such departure.

8.7 Content of the Business Plan

The Business Plan must be prepared in accordance with the Commercial Rules issued by the Regulator.

8.8 Obligation to provide information to other parties

The CTP Insurer may be required to provide information to:

- 8.8.1 other members of the CTP Insurer Group;
- 8.8.2 the Nominal Defendant claims manager; or
- 8.8.3 the Multi-Insurer Claims manager,

as required by the Commercial Rules, or as Directed by the Regulator by written notice.

8.9 Statutory declaration

The Regulator may require the CTP Insurer to verify any information given to the Regulator under this clause 8 by statutory declaration and, in that event, the person will not be taken to have given the information as required unless it has been verified in accordance with the requirements of this clause 8.9.

8.10 False or misleading information

The CTP Insurer must not:

- 8.10.1 provide to the Regulator or any other person who is performing or exercising a function or power of the Regulator information that the CTP Insurer knows is false or misleading in a material particular; or
- 8.10.2 refuse or fail to include in information provided to the Regulator or a person who is performing or exercising a function or power of the Regulator other information without which the information provided is, to the knowledge of the person, false or misleading in a material particular.

8.11 Notification of breach

Without limiting any other provision of the Scheme Documents, the CTP Insurer must on becoming aware that there has been, or is likely or reasonably suspected to have been, a Major Breach or any breach of clause 7.2 by the CTP Insurer:

- 8.11.1 immediately provide preliminary notice of the breach to the Regulator (whether by email, telephone or otherwise and for the avoidance of doubt, at the same time as, or as soon as is reasonably practical following any notification to a regulator, including APRA); and

- 8.11.2 provide further details in writing within five Business Days of providing the preliminary notice.

9. **INSURANCE PREMIUMS**

9.1 **Premium determination**

- 9.1.1 The CTP Insurer acknowledges that in respect of any Policy issued or renewed on or after the Commencement Date, Insurance Applicants will be charged a Premium which is made up of:
- (a) the Insurer Premium; and
 - (b) Administration Expenses.
- 9.1.2 The Regulator must maintain Rules and/or Commercial Rules in relation to Premium determinations for the Term.

9.2 **Interpretation of "Premium" and "Insurer Premium" generally**

The parties acknowledge and agree that for the purposes of the Scheme Documents, any reference to:

- 9.2.1 "Premium" is to be read as referring to a Premium within the meaning defined in clause 1.1.50 of this document; and
- 9.2.2 "Insurer Premium" is to be read as referring to an Insurer Premium within the meaning defined in clause 1.1.35 of this document.

9.3 **Timing of payment of Insurer Premium**

Subject to clause 22.1 (Right to set off), the State will endeavour to procure the payment to the CTP Insurer of an Insurer Premium for a Policy within two Business Days of the Premium being paid by the Insurance Applicant; provided that the CTP Insurer acknowledges that delays in payment processing may occur from time to time, and particularly within the first 60 Business Days following the Commencement Date.

9.4 **Refunds**

To the extent that the Registrar makes a refund to a person of part or all of a Premium of a Policy issued by or Transferred to the CTP Insurer, the CTP Insurer must make a corresponding refund of part or all of the Insurer Premium to the State.

10. **MARKET SHARE**

10.1 **Regulator may issue Commercial Rules for reporting and assessment of Market Share**

The Regulator may issue Commercial Rules in relation to:

- 10.1.1 the frequency and content of reporting by the CTP Insurer of information about the CTP Insurer's Market Share;
- 10.1.2 the frequency with which the Regulator will assess Market Share; and

- 10.1.3 the methodology for assessing Market Share in accordance with clause 10.2.

10.2 Assessment of Market Share by Regulator

- 10.2.1 From time to time as specified in the Commercial Rules, the Regulator may use the information obtained pursuant to clause 10.1 to assess the Market Share held by each member of the CTP Insurer Group for the relevant time period specified in the Rules.
- 10.2.2 The Regulator may round the proportion assessed to the nearest one-tenth of a per cent.
- 10.2.3 Within 14 days of making an assessment under clause 10.2.1, the Regulator must inform the CTP Insurer in writing of the results of such assessment under this clause 10.2.

11. ALLOCATION OF POLICIES

11.1 General discretion of Regulator with respect to Allocation

Except to the extent otherwise specified in:

- 11.1.1 the MV Act;
- 11.1.2 a Scheme Document, any Commercial Rules; or
- 11.1.3 any other agreement or undertaking between the Regulator and the CTP Insurer,

the State retains a general discretion to perform Allocation in any manner that it sees fit.

12. TRANSFER OF POLICIES AT DIRECTION OF REGULATOR

12.1 Regulator's power to Direct Transfer

If a provision of a Scheme Document states that the Regulator may Direct a Transfer, the CTP Insurer must effect such Transfer on such terms and conditions as the Regulator may require by notice in writing:

- 12.1.1 provided that such terms and conditions are consistent with this clause 12; and
- 12.1.2 subject to the procurement by the CTP Insurer of any necessary Authorisations, including pursuant to Part III, Division 3A, of the *Insurance Act 1973* (Cth).

12.2 Terms of Transfer

A notice of Transfer issued by the Regulator under clause 12.1 must:

- 12.2.1 identify the Policies to be Transferred (which may be any or all of the Policies held at the date of the notice by the CTP Insurer);
 - 12.2.2 specify the date the Transfer will be effective;
-

12.2.3 nominate a willing Transferee that is, or will become, conditional on the Transfer, a person authorised by law to conduct CTP Insurance Business; and

12.2.4 make provision for the payment by the CTP Insurer to the nominated Transferee of such amounts, on account of unearned Premiums in relation to Policies the subject of the Transfer, as the Regulator reasonably determines.

12.3 Effect of Transfer on Policies

Upon Transfer of an interest in a Policy, all rights and liabilities in relation to the Policy subject to the Transfer are transferred to, and become rights and liabilities of, the Transferee as if the Transferee had been selected as the CTP Insurer of the Policy subject to the Transfer.

12.4 CTP Insurer must facilitate Transfer

In order to effect a Transfer Directed by the Regulator under this clause 12, the CTP Insurer must:

12.4.1 execute any transfer form or other document that the Regulator reasonably requires; and

12.4.2 use reasonable efforts, at the CTP Insurer's cost, to obtain any necessary Authorisations.

12.5 Power of attorney

The CTP Insurer irrevocably appoints the State as its attorney to complete and execute (under hand or under seal) such instruments for and on its behalf as the attorney thinks necessary or desirable to give effect to a Transfer Directed by the Regulator in accordance with this clause 12, if (and only in the event that) the Regulator reasonably determines that the CTP Insurer is in breach of its obligations under clause 12.4.1, which breach has persisted for more than two Business Days after the State has given notice of such breach in writing to the CTP Insurer.

13. ACTING AS NOMINAL DEFENDANT

13.1 General principle of allocation

Subject to clauses 13.2 and 13.3, as the Nominal Defendant receives notice of Nominal Defendant Claims the Regulator will allocate those Claims to each member of the CTP Insurer Group holding not less than 1% Market Share on a basis that the Regulator considers is consistent with the objective of achieving a sharing of Nominal Defendant Claims among members of the CTP Insurer Group consistent with the Market Share of each member, having regard, at the Regulator's discretion, to:

13.1.1 relevant arrangements between members of the CTP Insurer Group as set out in any Sharing Agreement; and/or

13.1.2 any scheme published by the Minister, as contemplated by Part 4 of the MV Act, under which members of the CTP Insurer Group are required to indemnify liabilities incurred by the Nominal Defendant.

13.2 Issue of Commercial Rules as to Nominal Defendant Claims allocated and other matters

The Regulator may issue Commercial Rules as to:

- 13.2.1 the method for performing the allocation described in clause 13.1;
- 13.2.2 circumstances (if any) in which a member of the CTP Insurer Group will not be allocated a Nominal Defendant Claim on the basis of an actual or potential conflict of interest;
- 13.2.3 procedures for managing and allocating Nominal Defendant Claims in which all members of the CTP Insurer Group have an actual or potential conflict of interest; and
- 13.2.4 duties of the CTP Insurer to notify the Nominal Defendant and/or the Regulator of any actual or potential conflict of interest.

13.3 Re-allocation of Nominal Defendant Claims

The Regulator may (but is not obliged to) re-allocate any Nominal Defendant Claim previously allocated to the CTP Insurer:

- 13.3.1 whose Approval is suspended or withdrawn;
- 13.3.2 where the Nominal Defendant Claim relates to an unidentified motor vehicle, if the CTP Insurer handling the Nominal Defendant Claim receives another Claim in respect of the same event or occurrence; or
- 13.3.3 for any other reason the Regulator deems appropriate.

13.4 No refusal of allocation

The CTP Insurer must not refuse or challenge the allocation of a Nominal Defendant Claim to it under this clause 13 unless permitted or required to do so by the Commercial Rules.

13.5 CTP Insurer to meet Nominal Defendant Claims

The CTP Insurer:

- 13.5.1 must meet and pay any Nominal Defendant Claim allocated to the CTP Insurer under this clause 13; and
- 13.5.2 may retain any sum awarded to the Nominal Defendant or recovered from the claimant in connection with a Nominal Defendant Claim allocated to the CTP Insurer under this clause 13,

in accordance with the provisions of this clause 13 and (if applicable) as supplemented or varied by the Sharing Agreement.

13.6 Claims handling cost

Where the CTP Insurer is handling a Nominal Defendant Claim that has been allocated to it, it is not entitled to recover from the Nominal Defendant any amount incurred or paid by it in handling the Claim, but the CTP Insurer may retain any legal or other costs recovered from the claimant in relation to the Claim.

13.7 CTP Insurer to observe model litigant requirements

If the Nominal Defendant is, from time to time, required by law or agreement to behave as a model litigant in the conduct of litigation, then the member of the CTP Insurer Group who (whether under this clause 13 or indirectly pursuant to a Sharing Agreement) handles a Nominal Defendant Claim, or manages a Multi-Insurer Claim that includes a Nominal Defendant Claim, must also behave as a model litigant in the conduct of litigation. Upon request by the CTP Insurer, the Nominal Defendant must provide a copy of any relevant model litigant guidelines that apply to it.

13.8 Sharing Agreement may supplement this clause

A Sharing Agreement entered into pursuant to clause 6 (Claims sharing) of the CTP Insurer Deed may address some or all of the matters described in clause 6.3 (Content of Sharing Agreement – other matters) of the CTP Insurer Deed.

13.9 State to procure cooperation of Nominal Defendant

The State must procure that the Nominal Defendant:

13.9.1 performs obligations expressed to be binding on the Nominal Defendant under this clause 13; and

13.9.2 takes such other action as may be reasonably necessary to give effect to this clause 13,

as if the Nominal Defendant were a party to this document.

13.10 State to hold benefit of this clause on trust for Nominal Defendant

Every right or benefit contained in this clause 13 to which the Nominal Defendant would be entitled if it were a party to this document will be held by the State for the benefit of, and will extend to protect, the Nominal Defendant as if it were a party to this document.

14. PRE-1 JULY 2016 CLAIMS MANAGER**14.1 MAC may continue to conduct CTP Insurance Business**

The CTP Insurer acknowledges that:

14.1.1 prior to 1 July 2016, MAC was the sole provider of CTP Insurance in South Australia and MAC (or a third party nominated by MAC) was responsible for managing all Claims arising prior to that date; and

14.1.2 nothing in any Scheme Document precludes MAC or the State from conducting CTP Insurance Business, to the extent that it is permitted or required to do so by law.

14.2 Dealings with Pre-1 July 2016 Claims Manager

If the Pre-1 July 2016 Claims Manager appoints the CTP Insurer to manage Claims arising prior to the Scheme Start Date, then, in addition to, and in priority to, any other terms and conditions agreed between the CTP Insurer and the Pre-1 July 2016 Claims Manager:

- 14.2.1 to the extent that the CTP Insurer acts in that capacity, it must do so in accordance with its general obligations as the CTP Insurer under the Scheme Documents; and
- 14.2.2 the other members of the CTP Insurer Group must deal with the CTP Insurer acting in that capacity in the same manner as they would normally deal with the CTP Insurer, having regard to the Scheme Documents and any Sharing Agreement.

14.3 State to procure cooperation of Pre-1 July 2016 Claims Manager

The State must procure that the Pre-1 July 2016 Claims Manager:

- 14.3.1 permits any member of the CTP Insurer Group appointed to manage Claims arising prior to the Scheme Start Date to manage such Claims in a manner consistent with the Scheme Documents; and
- 14.3.2 takes such other action as may be reasonably necessary to give effect to this clause 14.

14.4 State to hold benefit of this clause for MAC

- 14.4.1 The parties acknowledge that pursuant to section 4(3) of the *Motor Accident Commission Act 1992* (SA), MAC is an instrumentality of the State and it holds its property on behalf of the State.
- 14.4.2 Every right or benefit contained in this clause 14 to which MAC would be entitled if it were a party to this document will be held by the State for the benefit of, and will extend to protect, MAC as if it were a party to this document.

15. DISPUTES

15.1 Notification of disputes generally

Despite anything to the contrary in a Sharing Agreement, if there is a dispute between members of the CTP Insurer Group in relation to CTP Insurance, other than a dispute in relation to which CTP Insurer Deed clause 6.9 (Notification of dispute about whether a motor vehicle accident is involved in a Multi-Insurer Claim) applies, and the dispute is not resolved within two Months after the occurrence of any such dispute, then each member of the CTP Insurer Group involved in the dispute must immediately notify the Regulator.

15.2 Sharing Agreement may set out dispute resolution process

The Sharing Agreement may specify a binding process to which each member of the CTP Insurer Group agrees to submit in order to resolve disputes between members of the CTP Insurer Group in relation to CTP Insurance without recourse to litigation.

15.3 Issue of Commercial Rules to supplement Sharing Agreement

To the extent that the matter described in clause 15.2 is not addressed in a Sharing Agreement in effect between the members of the CTP Insurer Group from time to time, the Regulator may issue Commercial Rules about that matter, which Commercial Rules may establish, without limitation, a binding arbitration process for disputes between members in relation to CTP Insurance, the costs of

which arbitration will be borne by the relevant members of the CTP Insurer Group as specified in the Commercial Rules.

16. **BOUNDARY ISSUES AND INCIDENTAL ARRANGEMENTS**

16.1 **Issue of Commercial Rules**

The Regulator may issue Commercial Rules concerning:

- 16.1.1 interactions between CTP Insurance and statutory or other compensation schemes that may apply in relation to insured persons (**Other Schemes**);
- 16.1.2 reporting, sharing, payment and recovery arrangements applicable to the CTP Insurer in relation to Other Schemes; and
- 16.1.3 arrangements between the CTP Insurer, third parties, and/or other administrative units and instrumentalities of the State or the Commonwealth of Australia in relation to, or incidental to, CTP Insurance.

16.2 **Ex-gratia payments**

16.2.1 The Regulator may, in relation to any Claim involving the CTP Insurer, Direct the CTP Insurer to make an ex-gratia payment to a claimant on the condition that the amount of the payment will be deducted from any amount that may otherwise be payable by the CTP Insurer to the claimant in respect of the Claim (**Ex-Gratia Payment**).

16.2.2 If the Regulator makes such Direction, then:

- (a) the Regulator will reimburse the CTP Insurer the cost of the Ex-Gratia Payment pending the outcome of the Claim; and
- (b) if, upon the finalisation of the Claim, the CTP Insurer is required to make a payment to the claimant, the CTP Insurer must withhold from that payment the amount of the Ex-Gratia Payment, and instead pay such withheld amount to the Regulator.

16.2.3 For the avoidance of doubt, if the amount of an Ex-Gratia Payment exceeds the amount payable by the CTP Insurer to the claimant upon finalisation of the relevant Claim, then the CTP Insurer must withhold the full amount payable to the claimant and instead pay that amount to the Regulator, but having done so, the CTP Insurer has no further liability to the Regulator in relation to the Ex-Gratia Payment.

16.3 **Breach caused or contributed to by the State**

Despite anything to the contrary in a Scheme Document, the CTP Insurer will not be liable under a Scheme Document for any breach or non-performance of any of the CTP Insurer's obligations under the Scheme Documents, to the extent that such failure is directly caused or contributed to by the State's breach or non-performance of the State's obligations under a Scheme Document.

16.4 **Interaction with the MV Act**

16.4.1 The CTP Insurer acknowledges that section 101(8) of the MV Act provides that if:

- (a) the CTP Insurer commits a breach of a term or condition of a provision of Part 4 of the MV Act, or a term or condition on an undertaking or agreement entered into pursuant to section 101 of the MV Act; or
- (b) the CTP Insurer fails to comply with a requirement under subsection 101(7) of the MV Act; or
- (c) the Minister, after considering evidence furnished by the CTP Insurer in compliance with a requirement under section 101(7) of the MV Act, is not satisfied that the CTP Insurer has sufficient financial resources to continue properly to carry on business as an insurer with Approval to conduct CTP Insurance Business,

the Minister may:

- (d) withdraw the Approval of the CTP Insurer; or
- (e) suspend the Approval of the CTP Insurer for such period as the Minister thinks fit.

16.4.2 The parties acknowledge and agree that the Scheme Documents are each undertakings or agreements for the purposes of section 101(8) of the MV Act.

16.4.3 Nothing in this clause 16.4 or any other part of the Scheme Documents replaces, fetters or restrains the Minister's rights under section 101(8) of the MV Act.

17. SANCTIONS FOR BREACH OF A SCHEME DOCUMENT

17.1 Sanctions payable by CTP Insurer

If the CTP Insurer breaches any provision of a Scheme Document (including any Rule or Commercial Rule) then, within 20 Business Days of receipt of a written demand by the Regulator, the CTP Insurer must pay to the State the Sanction relevant to such breach.

17.2 Acknowledgement

17.2.1 The CTP Insurer acknowledges and agrees that the State will suffer and incur loss and damage if the CTP Insurer breaches any provision of a Scheme Document (including the Rules or Commercial Rules).

17.2.2 The parties agree that the Sanctions set out in Schedule 2 are fair, reasonable and genuine pre-estimates of the loss and damage the State is likely to suffer and incur as a result of the respective breaches described in that Schedule.

17.2.3 The CTP Insurer agrees that it will not assert in any dispute or in any proceedings commenced under or in connection with a Scheme Document that a Sanction represents an unlawful or unenforceable penalty or that the obligation to pay a Sanction is void or unenforceable.

17.3 Consultation

- 17.3.1 The Regulator will, prior to the issue of any demand under clause 17.1, issue Commercial Rules establishing a process by which the Regulator will consult with the CTP Insurer prior to the issue of any demand under clause 17.1.
- 17.3.2 The Regulator may, by notice in writing, inform the CTP Insurer that the Regulator considers that the consultation process referred to in clause 17.3.1 and as set out in the Commercial Rules has been completed. Upon the issuance of such a notice, such consultation process will be deemed to have been completed.
- 17.3.3 The Regulator may, at its discretion, by giving notice in writing to the CTP Insurer after consulting with the CTP Insurer:
- (a) waive its right to issue a demand under clause 17.1; or
 - (b) partly or wholly waive its right to receive payment of a Sanction, in relation to a specific breach of a Scheme Document by the CTP Insurer.

18. EXERCISE OF DIVERSION POWER IN RESPONSE TO BREACH**18.1 Diversion**

- 18.1.1 Subject to clause 18.1.2, if the CTP Insurer breaches any provision of:
- (a) this document (including the Commercial Rules);
 - (b) the CTP Insurer Deed; or
 - (c) the Rules,
- then the Regulator may:
- (d) exercise its right to Allocate in a manner that suspends the Allocation of new and renewal CTP Insurance Business to the CTP Insurer and instead Allocate such new and renewal CTP Insurance Business to one or more other members of the CTP Insurer Group;
 - (e) exercise its right to Allocate in a manner that reduces the rate of Allocation of new and renewal CTP Insurance Business to the CTP Insurer, relative to the level of CTP Insurance Business that the CTP Insurer might otherwise have received having regard to procedures for Allocation described in clause 11 (Allocation of Policies), and instead Allocate such new and renewal CTP Insurance Business to one or more other members of the CTP Insurer Group;
 - (f) Direct a Transfer of Policies held by the CTP Insurer to another person, in accordance with clause 12 (Transfer of Policies at Direction of Regulator), subject to the procurement by the CTP Insurer of any necessary Authorisations, including pursuant to Part III, Division 3A, of the *Insurance Act 1973* (Cth); or
 - (g) pursue a combination of the above remedies,

at the Regulator's discretion (**Diversión**).

18.1.2 The State must ensure that the number of Policies that are the subject of Diversión does not exceed the number of Policies specified in Schedule 3 in respect of the breach to which the Diversión relates (**Diversión Quantity**).

18.1.3 In exercising its Diversión rights, the Regulator may select Policies that are the subject of the Diversión at its discretion.

18.2 Interaction with Sanctions

18.2.1 Subject to clause 18.2.2, if a Diversión is specified for the breach of an obligation in respect of which a Sanction is also specified under a Scheme Document, then the State may elect, in writing, to:

- (a) recover the specified Sanction amount; or
- (b) undertake a Diversión,

but not both.

18.2.2 At any time prior to the State making a written election pursuant to clause 18.2.1, the CTP Insurer may elect to receive a Sanction by making payment in full of the Sanction amount for each relevant breach.

18.2.3 If the CTP Insurer makes an election pursuant to clause 18.2.2, the Regulator must accept the Sanction and will not be entitled to pursue a Diversión for the relevant breach.

18.3 Notice of Diversión

The Regulator must give the CTP Insurer at least five Business Days' prior notice in writing of:

- 18.3.1 the commencement of any Diversión in relation to the CTP Insurer;
- 18.3.2 the cessation of any Diversión in relation to the CTP Insurer; and
- 18.3.3 the State's intention to make an election pursuant to clause 18.2.1.

18.4 Acknowledgement

18.4.1 The CTP Insurer acknowledges and agrees that:

- (a) the State and/or the Regulator will suffer and incur loss and damage if the CTP Insurer breaches any provision of this document or the CTP Insurer Deed;
- (b) further, the State has a material financial interest in ensuring that members of the CTP Insurer Group comply with their obligations in relation to CTP Insurance Business (including, but not limited to, as a result of the State's exposure to the liabilities of the Nominal Defendant); and
- (c) accordingly, it is fair and reasonable, having regard to the State's financial interests, that the Regulator may exercise its Diversión rights as described in this clause 18, in order to direct a greater

proportion of CTP Insurance Business to members of the CTP Insurer Group that comply with their relevant obligations, and to reduce the proportion of CTP Insurance Business that is directed to those that have failed to do so.

18.4.2 The CTP Insurer agrees that it will not assert in any dispute or in any proceedings commenced under or in connection with this document or the CTP Insurer Deed that the exercise by the Regulator of its Diversion rights in accordance with this clause 18 is unenforceable or unlawful.

18.4.3 The CTP Insurer indemnifies and holds harmless the State and the Regulator from and against any direct or indirect loss (including but not limited to loss of business, loss of profit and loss of opportunity) suffered by the CTP Insurer as a result of the exercise by the Regulator of its Diversion rights in accordance with this clause 18.

19. **WITHDRAWAL OF APPROVAL**

19.1 **CTP Insurer must cease offer and issue of Policies**

If the Minister withdraws the Approval of the CTP Insurer pursuant to section 101(8) of the MV Act, then the CTP Insurer must immediately cease to:

19.1.1 issue new or renewal Policies; or

19.1.2 offer to issue new or renewal Policies.

19.2 **Regulator's response to withdrawal of Approval**

Without limitation of section 101(8) of the MV Act or clause 19.3, upon withdrawal of the CTP Insurer's Approval, the Regulator may Direct a Transfer of Policies held by the CTP Insurer to another person.

19.3 **Effect on continuing obligations**

Withdrawal of Approval does not relieve the CTP Insurer of its obligations under the Scheme Documents or the MV Act.

20. **SUSPENSION OF APPROVAL**

20.1 **CTP Insurer must cease offer and issue of Policies**

If the Minister suspends the Approval of the CTP Insurer pursuant to section 101(8) of the MV Act, then the CTP Insurer must immediately cease to:

20.1.1 issue new or renewal Policies; or

20.1.2 offer to issue new or renewal Policies,

for the duration of the suspension.

20.2 **Regulator's response to suspension of Approval**

Without limitation of section 101(8) of the MV Act or clause 20.3, upon suspension of the CTP Insurer's Approval, the Regulator may:

20.2.1 Direct a Transfer of Policies held by the CTP Insurer to another person; and/or

20.2.2 require the CTP Insurer to develop a Remediation Plan as described in clause 21.1.

20.3 Effect on continuing obligations

Suspension of Approval does not relieve the CTP Insurer of its obligations under the Scheme Documents or the MV Act.

21. REMEDIATION

21.1 Development of Remediation Plan

21.1.1 If a provision of a Scheme Document states that the CTP Insurer must develop a Remediation Plan, or the Regulator otherwise Directs the CTP Insurer in writing to prepare a Remediation Plan in respect of any breach, the CTP Insurer must, within five Business Days or such longer period as the Regulator allows in its sole discretion, provide to the Regulator a Remediation Plan.

21.1.2 The CTP Insurer:

- (a) must commence implementation of the Remediation Plan immediately upon delivery to the Regulator regardless of the status of the Regulator's review of the Remediation Plan per clause 21.2; and
- (b) releases the State from any and all liability arising from the CTP Insurer's failure or delay in remedying any breach by the CTP Insurer of a Scheme Document on the basis of any Remediation Plan, whether or not such Remediation Plan is under consideration by, or is accepted or rejected by, the State.

21.1.3 Nothing in this clause 21 limits or waives the State's rights, or limits the CTP Insurer's obligation to cure any breach of a Scheme Document.

21.2 Regulator review

Upon receipt of a Remediation Plan, the Regulator will review it and use reasonable endeavours to, within 10 Business Days:

21.2.1 accept the Remediation Plan; or

21.2.2 reject the Remediation Plan and Direct the CTP Insurer to revise and re-submit the Remediation Plan, in which case the CTP Insurer must again comply with clause 21.1.

21.3 Compliance with Remediation Plan

21.3.1 The CTP Insurer must, at its cost, take all actions necessary to comply with its obligations as set out in a Remediation Plan accepted by the Regulator, by such times as are specified in the Remediation Plan.

21.3.2 The CTP Insurer subject to a Remediation Plan must provide a progress report every Month (unless the Regulator notifies the CTP Insurer that circumstances warrant fortnightly or weekly reporting) to the Regulator setting out:

- (a) the obligations the CTP Insurer has performed;
- (b) the obligations the CTP Insurer has not yet performed, and a progress report and details as to how performance will be achieved by the relevant deadline set out in the Remediation Plan; and
- (c) any obligations that are overdue for performance under the Remediation Plan, and details as to actions the CTP Insurer is taking to ensure that performance occurs without further delay.

22. RIGHT OF SET-OFF

22.1 Right to set-off

The State is entitled, by notice to the CTP Insurer from time to time, to set off amounts that the State, the Regulator or MAC are liable to pay to the CTP Insurer, against amounts the State, the Regulator or MAC are entitled to receive from the CTP Insurer, under or in connection with any Scheme Document.

22.2 Compensation if set-off incorrectly applied

22.2.1 If it is determined that as a result of a set-off applied under clause 22.1, the State has recovered an amount from the CTP Insurer in excess of any amount it is entitled to receive, then the Regulator must procure that the CTP Insurer receives fair compensation for such excessive or invalid exercise of the State's set-off right.

22.2.2 If the Regulator fairly compensates the CTP Insurer in accordance with clause 22.2.1, then the CTP Insurer waives any further or additional rights of recovery it might otherwise have against the State.

23. INSOLVENCY

Without limiting clause 9 (Insolvency) of the CTP Insurer Deed, if the Regulator is satisfied that an Insolvency Event has occurred in relation to the CTP Insurer, the Regulator may:

23.1.1 Direct a Transfer of Policies held by the CTP Insurer to another person; and/or

23.1.2 require the CTP Insurer to develop a Remediation Plan in accordance with clause 21.1.

24. APRA

If the CTP Insurer commits a breach of clause 10.1 (CTP Insurer obligations in relation to APRA) of the CTP Insurer Deed, without limiting clause 10.3 (Effect of non-compliance) of the CTP Insurer Deed the Regulator may:

24.1.1 Direct a Transfer of Policies held by the CTP Insurer to another person; and/or

24.1.2 require the CTP Insurer to develop a Remediation Plan in accordance with clause 21.1.

25. CTP INSURER'S WARRANTIES AND ACKNOWLEDGEMENTS**25.1 Warranties**

The CTP Insurer warrants to the State that:

25.1.1 this document:

- (a) has been duly executed and delivered by the CTP Insurer; and
- (b) constitutes a legal, valid and binding obligation of the CTP Insurer enforceable against the CTP Insurer in accordance with its terms, subject to the effect of any applicable bankruptcy, reorganisation, insolvency, moratorium or similar laws affecting creditors' rights generally;

25.1.2 the execution, delivery and performance by the CTP Insurer of this document complies with:

- (a) each applicable law, regulation, Authorisation, ruling, judgment, order or decree of any Government Agency;
- (b) the constitution of the CTP Insurer or other constituent documents of the CTP Insurer; and
- (c) any Security Interest or document which is binding on the CTP Insurer;

25.1.3 the CTP Insurer:

- (a) is a corporation duly incorporated, validly existing and in good standing under the laws in which it was incorporated;
- (b) has taken all necessary action to authorise the execution, delivery and performance of this document in accordance with its terms;
- (c) has full power to enter into and perform its obligations under this document and can do so without the consent of any other person; and
- (d) remains under control of the person who controlled the CTP Insurer on the date of its Application;

25.1.4 the CTP Insurer acknowledges that it remains responsible under the terms of the Scheme Documents despite any sub-contracting arrangement it may enter into;

25.1.5 the CTP Insurer has not gone into external administration, liquidation, or passed a winding up resolution or applied for deregistration;

25.1.6 no petition or other process for winding up has been presented or threatened against the CTP Insurer and, as far as the CTP Insurer is aware, there are no circumstances justifying a petition or other process for winding-up;

25.1.7 no writ of execution has been issued against the CTP Insurer and, as far as the CTP Insurer is aware, there are no circumstances justifying a writ; and

- 25.1.8 no receiver or receiver and manager of any part of the undertaking or assets of the CTP Insurer has been appointed nor is threatened or expected to be appointed and, as far as the CTP Insurer is aware, there are no circumstances justifying an appointment.

25.2 Inspection and inquiry

The CTP Insurer warrants and represents to the State that before the CTP Insurer executed this document the CTP Insurer inquired, or caused inquiries to be made on the CTP Insurer's behalf, including in relation to:

- 25.2.1 any financial return the CTP Insurer expects to generate from its conduct of a CTP Insurance Business;
- 25.2.2 any legislation or other regulations applicable to CTP Insurance Business in South Australia, including any legislation or other regulations which may affect the grant or continuation of the CTP Insurer's Approval; and
- 25.2.3 all materials provided to it by the State for the purpose of this clause 25, and that the CTP Insurer is satisfied as to the result of all such inspections and inquiries.

25.3 Acknowledgments

The CTP Insurer acknowledges that:

- 25.3.1 it has negotiated this document with the assistance of its professional advisers and relies only on the matters expressly set out in this document in executing this document; and
- 25.3.2 the warranties, representations and acknowledgments contained in this clause 25 are given to the State by the CTP Insurer for the purpose of inducing the State to execute this document.

25.4 No State warranties or representations

The CTP Insurer warrants and represents to the State that no warranty or assurance has been given, and no representation, promise or other statement has been made, to the CTP Insurer or any of the CTP Insurer's officers, employees or agents, by or on behalf of the State:

- 25.4.1 concerning any matter directly or indirectly connected with any of the subject matter of this document or the CTP Insurer Deed;
- 25.4.2 which has induced the CTP Insurer to execute this document or the CTP Insurer Deed; or
- 25.4.3 which the CTP Insurer has otherwise relied on in executing this document or the CTP Insurer Deed.

25.5 Independent warranties

Each warranty in this clause 25 is to be construed independently and is not limited by reference to or inference from any other warranty.

26. CONFIDENTIALITY

26.1 Confidential Information

In this document, **Confidential Information** means:

26.1.1 information provided by one party to the other party pursuant to clauses 6.1 (Power to issue and vary Commercial Rules), 6.4 (Consultation), 8 (Provision of information and reporting to Regulator), 12 (Transfer of Policies at Direction of Regulator), 15 (Disputes) 17.1 (Sanctions payable by CTP Insurer), 18.3 (Notice of Diversion), 21 (Remediation), 22.1 (Right to set-off) and 27 (Dispute resolution) or pursuant to any Commercial Rules contemplated by those clauses;

26.1.2 this document;

26.1.3 any Sharing Agreement;

26.1.4 information obtained by the Regulator or its agent pursuant to clause 7 of the CTP Insurer Deed (Entry and inspection);

26.1.5 information reported to and/or residing in the Claims Register;

26.1.6 information that could affect the competitive position of the CTP Insurer or another person; and

26.1.7 information that is commercially sensitive for some other reason,

but excludes information that has entered into the public domain otherwise than as a result of a breach by any party of the Scheme Documents.

26.2 Acknowledgement

The parties acknowledge that the Confidential Information is confidential.

26.3 Obligation

Subject to this clause 26, the parties must:

26.3.1 keep the Confidential Information confidential and secure; and

26.3.2 not disclose any Confidential Information without the prior written consent of the other party.

26.4 Exclusions

26.4.1 A party may disclose the Confidential Information:

- (a) as authorised or required by applicable law or regulation (excluding the *Freedom of Information Act 1991* (SA)); or
- (b) as authorised or required by a court or tribunal constituted by law.

26.4.2 The State may disclose the Confidential Information:

- (a) to Parliament, the Governor, Cabinet or a Parliamentary or Cabinet committee or subcommittee; or
-

- (b) to any agency, authority, instrumentality, Minister or Officer of the State of South Australia.

26.4.3 The Regulator may disclose the Confidential Information:

- (a) for the purposes of clause 12 (Public interest disclosure) of the CTP Insurer Deed;
- (b) for the purposes of clause 10.2 (Disclosure of information to APRA) of the CTP Insurer Deed;
- (c) to interstate regulatory authorities; and
- (d) as otherwise contemplated by the Scheme Documents.

26.4.4 The CTP Insurer may disclose the Confidential Information as required by the rules of any recognised stock exchange on which its securities are listed, provided that the CTP Insurer promptly gives notice to the State of its intended disclosure and, to the extent reasonably practicable, consults with the State and uses its reasonable endeavours to minimise any such disclosure.

26.5 **Notification of disclosure**

26.5.1 A party must, before disclosing any Confidential Information as permitted by clause 26.7, give the other party written notice of the proposed disclosure and reasons for the disclosure.

26.5.2 A CTP Insurer must on becoming aware that there has been, or is likely or reasonably suspected to have been, a breach of this clause 26:

- (a) immediately provide preliminary notice to the Regulator (whether by email, telephone or otherwise and for the avoidance of doubt, at the same time as, or as soon as is reasonably practical following any notification to a regulator, including APRA); and
- (b) provide further details in writing within five Business Days of providing the preliminary notice.

26.6 **Survival of obligations**

The obligations of confidentiality under this document survive the expiration or termination of this document.

26.7 **Permitted disclosure**

26.7.1 Each party may disclose Confidential Information to those of its employees, officers, reinsurers or professional advisers of that party or its Related Bodies Corporate who have a need to know the Confidential Information.

26.7.2 Each party must ensure that any Confidential Information it discloses pursuant to clause 26.7.1 is kept confidential in accordance with the terms of this clause 26.

26.8 **Public statements**

26.8.1 The CTP Insurer must not:

- (a) distribute, disclose or communicate to the public any of the Scheme Documents; or
- (b) make any public statement in relation to the Scheme Documents, without the prior written consent of the State except as required by:
- (c) applicable law; or
- (d) the rules of any recognised stock exchange on which its securities are listed,

provided that the CTP Insurer promptly gives notice to the State of its intended disclosure and, to the extent reasonably practicable, consults with the State.

26.8.2 The State may:

- (a) distribute, disclose or communicate to the public any or all of the CTP Insurer Deed and the Rules at any time following the execution of this document; and
- (b) make any public statement in relation to this document, in its absolute discretion.

27. DISPUTE RESOLUTION

27.1 No legal proceedings outside of process

Except in a case of genuine urgency where a party seeks immediate interlocutory relief or an interim remedy, neither the State nor the CTP Insurer may take legal proceedings in respect of any dispute or difference between them arising out of or in connection with a Scheme Document (**Dispute**) without first complying with this clause 27.

27.2 Notice of initial meeting

27.2.1 In the event of a Dispute, a party may issue to the other party a written notice of dispute (**Dispute Notice**), describing the issue in dispute and requiring that the process described in this clause 27 be followed.

27.2.2 Within seven days of receipt of a Dispute Notice, each party must record in sufficient detail the nature and scope of the Dispute, and the issues raised by it, and submit the record in writing to the other party.

27.2.3 The State's Representative and the CTP Insurer's Representative must meet and attempt to resolve the Dispute as soon as practicable, but in any event within 14 days of receipt of the Dispute Notice.

27.3 Escalation

27.3.1 If the parties are unable to resolve a Dispute within 21 days of receipt of a Dispute Notice, then (unless they agree to an extension of time), each of them must nominate one of its senior executives who is authorised to resolve the Dispute on behalf of that party (**Nominated Manager**).

27.3.2 The Nominated Manager of each party must meet and attempt to resolve the Dispute within 28 days of receipt of the Dispute Notice.

27.3.3 Each party must sufficiently brief its Nominated Manager so that the Nominated Managers are able to resolve the Dispute without detailed reference to other parties or persons, provided that each Nominated Manager may be supported, at that person's election, by legal, financial, technical, actuarial or other experts.

27.4 Mediation

If the parties are unable to resolve a Dispute within 28 days of receipt of a Dispute Notice, then either party may submit the Dispute for mediation in accordance with, and subject to, the Resolution Institute Mediation Rules published by the Resolution Institute Australia as amended and replaced from time to time.

27.5 Arbitration

If a Dispute has been referred to mediation in accordance with clause 27.4 but the Dispute is not resolved within seven days of the date that the mediation concludes or is terminated, then the Dispute must be submitted to arbitration by the party that issued the Dispute Notice in accordance with, and subject to, the Resolution Institute Arbitration Rules published by the Resolution Institute Australia as amended and replaced from time to time.

27.6 Scheme Documents remain in force

The parties must each continue to perform their respective obligations under the Scheme Documents pending resolution of any Dispute.

28. COST AND STAMP DUTY

28.1 Costs generally

Each party will pay its own costs in connection with the negotiation, preparation and execution of this document.

28.2 Stamp duty

The CTP Insurer will bear the stamp duty incurred on this document and any instrument or transaction contemplated by this document and the CTP Insurer Deed, and must indemnify the State against any liability for such duty.

29. GST

29.1 Defined terms

Unless the context otherwise requires, in this clause 29 'GST', 'input tax credit', 'recipient', 'supplier', 'supply' and 'tax invoice' have the respective meanings ascribed to those terms in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

29.2 GST exclusive

Any amount referred to in this document which is relevant in determining a payment to be made by one of the parties to the other is exclusive of any GST unless indicated otherwise.

29.3 Additional consideration

If GST is imposed on a supply made under or in connection with this document, the consideration for the supply is increased by the rate at which the GST is imposed. The additional consideration is, subject to the supplier issuing a tax invoice to the recipient, payable at the same time and in the same manner as the consideration to which it relates.

29.4 Reimbursement

If one of the parties to this document is entitled to be reimbursed for an expense or outgoing incurred in connection with this document, then the amount of the reimbursement will be net of any input tax credit which may be claimed by the party being reimbursed in relation to that expense or outgoing.

30. AUTHORISED REPRESENTATIVE**30.1 State's Representative**

- 30.1.1 The State appoints the State's Representative, as its agent for the performance of its obligations under the Scheme Documents.
- 30.1.2 The State's Representative may give directions and carry out all functions of the State under the Scheme Documents as agent of the State, except for those under clause 32.1 (Amendment) and except for those ascribed to the Regulator.
- 30.1.3 The State may at any time replace the State's Representative, in which event the State will appoint another person as the State's Representative and notify the CTP Insurer of that appointment.
- 30.1.4 Nothing in this clause 30.1 limits the State's right to exercise any of the State's, or the State's Representative's, powers or functions under the Scheme Documents.

30.2 CTP Insurer's Representative

- 30.2.1 The CTP Insurer appoints the CTP Insurer's Representative as its agent for the performance of its obligations under the Scheme Documents, except for those under clause 32.1 (Amendment).
- 30.2.2 A direction given to the CTP Insurer's Representative is deemed to have been given to the CTP Insurer.
- 30.2.3 The CTP Insurer may at any time replace the CTP Insurer's Representative, in which event the CTP Insurer will appoint another person as the CTP Insurer's Representative and notify the State of that appointment.
- 30.2.4 Nothing in this clause 30.2 limits the CTP Insurer's right to exercise any of the CTP Insurer's, or the CTP Insurer's Representative's, powers or functions under the Scheme Documents.

31. NOTICES

Notices under any Scheme Document must be served in accordance with the provisions of Schedule 1, except as required under the *Compulsory Third Party Insurance*

Regulation Act 2016 (SA), in which case they are to be served in accordance with section 21 of that Act.

32. **GENERAL**

32.1 **Amendment**

Except as described in clause 6.1 (Power to issue and vary Commercial Rules), this document may only be amended in writing signed by both parties and may not be amended in any other manner.

32.2 **Entire agreement**

This document and the CTP Insurer Deed contain the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this document and has no further effect.

32.3 **Relationship**

The relationship between the parties is and will remain that of independent contractors, and nothing in this document constitutes the parties as partners or joint venturers or constitutes any party as the agent of another party or gives rise to any other form of fiduciary relationship between the parties.

32.4 **Waiver**

No waiver by a party of any breach or default by any other party is effective unless reduced to writing and signed by the party making such waiver, and any such waiver does not constitute a waiver of any other continuing breach or default under this document.

32.5 **Remedies**

32.5.1 Other than as provided in this document the rights and remedies provided under this document are cumulative and not exclusive of any rights or remedies provided by law or of any other such right or remedy. Any single or partial exercise of any power or right does not preclude any other or further exercise of it or the exercise of any other power or right under this document.

32.5.2 The rights and obligations of the parties pursuant to this document are in addition to and not in derogation of any other right or obligation between the parties under any other document or agreement to which they are parties.

32.6 **Severance**

If any provision of this document is prohibited, invalid or unenforceable in any jurisdiction, that provision will, as to that jurisdiction, be ineffective to the extent of the prohibition, invalidity or unenforceability without invalidating the remaining provisions of this document or affecting the validity or enforceability of that provision in any other jurisdiction.

32.7 Stay on rights in an Insolvency Event

If a provision of this document provides for the exercise of a right on the occurrence of an Insolvency Event, that right shall be exercisable except to the extent that a stay on the exercise of such a right applies under sections 415D – 415G, 434J – 434M or 451E – 451H of the Corporations Act.

32.8 Governing law

This document is governed by the law in force in South Australia. The parties submit to the exclusive jurisdiction of the courts of that State in respect of all proceedings arising in connection with this document.

32.9 Assignment

32.9.1 The CTP Insurer must not assign or novate any of its rights or obligations under this document without the prior written consent of the State.

32.9.2 The parties acknowledge that the State may be reordered, split or reconstituted, and its contractual rights or liabilities transferred, from time to time by force of legislation. If that occurs, then the rights and liabilities of the State under this document will transfer in accordance with the legislation, without requiring any prior consent of the CTP Insurer.

32.10 Further assurances

Each party must do or cause to be done all acts and things necessary or desirable to give effect to this document and refrain from doing all acts and things that could hinder performance by any party of this document and the CTP Insurer Deed.

32.11 No merger

No right or obligation of either party will merge on completion of any transaction under this document. All rights and obligations under this document survive the execution and delivery of any transfer or other document which implements any transaction under this document.

32.12 Counterparts and multiple originals

This document may be executed in any number of counterparts and all of those counterparts taken together will be deemed to constitute the same document.

32.13 Attorneys

Each attorney who executes this document on behalf of a party declares that the attorney has no notice of the revocation or suspension of the power of attorney under the authority of which the attorney executes this document.

32.14 Auditor-General

The parties agree that nothing contained in this document or any action taken pursuant to this document limits the rights and responsibilities of the Auditor-General under the *Public Finance and Audit Act 1987* (SA).

SCHEDULE 1- SERVICE OF NOTICES**1. DELIVERY**

A notice must be in writing and delivered on a Business Day, sent by prepaid mail (airmail if overseas) or by email to the address or email address of the recipient party set out in item 3 of this Schedule 1 or to such other address or email address as that party may from time to time notify the other party for the purposes of this item 1.

2. RECEIPT

A notice given in accordance with item 1 of this Schedule 1 will be taken to have been received:

- 2.1 if it is delivered before 5.00pm on a Business Day, at the time of delivery, otherwise at 9.00am on the next following Business Day;
- 2.2 on the second Business Day (or if sent overseas, on the seventh Business Day) after posting; or
- 2.3 if sent by email, if it is received by the recipient's email server before 5.00pm on a Business Day, at the time of delivery, or otherwise at 9.00am on the next following Business Day.

3. ADDRESSES FOR NOTICES

For the purposes of this item 3, the address and email address details of each party are as follows:

3.1 The State:

Address: Department of Treasury and Finance, [REDACTED]

Email: [REDACTED]

3.2 The CTP Insurer:

Trading Name: [REDACTED]

Address: [REDACTED]

CTP Insurer's
Representative: [REDACTED]

Email: [REDACTED]

SCHEDULE 2 – SANCTIONS**1. SANCTIONS FOR MINOR BREACHES**

- 1.1 For each Minor Breach not capable of remedy (as determined by the Regulator): \$10,000 (ten thousand dollars).
- 1.2 For each Minor Breach capable of remedy:
 - 1.2.1 \$10,000 (ten thousand dollars) for each Month or part thereof until the Minor Breach is remedied; provided that
 - 1.2.2 no Sanction is payable in respect of the first 20 Business Days of such Minor Breach if:
 - (a) the CTP Insurer has not breached or provided notification of a different breach of that provision of the Scheme Document in the six Month period immediately preceding the Minor Breach; and
 - (b) the Minor Breach is remedied within that 20 Business Day period.

2. SANCTIONS FOR MAJOR BREACH

- 2.1 For each Major Breach not capable of remedy (as determined by the Regulator): \$100,000 (one hundred thousand dollars).
 - 2.2 For each Major Breach capable of remedy:
 - 2.2.1 \$100,000 (one hundred thousand dollars) for each Month or part thereof, for so long as the breach persists unremedied, except as provided by the following paragraphs;
 - 2.2.2 \$200,000 (two hundred thousand dollars) for each Month or part thereof after the first six Months, for so long as the breach persists unremedied; except as provided by the following paragraphs;
 - 2.2.3 \$400,000 (four hundred thousand dollars) for each Month or part thereof after the first 12 Months, for so long as the breach persists unremedied; except as provided by the following paragraphs;
 - 2.2.4 \$800,000 (eight hundred thousand dollars) for each Month or part thereof after the first 18 Months, for so long as the breach persists unremedied; except as provided by the following paragraph; and
 - 2.2.5 \$1,600,000 (one million, six hundred thousand dollars) for each Month or part thereof after the first 24 Months, for so long as the breach persists unremedied.
-

SCHEDULE 3 – DIVERSION QUANTITIES

1. DIVERSION QUANTITIES FOR MINOR BREACH

For each Minor Breach:

- 1.1 400 Policies for each Month or part thereof until the breach is remedied; provided that
- 1.2 no Policies are to be subject to Diversion in respect of the first 20 Business Days of any Minor Breach if the breach is remedied within that 20 Business Day period.

2. DIVERSION QUANTITIES FOR MAJOR BREACH

For each Major Breach:

- 2.1 4,000 Policies for each Month or part thereof, for so long as the breach persists unremedied, except as provided by the following paragraphs;
 - 2.2 8,000 Policies for each Month or part thereof after the first six Months, for so long as the breach persists unremedied; except as provided by the following paragraphs;
 - 2.3 16,000 Policies for each Month or part thereof after the first 12 Months, for so long as the breach persists unremedied; except as provided by the following paragraphs;
 - 2.4 32,000 Policies for each Month or part thereof after the first 18 Months, for so long as the breach persists unremedied; except as provided by the following paragraph; and
 - 2.5 64,000 Policies for each Month or part thereof after the first 24 Months, for so long as the breach persists unremedied.
-

SCHEDULE 4 – COMMERCIAL RULES

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Commercial Rules

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Purpose of the Commercial Rules

The purpose of these Commercial Rules is to complement existing legislative and contractual framework, supplement the public Rules and provide CTP Insurers with an enforceable framework that underpins internal procedures relevant to dealings they have with the Regulator, Scheme Stakeholders and each other. They are issued pursuant to the Commercial Deed.

In the interests of maintaining business efficacy and open dealings between the Regulator and CTP Insurers, these Commercial Rules are to remain confidential and kept in confidence.

Before the CTP Insurer was granted Approval under section 101(1) of the MV Act, it agreed to comply with these Commercial Rules. The Regulator will review the CTP Insurers' compliance with the Commercial Rules and monitor complaints received by it about CTP Insurers' Claims handling practices.

These Commercial Rules do not overrule or substitute a CTP Insurer's obligations under the MV Act, other relevant legislation or applicable common law. In any circumstance where the contents of these Commercial Rules are inconsistent with the requirements of governing legislation or applicable common law, those requirements will take precedence. It is the responsibility of CTP Insurers to be aware of and to comply with their legal obligations.

The Regulator may monitor and review compliance with these Commercial Rules.

Internal auditing of compliance with these Commercial Rules must form part of each CTP Insurer's risk management and compliance program. CTP Insurers have a responsibility to report to the Regulator any results of audit programs conducted by CTP Insurers.

These Commercial Rules are subject to continuous review and subsequent updates will be published by the Regulator.

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Definitions

AAAM means the Association for the Advancement of Automotive Medicine;

Accident means a collision or impact caused by, or arising out of, the use of a motor vehicle;

Administration Expenses means such amounts as the Regulator may determine from time to time in accordance with section 99A(14) of the MV Act to be costs associated with CTP Insurance;

AIS means the anatomical based coding system set out in *Abbreviated Injury Scale (AIS) 2005* and the *Update 2008 Manual* created by AAAM to classify and report Injury data, as replaced from time to time;

Approval means a grant by the Minister of approval in response to an application by a person under section 101 of the MV Act;

APRA means the Australia Prudential Regulation Authority established pursuant to the *Australian Prudential Regulation Authority Act 1998* (Cth), as amended and replaced from time to time;

Business Continuity means ensuring a CTP Insurer can continue to conduct CTP Insurance Business in the event of unforeseen circumstances that adversely impact normal conduct of CTP Insurance Business;

Business Day means any day except Saturdays, Sundays and declared public holidays in South Australia;

Business Model means the tools, processes, systems and resources a CTP Insurer uses to conduct CTP Insurance Business;

Business Plan means a written plan that provides a detailed description of the goals, strategies and actions that the CTP Insurer will adopt to conduct CTP Insurance Business including those matters described at Commercial Rules 1.1.2 and 1.1.3;

Central Locked Folder means a secure system for the upload of Premium Rate Filings, as notified by the Regulator from time to time;

Claim means a claim for loss or damage:

- (a) under, asserted to be under, or capable of being validly made under, a Policy; or
- (b) a Nominal Defendant Claim;

Claimant means an individual who makes a Claim or on whose behalf a Claim is made, including their properly appointed representative, agent or their lawyer where applicable;

Claims Consultant means a person employed by a CTP Insurer to handle Claims on behalf of that CTP Insurer;

Commercial Deed means the document of that name executed between the State of South Australia and the CTP Insurer;

Complaint means an expression of grievance or dissatisfaction relating to Claims management (but does not include anything relating to offers made by CTP Insurers to resolve a Claim or determinations made by CTP Insurers relating to Claim outcomes) made, either verbally or in writing, to a CTP Insurer that is not resolved to the complainant's satisfaction;

Confidential Information means the information identified as confidential in the Commercial Deed;

CTP Insurance means compulsory third party insurance under Part 4 of the MV Act;

CTP Insurance Business means business relating to CTP Insurance;

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CTP Insurer means any person or body (whether incorporated or not) approved by the designated Minister under Part 4 of the MV Act to carry on CTP Insurance Business in South Australia, but excludes MAC;

CTP Insurer Group means the CTP Insurer together with all other persons that have received or may be the subject of an Approval;

CTP Insurer Deed means the document of that name between the State of South Australia and the CTP Insurer;

Customer means a person who holds or intends to hold a Policy with a CTP Insurer;

Data means all hard copy and electronic representation of CTP Insurance scheme information including:

- (a) open, closed and archived documents;
- (b) accounts, records and all other information relating to Claims made against the CTP Insurance scheme;
- (c) document reproduction, document imaging, correspondence and file communication;
- (d) reports and reporting specifications which outline how each reported data element is defined or derived; and/or
- (e) any other storage form directed by the Regulator;

Disaster Recovery means the restoration of Business Continuity as quickly as possible following any major disaster or failure that affects conduct of CTP Insurance Business;

Financial Year means the year commencing 1 July and ending 30 June in the following year;

First Charge means a charge given pursuant to section 66(7) of the RTW Act by Return to Work SA, a Self Insured Employer or the LGA as the case may be to a CTP Insurer;

Government Agency means any State or Commonwealth government department or office or any public, statutory, governmental, semi-governmental or judicial body, local government council, instrumentality, entity or authority and any self-regulatory organisation of government;

Hack or Hacking means the unauthorised access or attempt to obtain authorised access to any portion, feature, transmissions or aspect of software, hardware or system or any portion, feature, transmissions or aspect of the network connected to software, hardware or system by any method, including reverse look-up, tracing, hacking, decoding, password mining or any other illegitimate means;

Hacker means a person or persons who participate in Hacking;

Incentive means any reward, benefit or gift, including a commission or rebate, membership or loyalty program, administration payment or general financial support offered or provided, directly or indirectly, to the Customer or any other person (and includes for the avoidance of doubt any Inducements), unless permitted by the MV Act. Without limiting the foregoing, "Incentive" includes:

- (a) the offering of any Inducement; and
- (b) the offering or provision of any benefit given directly or indirectly in respect of a product or service sold or distributed by or through a CTP Insurer or any related company of a CTP Insurer, where that benefit is given by reason of or in connection with the actual or proposed issue or holding of a Policy;

Inducement means any commission, discount, gift, rebate or any other form of financial benefit or inducement within the meaning of section 129A of the MV Act;

Information Security Management Framework means the South Australian Government framework on cyber security – *Information Security Management Framework (DPC/F4.1)*;

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Injury means:

- (a) bodily injury including pure mental harm or nervous shock; or
- (b) where the context admits – the death of a person;

insured person has the meaning given to that term in the MV Act;

Insurer Premium means the component of a Premium paid or payable to a CTP Insurer (excluding GST) after deduction of Administration Expenses and exclusive of stamp duty;

LGA means Local Government Authority;

LGA Claim means a claim given or forwarded to the LGA pursuant to section 30(4) of the RTW Act;

LSA means the Lifetime Support Authority of South Australia established under the LSS Act;

LSS means Lifetime Support Scheme as established under the LSS Act;

LSS Act means the *Motor Vehicles (Lifetime Support Scheme) Act 2013* (SA), as amended and replaced from time to time;

LSS Rules means the Lifetime Support Scheme Rules made under section 56 of the LSS Act;

MAC means the commission described in the *Motor Accident Commission Act 1992* (SA), as amended and replaced from time to time;

Market Share of a member of the CTP Insurer Group means, at any particular time, the market share of that member, expressed as a percentage, and determined by dividing the aggregate value of Premiums for all Policies issued by the member during the previous 12 Months, by the aggregate value of Premiums for all Policies issued by all members of the CTP Insurer Group during the previous 12 Months, as assessed by the Regulator;

Minister has a meaning consistent with the usage of that term in the MV Act (as applicable);

Month means:

- (a) a calendar month; or
- (b) if calculating a month from a certain date, the period from that date to the day prior to the same date in the next calendar month (or if the next month does not contain the same date then the last day of the next month);

motor vehicle has the meaning given to that term in the MV Act;

MV Act means the *Motor Vehicles Act 1959* (SA), as amended and replaced from time to time;

Non-AIS Code means codes issued by the Regulator, as updated from time to time, to report insufficient medical information, Injuries not in the AIS, or additional information that is claimable but not an Injury;

Nominal Defendant means a person appointed by the Minister to be the nominal defendant and for the time being holding that appointment, as described in the MV Act;

Nominal Defendant Claim means a claim for loss or damage:

- (a) against, or capable of being validly made against the Nominal Defendant as contemplated by Part 4 of the MV Act; or
- (b) in relation to a self-propelled wheelchair or other motor vehicle that is taken to be subject to a Policy, as described in section 12A of the MV Act;

Notable Claims means those Claims which are sensitive or have a wide reaching impact on the CTP Insurance scheme as described by Commercial Rule 20.1.1;

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Personnel means any employee or contractor of a CTP Insurer who is engaged by the CTP Insurer in conducting the CTP Insurance Business but not including Third Party Service Providers or Subcontractors;

PIR means the Personal Injury Register maintained by the Regulator;

Policy has an equivalent meaning to the term "policy of insurance" as used in the MV Act;

Premium means the premium appropriate to the motor vehicle insured under a Policy as determined by the Regulator from time to time, which premium, for the avoidance of doubt, includes Administration Expenses and the Insurer Premium;

Premium Band for a given Premium Class is the range of amounts between and including the amounts of the minimum and the maximum Insurer Premiums that can be charged by each CTP Insurer for that Premium Class;

Premium Class means a premium class set out in the CTP Insurance Premium Schedule as notified by the Regulator from time to time;

Premium Effective Date is the date on which an Insurer Premium comes into effect;

Premium Rate Filing Day means the date on which each CTP Insurer is required to submit Premium Rate Filings to the Regulator in accordance with Commercial Rule 3.2;

Premium Rate Filings means submissions by a CTP Insurer to the Regulator that:

- (a) detail the Insurer Premium that the CTP Insurer proposes be payable in respect of each Premium Class for the relevant Financial Year (or the remainder of the Financial Year for revised Premium Rate Filings made in accordance with Commercial Rule 3.4);
- (b) detail the CTP Insurer's rationale for proposing the Insurer Premium in respect of each Premium Class with reference to the applied assumptions regarding projected Claim costs and frequency, insurer expenses and margins and economic variables;
- (c) detail the CTP Insurer's proposed Premium Effective Date; and

are in the format determined by the Regulator from time to time;

Quarter or Quarterly means each three Month period commencing 0000 hours on 1 July, 1 October, 1 January and 1 April each Financial Year and ending at 2400 hours on 30 September, 31 December, 31 March and 30 June respectively;

Records mean all information that is made or kept, or received and kept, by a CTP Insurer in conducting CTP Insurance Business in any form (including written and electronic) and includes:

- (a) Data;
- (b) CTP Insurer insurance records and files;
- (c) contracts with Third Party Service Providers and Subcontractors;
- (d) reports and other documentation prepared in connection with any audit or inspection by the Regulator or its representatives;
- (e) reports, specifications, user or technical manuals, designs, plans, spread sheets, drawings, pictures; and
- (f) books and accounts;

Regulator means the State acting through its designated agent the CTP Regulator established under the *Compulsory Third Party Insurance Regulation Act 2016* (SA);

Remediation Plan means a plan in writing signed by the Accounts Manager of the CTP Insurer nominated under Commercial Rule 12.1.1 (or a person acting in that person's position) detailing:

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- (a) the nature and extent of any breach of a Scheme Document to which the plan relates;
- (b) the actions that the CTP Insurer has taken to date and proposes to undertake to remedy the breach as soon as reasonably practicable (but in any event within six Months);
- (c) the actions that the CTP Insurer has taken to date and proposes to undertake going forward to prevent the breach re-occurring; and
- (d) a project plan detailing the timing of completion of each action proposed to be undertaken by the CTP Insurer;

Return to Work SA means the Return to Work Corporation of South Australia trading as ReturnToWorkSA established pursuant to the *Return to Work Corporation of South Australia Act 1994* (SA), as amended and replaced from time to time;

Return to Work SA Claim means a claim given or forwarded to Return to Work SA pursuant to section 30(4) or (5) of the RTW Act;

RTW Act means the *Return to Work Act 2014* (SA), as amended and replaced from time to time;

RTW Injury means, in connection with a claim under the RTW Act:

- (a) any physical or mental injury including:
 - (i) loss, deterioration or impairment of a limb, organ or part of the body;
 - (ii) a disease; or
 - (iii) disfigurement; or
- (b) where the context admits – the death of a person,

and includes an injury that is, or results from, the aggravation, acceleration, exacerbation, deterioration or recurrence of a prior injury;

Rule means a rule regarding the conduct of CTP Insurance Business set out in Schedule 1 to the CTP Insurer Deed or issued by the Regulator in accordance with the CTP Insurer Deed or pursuant to law, as varied, revoked and replaced from time to time;

Scheme Documents means the documents which regulate the conduct of CTP Insurance Business by a CTP Insurer, to which the CTP Insurer is a party, including:

- (a) the CTP Insurer Deed;
- (b) the Commercial Deed;
- (c) the Rules; and
- (d) these Commercial Rules;

Scheme Start Date means 1 July 2016;

Scheme Sensitive Matters means any matter or event that has had or could have a material adverse effect on the CTP Insurance scheme as described in Commercial Rule 20.2;

Scheme Stakeholder means any party that may have an interest in and/or provide services to the CTP Insurance scheme, aside from the CTP Insurer;

Section 33 expenses means the medical and like expenses which are compensable pursuant to the provisions of section 33 of the RTW Act;

Self Insured Employer means an employer who is registered as a self insured employer under Part 9 Division 1 by Return to Work SA under the RTW Act and has executed a memorandum of administrative arrangement with the Regulator addressing the matters set out in Commercial Rule 25;

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Self Insured Employer Claim means a claim given or forwarded pursuant section 30(4) of the RTW Act to a Self Insured Employer;

Staff Incentive means any program designed to incentivise or motivate the behaviour of any Personnel directly involved in the CTP Insurer's conduct of its CTP Insurance Business as part of their day to day responsibilities, including but not limited to incentive structures, remuneration (excluding base salary amounts) and performance metrics;

State Records Act means the *State Records Act 1997 (SA)*, as amended and replaced from time to time;

Subcontractor means any subcontractor or agent engaged by a CTP Insurer to fulfil all or part of its obligations to conduct CTP Insurance Business, not including a Third Party Service Provider;

Third Party Service Provider means any person who provides services to a CTP Insurer for the purposes of conducting CTP Insurance Business;

Transfer Plan means a written plan that specifies the plans and procedures which the CTP Insurer will adopt to facilitate an orderly and efficient transfer of its CTP Insurance Business;

Trigger Event means the occurrence of any one or more of the following:

- (a) a movement of $\pm 1.5\%$ per annum or more in the economic gap rate (the average discount rate minus the average wage inflation rate);
- (b) a movement of $\pm 5\%$ in core claim frequency since the previous pricing review, adjusted for seasonality. Core claims exclude workers' compensation recovery claims, interstate claims and no-fault children's claims;
- (c) a change in legislative or legal precedents that changes the required risk premium by $\pm 5\%$ or more;
- (d) a change in regulation that changes the required risk premium by $\pm 5\%$ or more; or
- (e) a combination of the above factors that changes the required risk premium by $\pm 5\%$ or more;

TRUMPS means the Transport Regulation User Management Processing System, as operated by the Regulator or its agent;

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

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

Worker means a worker within the meaning of section 4(1) of the RTW Act, who has made a claim under that Act.

1 Business Plans

1.1 Requirements of a Business Plan

1.1.1 A CTP Insurer must prepare a Business Plan annually.

1.1.2 The Business Plan must include a description of the CTP Insurer's Business Model including:

- (a) organisational structure;
- (b) Claims management;

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- (c) business systems for Policy and Claimant information; and
- (d) fraud detection and management.

1.1.3 The Business Plan must also include details of:

- (a) the CTP Insurer's marketing strategy for the forthcoming year and how any strategy is likely to impact its Market Share;
- (b) the CTP Insurer's audit plan for CTP Insurance Business for the next 12 Months;
- (c) planned innovation to Claims management practices;
- (d) performance against service level standards for CTP Insurance Business;
- (e) operational issues that have occurred in the past or could occur in future;
- (f) future risks that may impact on the conduct of CTP Insurance Business;
- (g) any Subcontractor arrangements relating to the administration of Policies or Claims;
- (h) any arrangements relating to the administration of Policies and Claims occurring outside the State of South Australia;
- (i) reinsurance arrangements relevant to the conduct of CTP Insurance Business;
- (j) business systems' age and estimated future lifetime and known capability gaps; and
- (k) fraud detection strategy for the next 12 Months.

1.1.4 The Regulator may, from time to time, direct that the Business Plan be in a prescribed form or contain particular content.

1.2 Revision of Business Plan

1.2.1 The Business Plan must be revised by the CTP Insurer:

- (a) at least once per year;
- (b) when there is a change to the Scheme Documents or to these Commercial Rules that affects the content of the Business Plan;
- (c) if the CTP Insurer, in conducting CTP Insurance Business, departs significantly from its previous Business Plan; and
- (d) when the Regulator directs the CTP Insurer to revise its Business Plan.

1.3 Provision of Business Plans

1.3.1 The CTP Insurer must provide the Regulator with a Business Plan each year, by 31 March of the relevant year.

1.3.2 The CTP Insurer must provide the Regulator with a copy of its revised Business Plan within 10 Business Days of notice from the Regulator.

1.4 Notification and queries from the Regulator

1.4.1 The Regulator may, from time to time, direct a CTP Insurer to provide further details in relation to the Business Plan.

1.4.2 CTP Insurers must be reasonably available to respond to any queries from the Regulator in relation to information contained in the Business Plan.

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- 1.4.3 The Regulator may, in a format and timeframe determined by it, direct a CTP Insurer to report on any aspect of the Business Plan, compliance with these Commercial Rules or their market practices.

1.5 Variance of CTP Insurance Business

- 1.5.1 A CTP Insurer may vary the way it conducts CTP Insurance Business as long as:
- (a) any variance complies with the Scheme Documents and any Rule issued by the Regulator; and
 - (b) any material variance is disclosed to the Regulator in accordance with these Commercial Rules.

2 Business Continuity and Disaster Recovery

A CTP Insurer must maintain and submit to the Regulator a plan or plans for Business Continuity and Disaster Recovery which are, as far as is reasonably practicable, consistent with Standards Australia AS/NZS 5050:2010 and APRA Prudential Standard CPS 232.

3 Premium determination

3.1 Determination of Premium Bands

- 3.1.1 Premium Bands will be determined by the Regulator annually by any mechanism it sees fit.
- 3.1.2 At least 11 weeks prior to the start of each Financial Year, the Regulator will notify the CTP Insurers in writing of the Premium Bands determined by the Regulator for each Premium Class for the upcoming Financial Year (**Premium Bands Notice**).
- 3.1.3 The Premium Bands Notice will include:
- (a) a summary of the bases for the determination of the Premium Bands by the Regulator; and
 - (b) the Premium Rate Filing Day for the relevant Financial Year.
- 3.1.4 The Regulator will review the adequacy of Premium Bands outside of the annual cycle if one of the Trigger Events occurs. Each CTP Insurer acknowledges that this may result in Premium Bands being re-set outside of the annual cycle and the CTP Insurer being required to re-submit Premium Rate Filings during the course of the Financial Year, in which case they must re-submit Premium Rate Filings in accordance with Commercial Rule 3.4.

3.2 Premium Rate Filings

- 3.2.1 By 5pm ACST on the Premium Rate Filing Day of the relevant Financial Year, each CTP Insurer must submit Premium Rate Filings to the Regulator by uploading its Premium Rate Filings into the Central Locked Folder.
- 3.2.2 Once uploaded in accordance with Commercial Rule 3.2.1, the CTP Insurer cannot change the proposed Insurer Premiums set out in the Premium Rate Filings or otherwise submit a revised Premium Rate Filing other than in accordance with Commercial Rule 3.4.
- 3.2.3 Within three Business Days of uploading its Premium Rate Filings to the Central Locked Folder in accordance with Commercial Rule 3.2.1, the CTP Insurer must upload a Premium data file into TRUMPS.
- 3.2.4 Within three Business Days following receipt of an email notification that a Premium data file has been loaded into TRUMPS by a CTP Insurer, the Regulator (or its nominee) will review the Premium Rate Filings and Premium data files as uploaded in accordance with Commercial

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Rule 3.2.3 and by notice in writing to the CTP Insurer prior to the commencement of the Financial Year (which may be provided via a TRUMPS system notification):

- (a) if the Insurer Premium for each Premium Class in the Premium Rate Filing and Premium data file are consistent and fall within the Premium Bands determined by the Regulator for the applicable Premium Class for the specified Financial Year, approve the Insurer Premiums and determine the applicable Premium for entry into TRUMPS; or
- (b) if the Insurer Premiums for any Premium Class in the Premium Rate Filing and Premium data file are inconsistent and/or fall outside of the applicable Premium Band for that Premium Class, reject the entire Premium Rate Filing (in which case the Insurer Premium payable for that Premium Class will be as determined in accordance with Commercial Rule 3.3).

3.2.5 For the avoidance of doubt, an Insurer Premium will fall within the Premium Band if the Insurer Premium is equal to or greater than the floor limit and equal to or less than the ceiling limit for the designated Premium Class.

3.2.6 Within two Business Days following receipt of an email notification that a CTP Insurer's Premium data file has been approved by the Regulator, the CTP Insurer must activate their Premium data file within TRUMPS.

3.3 Failure to submit valid Premium Rate Filings

If a CTP Insurer fails to submit valid Premium Rate Filings for a Financial Year in accordance with Commercial Rule 3.2 (or to submit Premium Rate Filings at all) or if the CTP Insurer's Premium Rate Filing is rejected, then the Insurer Premium payable in respect of that CTP Insurer for the relevant Financial Year will be deemed to be:

- (a) if the failure is in respect of the first Financial Year, the maximum Insurer Premium in the Premium Band payable for each Premium Class; and
- (b) if the failure is in respect of a subsequent Financial Year, the Insurer Premium approved by the Regulator as payable in the preceding Financial Year for each Premium Class, except that:
 - (i) if the Insurer Premium approved by the Regulator as payable in the preceding Financial Year for any Premium Class is below the Premium Band for the relevant Financial Year, the Insurer Premium payable in respect of the CTP Insurer for that Premium Class will be the minimum Insurer Premium in the Premium Band payable for the relevant Premium Class; and
 - (ii) if the Insurer Premium approved by the Regulator as payable in the preceding Financial Year for any Premium Class is above the Premium Band for the relevant Financial Year, the Insurer Premium payable in respect of the CTP Insurer for that Premium Class will be the maximum Insurer Premium in the Premium Band payable for the relevant Premium Class.

3.4 Revising Premium Rate Filings during the Financial Year

3.4.1 CTP Insurers may submit revised Premium Rate Filings during the course of a Financial Year (or as required by Commercial Rule 3.1.4) in accordance with this Commercial Rule 3.4.

3.4.2 The CTP Insurer must provide the revised Premium Rate Filings by uploading them into the Central Locked Folder. The revised Premium Rate Filings must include a Premium Effective Date that is at least two Months and up to a maximum of six Months in the future from Premium activation performed in accordance with Commercial Rules 3.4.3 to 3.4.5.

3.4.3 Within two Business Days of uploading the Premium Rate Filings into the Central Locked Folder, CTP Insurers must upload their Premium data file into TRUMPS.

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- 3.4.4 Within two Business Days following receipt of an email notification that a Premium data file has been loaded into TRUMPS by a CTP Insurer, the Regulator (or its nominee) will review the Premium Rate Filings and Premium data files as uploaded in accordance with Commercial Rule 3.4.2 and by notice in writing to the CTP Insurer:
- (a) if the Insurer Premium for each Premium Class in the Premium Rate Filing falls within the Premium Bands determined by the Regulator for the applicable Premium Class for the specified Financial Year and the Premium Effective Date is within the required time period outlined in Commercial Rule 3.4.2, approve the Insurer Premiums detailed in the Premium Rate Filings and determine the applicable Premium for entry into TRUMPS; or
 - (b) if the Insurer Premiums for any Premium Class in the Premium Rate Filing falls outside of the applicable Premium Band for that Premium Class and/or the Premium Effective Date falls outside of the time period specified in Commercial Rule 3.4.2, reject the entire Premium Rate Filing, in which case the then applicable Insurer Premium for the relevant Premium Class will continue to apply.
- 3.4.5 Within two Business Days following receipt of an email notification that a CTP Insurer's revised Premium data file has been approved by the Regulator, the CTP Insurer must activate its Premium data file within TRUMPS.
- 3.4.6 On activation of the revised Premium Rate Filing, a new revised Premium Rate Filing associated Premium data file cannot be submitted with a Premium Effective Date that is before or equal to a currently activated Premium Effective Date.

4 Transfer

4.1 Application

- 4.1.1 This Commercial Rule 4 applies to a CTP Insurer that is transferring all or a portion of its CTP Insurance Business to another CTP Insurer, voluntarily and with the consent of the Regulator pursuant to the Scheme Documents and/or section 5(1)(h) of the *Compulsory Third Party Insurance Regulation Act 2016* (SA).
- 4.1.2 The CTP Insurer acknowledges in the event it transfers CTP Insurance Business to another CTP Insurer, it is critical for there to be continuity of the CTP Insurance scheme and minimal, if any, disruption to the CTP Insurance scheme and Scheme Stakeholders.

4.2 Transfer Plan

- 4.2.1 When applying to the Regulator for consent to transfer its CTP Insurance Business, the CTP Insurer must provide to the Regulator a Transfer Plan detailing how it will transfer CTP Insurance Business to another CTP Insurer, including:
- (a) a detailed overview of the CTP Insurer's approach and strategy;
 - (b) a project timeline with timeframes; and
 - (c) a risk matrix which identifies all transfer risks, their potential impact on the CTP Insurance scheme, and the mitigation strategies that will be adopted by the CTP Insurer.
- 4.2.2 A CTP Insurer must include in the Transfer Plan details of the roles and responsibilities of Personnel responsible for the management and provision of the transfer.
- 4.2.3 A CTP Insurer will include in the Transfer Plan:
- (a) the human resource management strategies that will be adopted to:
 - (i) manage the change process;

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- (ii) retain and support Personnel in conducting CTP Insurance Business during the period of transfer; and
 - (iii) ensure that adequate Personnel and resources are available to conduct CTP Insurance Business once the CTP Insurer has transitioned out of the CTP Insurance scheme; and
 - (b) internal staff communication strategies.
- 4.2.4 A CTP Insurer will include in the Transfer Plan:
- (a) details of the performance management strategies that will be adopted by it to maintain conduct of CTP Insurance Business;
 - (b) strategies to ensure Personnel maintain workloads that are not in excess of those set out in the CTP Insurer's Business Model;
 - (c) details of any Staff Incentives; and
 - (d) Personnel resource options to ensure the continuation of conduct of CTP Insurance Business.
- 4.2.5 A CTP Insurer will include in the Transfer Plan details of the strategies the CTP Insurer will adopt to work collaboratively with the Regulator and any new CTP Insurer to ensure the orderly transfer of:
- (a) Personnel who seek to transfer to the new CTP Insurer;
 - (b) Claim files that are fully maintained and up to date;
 - (c) Data and other information required under the agreement; and
 - (d) communications from Scheme Stakeholders.

5 Disputes with the Regulator

5.1 Disputes

Any dispute or difference whatsoever between the Regulator and a CTP Insurer will be dealt with in accordance with clause 27 (Dispute resolution) of the Commercial Deed and any Rules issued by the Regulator from time to time.

5.2 Continued Performance

Notwithstanding the existence of a dispute between the Regulator and a CTP Insurer, the CTP Insurer must continue to:

- (a) conduct CTP Insurance Business; and
- (b) act consistently with these Commercial Rules.

6 Systems

6.1 Systems requirements

- 6.1.1 A CTP Insurer must take all steps to ensure it has appropriate systems and associated information technology as is necessary to properly and efficiently conduct CTP Insurance Business and provide the Data required by the Regulator.
- 6.1.2 A CTP Insurer must ensure that in conducting CTP Insurance Business it does not knowingly (whether by act or omission) adversely affect or alter the operation, functionality or technical

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environment of a Regulator's systems, information technology equipment, interfaces or processes without approval by the Regulator.

- 6.1.3 The Regulator may, from time to time, by providing reasonable prior written notice and following consultation with the CTP Insurer, direct the CTP Insurer to make any required changes to its systems and associated information technology, including but not limited to changes to data fields to capture Data and information technology upgrades to comply with any technical specifications required by the Regulator.

6.2 Virus control by CTP Insurer

If any Virus is directly or indirectly introduced into the Regulator's system by a CTP Insurer or its representatives, it must:

- (a) immediately notify the Regulator;
- (b) immediately take action to remove the Virus and remedy any damage caused by the Virus;
- (c) keep the Regulator informed regularly of the status of the Virus removal and remedial actions being taken; and
- (d) ensure any relevant protection against Viruses is updated to address that and similar Viruses.

6.3 Anti-Hacking control by a CTP Insurer

- 6.3.1 A CTP Insurer must not, by act or omission, Hack, or encourage or assist others to Hack into the Regulator's system, software or interface.
- 6.3.2 A CTP Insurer must take all preventative measures to prevent Hacking of the Regulator's system, software or interface.
- 6.3.3 If an unauthorised access is detected in connection with the Regulator's system, or any CTP Insurer's system containing information or Data in relation to CTP Insurance Business, the CTP Insurer must:
- (a) immediately notify the Regulator;
 - (b) immediately take action to remove the Hacker from the system and remedy any damage caused by the Hacker;
 - (c) keep the Regulator informed regularly of the status of the Hacker and remedial actions being taken; and
 - (d) ensure any relevant protection against Hacking is updated to address that and similar Hacking.

6.4 Data Security

- 6.4.1 The CTP Insurer must maintain a system for information security management and outsourcing which is, as far as is reasonably practicable, consistent with the Information Security Management Framework, ISO27001 and APRA Prudential Standard CPS 231 and once in effect APRA Prudential Standard CPS 234.
- 6.4.2 On becoming aware that there has been, or is likely or reasonably suspected to have been, a breach of the CTP Insurer's information security management and outsourcing system connected to its CTP Insurance Business, or any other suspected or known breach of this Commercial Rule 6.4, the CTP Insurer must:
- (a) immediately provide preliminary notice of the breach to the Regulator (whether by email, telephone or otherwise and for the avoidance of doubt, at the same time as, or

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as soon as is reasonably practical following any notification to a regulator, including APRA); and

- (b) provide further details in writing within five Business Days of providing the preliminary notice.

7 Response to subpoenas, court documents and court orders

- 7.1.1 Subpoenas and court orders must be dealt with by the CTP Insurer and within the timeframes specified in the subpoena or court order (as applicable).
- 7.1.2 If the Regulator receives a subpoena, notice to produce or court order requiring attendance at court to give evidence or produce documents that relate to a Claim managed by a CTP Insurer, it must be referred to that CTP Insurer's legal advisors who are required to:
 - (a) advise the relevant business area or Claims Consultant;
 - (b) determine the validity of the subpoena, and if valid then ensure compliance with the subpoena; and
 - (c) comply with any directions made by the Regulator.

8 Injury Coding

8.1 Reporting Injury codes

In managing Claims, CTP Insurers must ensure that all Injuries (including pre-existing conditions or pre-existing Injuries) are coded in accordance with the AIS and reported to the PIR as follows:

- (a) on receipt of an Injury claim form (using a Non-AIS Code if no medical evidence is available);
- (b) on first receipt of medical information by the CTP Insurer;
- (c) within six weeks of receipt of any additional medical information that differs from previous medical information; and
- (d) on closing the Claim file, using the highest medical authority available in relation to the Injury (then in accordance with the AIS where applicable, or otherwise using a Non-AIS Code).

8.2 Assigning Injury codes

CTP Insurers must ensure at all times that Personnel performing Injury coding are:

- (a) accredited by an AIS Injury coding course developed by AAAM (or equivalent tertiary-recognised Injury coding classification course); and
- (b) appropriately trained or have prior knowledge of medical terminology, anatomy and physiology.

9 Data collection and provision

9.1 Reporting of Data

- 9.1.1 The Regulator may, from time to time, direct the CTP Insurer to provide specified Data in a specified format.

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9.1.2 CTP Insurers must ensure all Data extracts required by these Commercial Rules are correct and in accordance with any technical specifications directed by the Regulator.

9.2 Report categories

9.2.1 The Regulator may, from time to time, direct the CTP Insurer to provide specified reports in a specified format.

9.2.2 The following reports may be required:

- (a) Quarterly written Premium report;
- (b) Nominal Defendant Claim report;
- (c) share claims report;
- (d) self-audit report;
- (e) Business Plan;
- (f) Complaints report;
- (g) Quarterly scheme— Notable Claims and Scheme Sensitive Matters report; and
- (h) any other report as directed by the Regulator.

9.2.3 CTP Insurers must ensure all reports required by these Commercial Rules are clear, complete, concise and correct, and are provided in accordance with any technical specifications or timeframes requested by the Regulator.

10 Obligation to store and maintain Records

10.1 Records are captured

Records must be captured into corporate record keeping systems upon creation or receipt, or as soon as practicable afterwards. In particular the CTP Insurer must:

- (a) identify and document any specific administrative or legal requirements for Personnel to capture Records;
- (b) assign responsibility for the capture of Records created by the Regulator;
- (c) inform all Personnel of the need to capture Records into record keeping systems upon creation or receipt, or as soon as practicable afterwards;
- (d) identify the crucial points in its business transactions where Records need to be captured;
- (e) assign a unique claim number for all new Claims lodged; and
- (f) review business processes to ensure all Records that ought to be captured are captured.

10.2 Destruction of Records

10.2.1 When destroying Records the CTP Insurer must:

- (a) only destroy Records when the relevant retention period for such Records has elapsed;
- (b) ensure it destroys those Records in a secure and confidential manner;

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- (c) if assigning responsibility for destruction of Records, ensure any private contractor provides a certificate of destruction confirming confidential destruction;
- (d) if Records are in electronic format, destroy them by reformatting or rewriting to ensure the Data and any "pointers" in the system are destroyed and cannot be recovered; and
- (e) keep a record of all Records destroyed.

10.2.2 The CTP Insurer must ensure Third Party Service Providers and Subcontractors:

- (a) have and comply with a procedure that regularly deletes any copies of Records that may be stored on the hard drive of a printer, scanner, photocopier or personal computer or similar; and
- (b) in accordance with these Commercial Rules destroy the hard drive of any such equipment if the equipment is no longer used in conducting CTP Insurance Business.

10.2.3 The CTP Insurer must retain, at minimum, the Records for the retention period set out below and dispose of the Records at the end of the applicable period:

Type of File	Minimum Retention Period
Medical Only Claims	seven years from date of closure
General Claims (including Nominal Defendant, interstate, fraud and Claims by Personnel)	12 years from date of closure
Infant Claims	until the Claimant reaches 25 years of age or 12 years from the date of settlement, whichever is longer
Evidence (Physical evidence collected in the investigation of a Claim, including video, audio, motor vehicle components and personal evidence such as clothing, helmet, seat belts etc.)	for the same period as the relevant Claim file
Data (including financial records, communication notes, statistical data, and electronic images)	20 years
Scanned Documents	contingent upon the type of Claim to which the documents belong

10.2.4 The CTP Insurer must keep a record of Records being held off site from its office, for short and long-term retention.

10.3 Access to Records is managed

A CTP Insurer must manage the access and release of its Records to ensure:

- (a) the Regulator has access to the Records and can inspect the Records without undue delay;
- (b) such access to the Records does not compromise the reliability of those Records;
- (c) any Confidential Information contained within those Records remains confidential; and
- (d) the access to any Records that could expose the Regulator to legal liability is not allowed without prior approval of the Regulator.

10.4 State Records Act

The CTP Insurer must:

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- (a) not do or cause to be done any act, matter or thing which may result in a contravention of the State Records Act by the Regulator or its representatives; and
- (b) in consultation with the Regulator, do and cause to be done such acts, matters and things as may be required to ensure the Regulator complies with its obligations under the State Records Act.

11 Staff Incentives

11.1.1 Details of all proposed Staff Incentives must be provided by CTP Insurers to the Regulator either:

- (a) in the Business Plan; or
- (b) where not detailed in the Business Plan, at least 30 days prior to implementation or variation of the Staff Incentive.

11.1.2 CTP Insurers must ensure that any Staff Incentives will not have a negative impact on motor vehicle owners, Claims or Claimants that is inconsistent with the obligation and objectives of the CTP Insurance Scheme, and that there is no conflict between Staff Incentives and the obligations and objectives of the CTP Insurance Scheme.

11.1.3 CTP Insurers must have an organisational structure in place to monitor the effectiveness and impact of Staff Incentives, and must report these findings to the Regulator in the Business Plan or otherwise annually at the same time as providing the Business Plan.

12 Incentives

12.1.1 The CTP Insurer must nominate an Accounts Manager for CTP Insurance Business (or equivalent position), subject to approval by the Regulator. The CTP Insurer may thereafter nominate a replacement Accounts Manager for CTP Insurance Business at any time, but such nomination will not be effective unless it is approved in writing by the Regulator.

12.1.2 Within six weeks following the end of each Financial Year, the nominated Accounts Manager will sign a statutory declaration warranting to the Regulator that, having made all reasonable enquiries, she/he is not aware of:

- (a) any times throughout that Financial Year at which the CTP Insurer did not comply with the obligations prescribed by Rule 4.1 (Incentives for CTP insurance business prohibited); nor
- (b) any Incentives having been offered or provided to any Customer or to any other representative or intermediary of the CTP Insurer (including without limitation a motor dealer) during that Financial Year.

12.1.3 The CTP Insurer's Accounts Manager for CTP Insurance Business will be personally liable for any false declaration made in accordance with this Commercial Rule 12.

13 Reinsurance arrangements

The CTP Insurer must ensure that any arrangements the CTP Insurer has with reinsurers comply with the confidentiality obligations prescribed by clause 26 (Confidentiality) of the Commercial Deed.

14 Duty to Cooperate with Regulator

A CTP Insurer must:

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- (a) attend and actively participate in forums convened or attended by the Regulator to discuss the management and performance of the CTP Insurance scheme, to review the CTP Insurance scheme and to discuss new initiatives for the CTP Insurance scheme;
- (b) assist the Regulator to develop, refine and improve the functions, tasks, responsibilities and duties of CTP Insurers under these Commercial Rules;
- (c) assist the Regulator to identify any potential legislative or operational reforms to the CTP Insurance scheme and provide feedback on any new CTP Insurance scheme initiatives;
- (d) assist the Regulator in the management of Scheme Stakeholder relationships where it is reasonable for a CTP Insurer to do so; and
- (e) comply with the Regulator's compliance monitoring program, as amended from time to time.

15 Nominal Defendant

15.1 Allocation of Nominal Defendant Claims

- 15.1.1 Where it is alleged an Accident has arisen out of the use of an uninsured or unidentified motor vehicle within the State of South Australia, the Nominal Defendant will be substituted for the person who would otherwise have been indemnified by the Policy.
- 15.1.2 Subject to the Scheme Documents, the Regulator will allocate Nominal Defendant Claims to CTP Insurers in proportion to their Market Share by any mechanism it sees fit.
- 15.1.3 A CTP Insurer must not refuse the allocation of a Nominal Defendant Claim to it, unless the CTP Insurer has an actual or potential conflict of interest.

15.2 Management of Nominal Defendant Claims

- 15.2.1 CTP Insurers, in relation to a Nominal Defendant Claim, must:
 - (a) have processes in place to identify any actual or potential conflicts of interest; and
 - (b) where an actual or potential conflict of interest arises, expediently notify the Regulator of the conflict of interest.
- 15.2.2 The Regulator may give directions to a CTP Insurer as to re-allocation of a Nominal Defendant Claim if a conflict of interests exists or as the circumstances warrant.

15.3 Investigation of Nominal Defendant Claims

Where the CTP Insurer is allocated a Nominal Defendant Claim involving an unidentified motor vehicle, the CTP Insurer may make reasonable attempts to identify the motor vehicle alleged to have been at fault in the Accident and such attempts may include:

- (a) an advertisement—taken out in an appropriate media outlet, such as the Advertiser, the Sunday Mail, or a local publication such as the Messenger;
- (b) posters—displayed prominently in an appropriate location;
- (c) door-knocking—undertaken in an appropriate locality;
- (d) contacting vehicle repairers—in the local area or specialising in a particular type of vehicle;
- (e) police investigations; and

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- (f) investigating whether the vehicle is insured under a compulsory third party insurance scheme outside of South Australia.

16 Motor vehicles registered outside South Australia

Where a Claim in respect of liabilities arising under section 127B of the MV Act is to be allocated to a CTP Insurer by the Regulator:

- (a) subject to the Scheme Documents, the Regulator will allocate the Claim to a CTP Insurer with regard to its Market Share by any mechanism it sees fit;
- (b) subject to the terms of the Scheme Documents, a CTP Insurer can only refuse the allocation of the Claim to it if the CTP Insurer has an actual or potential conflict of interest which would prevent it from handling the Claim (as assessed by the Regulator, acting reasonably); and
- (c) the Regulator may give directions to a CTP Insurer as to re-allocation of the Claim if a conflict of interests exists or as the circumstances warrant.

17 Section 127B of the *Motor Vehicles Act 1959* (SA)

For the purposes of section 127B of the MV Act until otherwise notified by the Regulator, the **treatment, care and support needs** of a child include the child's needs for or in connection with any of the following:

- (a) education and vocational training;
- (b) home and transport modification;
- (c) such other kinds of treatment, care, support or services as may be approved by the insurer (either generally, for specified classes of cases, or for a particular person).

18 Complaints about CTP Insurers

- 18.1.1 CTP Insurers must have the necessary systems in place to undertake an analysis of trends to highlight emerging Complaints or patterns of Complaint.
- 18.1.2 Where recurring Complaints appear, the CTP Insurer must take remedial action to improve its procedures and processes.
- 18.1.3 CTP Insurers must have in place a tracking system with timeframes to monitor the progress of Complaints.
- 18.1.4 Where CTP Insurers receive a Complaint from the South Australian Ombudsman, a minister of the State of South Australia or any member of the Parliament of South Australia, CTP Insurers must:
 - (a) notify the Regulator immediately;
 - (b) provide the Regulator with a proposed response to the Complaint; and
 - (c) respond to the Complaint within the timeframe specified in the Complaint.

19 Prohibition on recovery of an excess in certain cases

Members of the CTP Insurer Group must not, under section 124AB of the MV Act, seek to recover from an insured person money paid and/or costs incurred by the CTP Insurer.

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20 Notable Claims and Scheme Sensitive Matters

20.1 Notable Claims

20.1.1 CTP Insurers must identify Claims that may reasonably be considered to be sensitive or may potentially have a wide reaching impact on the CTP Insurance scheme and notify the Regulator of those Claims.

20.1.2 In identifying Claims under Commercial Rule 20.1.1, CTP Insurers should have regard to:

- (a) the potential for precedents to be set that may affect the operation of the CTP Insurance scheme including any matters on appeal or test cases where the outcome could result in new or different interpretations of existing law;
- (b) severe Injuries where the estimated reserve is significant;
- (c) the potential for media scrutiny;
- (d) the potential for adverse social impact; or
- (e) the potential for fraud or criminal conduct to be proven against a Claimant relevant to the defence of a Claim.

(Note: this list is not exhaustive, and in considering whether a Claim is notable CTP Insurers should err on advising the Regulator of matters they believe could be sensitive or have a wide reaching impact on the CTP Insurance scheme).

20.1.3 If CTP Insurers are in any doubt as to whether a Claim should be brought to the Regulator's attention it should contact the Regulator to discuss the Claim further.

20.1.4 The Regulator may, from time to time, provide direction to a CTP Insurer regarding the management, resolution or conduct of a Notable Claim if it is in the broader interests of the CTP Insurance scheme to do so.

20.2 Scheme Sensitive Matters

A CTP Insurer must notify the Regulator as soon as it becomes aware of:

- (a) any matter or event that has had or could have a material adverse effect on:
 - (i) the ability of the CTP Insurer to perform its obligations under the MV Act, Scheme Documents or these Commercial Rules; or
 - (ii) the reputation of the Regulator;
- (b) any litigation, arbitration, tax claim, dispute or administrative or other proceeding in relation to it conducting CTP Insurance Business under the MV Act, the Scheme Documents or these Commercial Rules other than Claims brought under the MV Act or workers compensation claims; and
- (c) any dispute between it and a Government Agency in relation to performance of its obligations under the Scheme Documents or these Commercial Rules. The Regulator may, from time to time, direct the CTP Insurer to provide it with information and documentation (except documents or information the subject of legal professional privilege) relevant to the Scheme Sensitive Matter.

20.3 Regulator involvement in Notable Claims and Scheme Sensitive Matters

In respect of any Notable Claim or Scheme Sensitive Matter, CTP Insurers must, if requested by the Regulator:

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- (a) provide the Regulator with details as to the Claim or matter including the sensitive issues involved in the Claim or matter, its progress, Claim estimate, likely outcome, strategy and media sensitivity;
- (b) provide the Regulator with copies of submissions, judgments or court orders, as relevant;
- (c) keep the Regulator updated and advised on progress, likely outcomes, Claim estimate, strategy, relevant court or interlocutory dates and media sensitivity;
- (d) allow the Regulator to make recommendations to it regarding the management and strategy;
- (e) if proceeding to hearing, convene a conference with the Regulator and its legal advisors to discuss the Claim or matter 28 days prior to that hearing, or such lesser period as is reasonably practicable in the circumstances;
- (f) otherwise, provide updates and advice to the Regulator to allow sufficient time for the Regulator to consult with Scheme Stakeholders and make recommendations to the CTP Insurer as to the conduct of the Claim or matter prior to any significant events, such as a hearing, mediation or conference; and
- (g) provide the Regulator with a summary of the outcome of the Claim or matter.

21 Consultation regarding sanctions for breach of the Scheme Documents

For the purposes of clause 17.3 (Consultation) of the Commercial Deed, the following consultation process must be adhered to prior to the issue of a written demand by the Regulator under clause 17.1 (Sanctions payable by CTP Insurer) of the Commercial Deed (Sanction Notice):

21.1.1 Prior to the issue of a Sanction Notice, the Regulator must:

- (a) provide written notice to the CTP Insurer detailing the nature of the breaches of the Scheme Document (including any Rule or Confidential Rule) intended to be described in the Sanction Notice;
- (b) offer to consult with the CTP Insurer regarding the proposed Sanction Notice; and
- (c) if the CTP Insurer makes itself available to do so in accordance with Commercial Rule 21.1.2, meet with the CTP Insurer regarding the proposed Sanction Notice.

21.1.2 A meeting under Commercial Rule 21.1.2(c) may be undertaken, at the discretion of the Regulator, at such time and place reasonably nominated by the Regulator, and by any of the following means:

- (a) in person;
- (b) by telephone; or
- (c) by videoconference.

21.1.3 Provided the contents of a Sanction Notice is broadly consistent with the information initially notified to the CTP Insurer under Commercial Rule 21.1.1, the Sanction Notice will be compliant with this Commercial Rule.

22 Remediation

22.1.1 Notwithstanding clause 21.1.1 of the Commercial Deed, the Regulator may require that the CTP Insurer prepares a Remediation Plan in connection with any issue identified in any audit

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or compliance activity, regardless of whether or not such conduct constitutes a breach of the Scheme Documents.

- 22.1.2 Where the Regulator requires the preparation of a Remediation Plan in accordance with Commercial Rule 22.1.1, the CTP Insurer is to prepare the Remediation Plan and remediation is to be carried out in accordance with clause 21 (Remediation) of the Commercial Deed as if the conduct did constitute a breach of the Scheme Documents.

23 Working with the LSA

23.1 Early notification and expeditious determination of applications

- 23.1.1 The CTP Insurer must notify the LSA of potential participants under the LSS as soon as practicable, with the consent of the Claimant, if appropriate.
- 23.1.2 The CTP Insurer must take all necessary steps to comply with the application process under the LSS Act and LSS Rules, including the provision of necessary information and medical reports, including, where appropriate, obtaining the necessary consent from a Claimant.
- 23.1.3 Pursuant to section 48 of the LSS Act, the CTP Insurer must disclose any information or documents they have obtained under the MV Act in relation to a person who may become, or who has become, a Claimant, that is relevant to an application under the LSS, subject to Commercial Rule 23.7 (Confidentiality).
- 23.1.4 The CTP Insurer must not disclose any information and/or documents over which legal professional privilege is claimed, such as factual investigation reports.

23.2 Transition of Claimant between the LSS and CTP Insurance scheme

In the transition of Claimants between the LSS and the CTP Insurance scheme, with respect to persons who are accepted as interim participants and who are ultimately accepted as lifetime participants in the LSS, the CTP Insurer must, in accordance with the application process, take all necessary steps to ensure that all relevant information and medical reports are disclosed to the LSA, including obtaining the consent of the Claimant, if required.

23.3 Non-party disclosure

- 23.3.1 In the event that the CTP Insurer, in the course of proceedings under Part 4 of the MV Act, wishes to obtain information obtained and/or held by the LSA in relation to the Claimant by way of an order of the Court for non-party disclosure, the CTP Insurer must consult with the LSA on framing the appropriate terms of any such order for non-party disclosure, which:
- (a) outlines its interests in obtaining disclosure of relevant documents for the purposes of proceedings in its capacity as the CTP Insurer; and
 - (b) recognises the interests of the LSA in maintaining its long term relationship with participants.
- 23.3.2 The CTP Insurer must reimburse the LSA costs associated with photocopying documents in accordance with the applicable scale of costs relevant to the proceedings.

23.4 Financial responsibilities

- 23.4.1 The CTP Insurer must recognise that, pursuant to the LSS Act:
- (a) the LSA is responsible for payment of reasonable and necessary treatment, care and support needs of Claimants as at the date of acceptance of an application for participation under the LSS; and
 - (b) the LSA ceases to become responsible for the payment of reasonable and necessary treatment, care and support needs of the Claimant as at the date of LSA's determination that a person is not eligible for lifetime participation under the LSS.

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- 23.4.2 The CTP Insurers must comply with any reasonable requests from the Regulator to provide account information to the LSA so it may fulfil its obligations, as described in this Commercial Rule 23.
- 23.4.3 Where a CTP Insurer has paid for treatment, care and support needs for a Claimant whilst that person is a participant under the LSS, or where the LSA has paid for necessary and reasonable treatment, care and support needs for a Claimant after that person is no longer a participant under the LSS there must be, within six Months of the payment being made to the Claimant, a reconciliation between LSA and the CTP Insurer to ascertain if either party is entitled to reimbursement from the other, including through the provision of supporting accounts or information.
- 23.4.4 If reimbursement is required between the parties under Commercial Rule 23.4.3, the CTP Insurer must communicate with the LSA to determine the amount of such reimbursement.
- 23.5 Conflict resolution**
- 23.5.1 The CTP Insurers must accept the review processes in Part 5 of the LSS Act and Part 3 of the LSS Rules govern any disputes regarding LSS eligibility.
- 23.5.2 To facilitate those processes, the CTP Insurers must:
- (a) provide any relevant information or documentary material, including any additional materials that may be requested by the review officer or expert review panel, whichever relevantly applies; and
 - (b) reach agreement with the LSA to nominate a relevant contact person for the conduct of disputes and requests for information and for reimbursement of any costs paid in error.
- 23.6 Governance structure and reporting**
- The CTP Insurers must attend the working group interface meetings between the Regulator and the LSA at the request of the Regulator.
- 23.7 Confidentiality**
- 23.7.1 When dealing with personal information relating to a Claimant, the CTP Insurers must take all necessary steps to ensure the privacy and confidentiality of that personal information in accordance with their obligations under the MV Act and to the *Privacy Act 1988* (Cth).
- 23.7.2 Without limiting Commercial Rule 23.7.1, the CTP Insurers must treat as confidential all confidential information obtained by them from the LSA in connection with these Commercial Rules and must not divulge such Confidential Information to any other person except to their own employees and then only to those persons who need to know that Confidential Information.
- 23.7.3 Commercial Rule 23.7.2 does not apply to information which was rightfully in the possession of a party prior to the Scheme Start Date or which is already public knowledge or becomes so at a future date (otherwise than as a result of a breach of Commercial Rule 23.7).
- 23.7.4 The obligations as to confidentiality under this Commercial Rule 23.7 will survive any expiry or termination of these Commercial Rules.

24 Working with the Return to Work Corporation of South Australia**BACKGROUND:**

- A. Return to Work SA is responsible for the administration of the RTW Act.
- B. Return to Work SA and the Regulator expect that a significant number of the Claims made against CTP Insurers under Policies will be made by Claimants who are also in receipt from

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Return to Work SA of benefits under the RTW Act. In those circumstances Return to Work SA may be entitled, under section 66 of the RTW Act, to a First Charge on any damages payable by CTP Insurers to Claimants.

24.1 Notification requirements

- 24.1.1 CTP Insurers acknowledge they may receive from Return to Work SA notices of First Charge in any Return to Work SA Claim where the RTW Injury to the Worker arises out of the use of a motor vehicle in circumstances such that the driver or owner of the vehicle is potentially liable at common law to the Worker.
- 24.1.2 The CTP Insurer must accept receipt from Return to Work SA of any notice of First Charge.
- 24.1.3 Receipt by the CTP Insurer of a notice of First Charge from Return to Work SA within three years of the date of the trauma out of which the relevant RTW Injury arises suspends the operation of the time limit imposed on Return to Work SA by section 66(7)(g)(ii) of the RTW Act.
- 24.1.4 The CTP Insurer must, insofar as it may be necessary, consent to an extension of that time.
- 24.1.5 If it should come to the knowledge of the CTP Insurer that Return to Work SA has paid compensation to a Claimant and Return to Work SA has failed or omitted to give a notice of First Charge to the CTP Insurer, the CTP Insurer must promptly inform Return to Work SA of the Claimant's Claim and of the failure or omission.

24.2 Proof of Section 33 expenses

- 24.2.1 The CTP Insurer must ensure any print out of payments or notice of First Charge provided to it by Return to Work SA does not include any items Return to Work SA is not entitled to claim from the CTP Insurer such as rehabilitation expenses, legal costs and disbursements.
- 24.2.2 The CTP Insurer must accept the print out referred to in Commercial Rule 24.2.1 as conclusive proof each charge referred to therein was incurred, the amount of the charge for each service rendered is reasonable and Return to Work SA paid the amount of each charge.
- 24.2.3 Despite Commercial Rule 24.2.2, the CTP Insurer may still dispute whether the treatment provided was, in the circumstances, reasonable.

24.3 Exchange of information

- 24.3.1 Upon notice of First Charge being given by Return to Work SA to a CTP Insurer, the CTP Insurer must provide a copy of each medical report obtained by it to Return to Work SA without charge.
- 24.3.2 Private investigators' and assessors' reports must not be provided to Return to Work SA, unless by agreement or required by the Regulator in a procedure commenced under Commercial Rule 24.6 (Procedure following a deadlocked negotiation). However, the CTP Insurer must disclose to the other the existence of any such reports that it has, with sufficient detail to enable each report to be identified. If the CTP Insurer is providing information or documentation that is confidential, it must ensure that information or documentation is identified to Return to Work SA as confidential.

24.4 Settlement with Claimant

- 24.4.1 The CTP Insurer must seek to negotiate a fair and reasonable settlement with each Claimant in circumstances where Return to Work SA has given a notice of First Charge to the CTP Insurer in relation to the Claimant's claim against the CTP Insurer.
- 24.4.2 Where the CTP Insurer becomes aware of a dispute between a Claimant and Return to Work SA as to the amount which the CTP Insurer is to pay to Return to Work SA pursuant to First Charge, the amount in dispute must, upon an undertaking being given by the Claimant and the

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Claimant's solicitors the disputed amount will remain in the Trust Account of the Claimant's solicitors until resolution of such dispute, be paid by the CTP Insurer to the Claimant's solicitors.

- 24.4.3 In the absence of any such undertaking from the Claimant referred to in Commercial Rule 24.4.2, the CTP Insurer must interplead.

24.5 Procedure in the event a Worker does not pursue CTP Claim

- 24.5.1 If a Worker has a right to recover an amount from a CTP Insurer under Part 4 of the MV Act and elects not to pursue a Claim against a CTP Insurer, the CTP Insurer must negotiate a settlement with Return to Work SA of Return to Work SA's entitlements.
- 24.5.2 The CTP Insurer will, in negotiating any such settlement referred to in Commercial Rule 24.5.1, proceed as if a Claim was being advanced, or will be advanced, by the Worker.
- 24.5.3 Subject to Commercial Rule 24.3.2, prior to a negotiation under this Commercial Rule 24.5, and free of charge, the CTP Insurer must, subject to obtaining all necessary consents to avoid breaching its privacy obligations, provide Return to Work SA with all medical reports, experts' reports, factual investigators' reports, surveillance reports and all other relevant material (excluding legally professionally privileged material) upon which the CTP Insurer will rely for the purpose of negotiation.
- 24.5.4 The CTP Insurer must use reasonable endeavours to obtain all consents to the disclosure of the information specified in Commercial Rule 24.5.3 it must obtain to avoid the disclosure of that information resulting in a breach of its privacy obligations.
- 24.5.5 Nothing in these Commercial Rules can be construed to require a CTP Insurer to make any payment to Return to Work SA which the CTP Insurer would not be required to make if the injured Worker had made a Claim or, having made a Claim, had continued to advance it.
- 24.6 Procedure following a deadlocked negotiation**
- 24.6.1 If Return to Work SA and the CTP Insurer are unable to agree an amount payable by the CTP Insurer to Return to Work SA under these Commercial Rules, the CTP Insurer must notify the Regulator in writing of the existence of a deadlocked negotiation, and may request that the Regulator refer the matter to arbitration, whereupon the Regulator will (if agreed by Return to Work SA) refer the matter to arbitration to resolve the dispute in accordance with, and subject to, the Resolution Institute Arbitration Rules published by the Resolution Institute Australia (as amended and replaced from time to time).
- 24.6.2 The CTP Insurer agrees that, in relation to any dispute referred to arbitration in accordance with Commercial Rule 24.6.1:
- (a) the dispute will thereafter be finally determined by the independent arbitrator in accordance with the Resolution Institute Arbitration Rules;
 - (b) the CTP Insurer must provide to the independent arbitrator its original file which will comprise copies of the documents referred to in Commercial Rule 24.5.3; and
 - (c) the file referred to in Commercial Rule 24.6.2(b) must not include copies of any correspondence passing between the CTP Insurer and Return to Work SA or between the CTP Insurer and any legal practitioner engaged by it to act or advise.
- 24.6.3 The CTP Insurer must immediately notify the Regulator in writing of the final outcome of any mediation or arbitration with Return to Work SA.
- 24.7 Non-party discovery/subpoena**
- 24.7.1 For the purposes of defending a claim brought by a Claimant against an insured person, the CTP Insurer may obtain Return to Work SA's file by way of non-party discovery.

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24.7.2 In the event it is necessary for the CTP Insurer to obtain non-party discovery of Return to Work SA files relating to previous or subsequent claims, the CTP Insurer may require Return to Work SA to make such files available for inspection by the CTP Insurer and/or its solicitors or counsel at the premises of Return to Work SA or such other place as Return to Work SA may agree.

24.7.3 The CTP Insurer and/or its solicitors may select documents to be copied for it by Return to Work SA.

25 Working with Self Insured Employers

BACKGROUND:

- A. The Self Insured Employer is a self insured employer for the purposes of the RTW Act.
- B. The Self Insured Employer and the Regulator expect some Claims made against CTP Insurers under Policies will be made by Claimants who are also in receipt from the Self Insured Employer of benefits under the RTW Act. In those circumstances the Self Insured Employer may be entitled, under section 66 of the RTW Act, to a First Charge on any damages payable by CTP Insurers to the Claimants.

25.1 Notification requirements

- 25.1.1 The CTP Insurer acknowledges a Self Insured Employer may use its best endeavours to notify the CTP Insurer as soon as possible, but in any event within two Months of a Self Insured Employer becoming aware of, any possible compensation paid by it under a Self Insured Employer Claim which arises out of an Accident resulting in an RTW injury to a Worker under the RTW Act.
- 25.1.2 The CTP Insurer must advise a Self Insured Employer if it becomes aware that a Self Insured Employer has failed to issue a notice to the CTP Insurer in accordance with Commercial Rule 25.1.1.
- 25.1.3 The CTP Insurer must not take issue on any extension of time point provided notice has been given to it within the three year statutory limit.
- 25.1.4 The CTP Insurer must use its best endeavours to notify a Self Insured Employer of any court conference date or trial date in any action involving a person who:
 - (a) is a Claimant; and
 - (b) has also made a Self Insured Employer Claim.

25.2 Exchange of information

- 25.2.1 Subject to any restrictions imposed by law, medical reports obtained by a CTP Insurer with respect to each Worker or Claimant (as the case may be) must be provided to a Self Insured Employer without charge.
- 25.2.2 Reports of private investigators and assessors and documents to which legal professional privilege attaches must not be provided to a Self Insured Employer unless the CTP Insurer has reached an agreement with a Self Insured Employer to the contrary.

25.3 Non-party discovery/subpoena

- 25.3.1 For the purposes of defending a Claim brought by a Claimant against an insured person, the CTP Insurer may obtain a Self Insured Employer's file by way of non-party discovery.
- 25.3.2 In the event it is necessary for the CTP Insurer to obtain non-party discovery of a Self Insured Employer's files, or in the alternative to subpoena a Self Insured Employer's files for a court

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hearing, the CTP Insurer must limit its application to the case management file (including Section 33 expense vouchers) and/or case management files, relating to previous or subsequent claims. The documents sought from such files, must be restricted to claim forms, medical reports, medical certificates and any determinations made from time to time and any court proceedings or correspondence arising out of those determinations.

25.4 Settlement

- 25.4.1 Where there is any dispute between a Worker and a Self Insured Employer as to the amount which the CTP Insurer will pay to a Self Insured Employer pursuant to a charge notified under section 66 of the RTW Act, the amount must remain in the Worker's solicitor's trust account by way of an undertaking from the Worker and the Worker's solicitor until resolution of the dispute.
- 25.4.2 Failing an undertaking referred to in Commercial Rule 25.4.1 being provided by both the Worker and the Worker's solicitor, the CTP Insurer must accept the amount in dispute will be paid into Court.

25.5 Obligation to negotiate

- 25.5.1 The CTP Insurer must seek to negotiate a fair and reasonable settlement with each Worker who has made a Claim against the CTP Insurer under a Policy in circumstances where a Self Insured Employer has given a notice of First Charge to the CTP Insurer in relation to the Worker's Claim against the CTP Insurer.
- 25.5.2 If a Worker has a right to recover an amount from a CTP Insurer under Part 4 of the MV Act and elects not to pursue a claim against the CTP Insurer, the CTP Insurer must make an offer to the Worker and seek to negotiate a fair and reasonable settlement with the Worker in accordance with Commercial Rule 25.5.1 as if the Worker had made a claim against the CTP Insurer under Part 4 of the MV Act.

25.6 Dispute resolution

- 25.6.1 If a Self Insured Employer and the CTP Insurer are unable to agree an amount payable by the CTP Insurer to a Self Insured Employer in respect of a Claim that is the subject of a First Charge, the CTP Insurer must notify the Regulator in writing of the existence of the dispute and may request that the Regulator refer the matter to arbitration, whereupon the Regulator (if agreed by the Self Insured Employer) will refer the matter to arbitration to resolve the dispute in accordance with, and subject to, the Resolution Institute Arbitration Rules published by the Resolution Institute Australia (as amended and replaced from time to time).
- 25.6.2 The CTP Insurer agrees that, in relation to any dispute referred to arbitration in accordance with Commercial Rule 25.6.1:
- (a) the dispute will thereafter be finally determined by the independent arbitrator in accordance with the Resolution Institute Arbitration Rules;
 - (b) the CTP Insurer must provide to the independent arbitrator its original file which will comprise copies of the documents referred to in Commercial Rule 25.3; and
 - (c) the file referred to in Commercial Rule 25.6.2(b) must not include copies of any correspondence passing between the CTP Insurer and a Self Insured Employer or legal practitioner engaged by the CTP Insurer to act or advise.
- 25.6.3 The CTP Insurer must immediately notify the Regulator in writing of the final outcome of any mediation or arbitration with a Self Insured Employer.

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26 Working with the South Australia Government Captive Insurance Corporation**BACKGROUND:**

SAICORP is responsible for the management of property, liability and medical malpractice claims involving South Australian Government Agencies.

26.1 Notification requirements

- 26.1.1 The CTP Insurers must notify SAICORP as soon as possible of it becoming aware of any Claim or proposed Claim against it as a CTP Insurer under Part 4 of the MV Act in connection with an Accident by a person who has made or intends to make a claim against the State of South Australia in connection with that Accident.
- 26.1.2 During the term of each such claim the relevant CTP Insurer must periodically inform SAICORP of progressive payments made to or on behalf of the Claimant.

26.2 Exchange of information, confidentiality and privilege

- 26.2.1 Where a CTP Insurer has notified SAICORP in accordance with Commercial Rule 26.1.1 or has received a notice provided by SAICORP, the CTP Insurer must disclose to SAICORP details of all other claims made by the Claimant against any of the CTP Insurer's insured persons, which may be relevant to the Claimant's claim against SAICORP.
- 26.2.2 Subject to any restriction imposed by law, medical reports obtained by a CTP Insurer with respect to each Claimant must be provided by the CTP Insurer to SAICORP without charge. The CTP Insurer must use its best endeavours to obtain any consent necessary from parties involved in litigation to release medical reports to SAICORP.
- 26.2.3 Exchange of such information (and any other information provided under these Commercial Rules) is done on a without prejudice basis and the CTP Insurer must accept this is not a waiver of legal professional or public interest privilege by it and documents exchanged under these Commercial Rules will only be disclosed to a Claimant or other person in accordance with the law.

26.3 Proof of payments

- 26.3.1 The CTP Insurer must acknowledge and agree notification by it to SAICORP of any monies paid by it to a Claimant does not bind SAICORP and/or the State as to the quantum thereof, the reasonableness of each item or as to the reasonableness of incurring each item and it is open to SAICORP and/or the State to negotiate with the CTP Insurer the amount recoverable.
- 26.3.2 The CTP Insurer must agree the notification of any claim for medical and like expense must contain full details of the name of the provider and the nature, cost and date of each item of expense.
- 26.3.3 The CTP Insurer must accept notification of any claim for medical and like expenses will contain full details of the name of the provider and the nature, cost and date of each item of expense.

26.4 Finalisation of Claim by agreement

If SAICORP and a CTP Insurer reach agreement regarding an amount payable by SAICORP to the CTP Insurer or by the CTP Insurer to SAICORP in respect of a claim made by a Claimant, the CTP Insurer must execute a discharge in the form of Annexure A.

26.5 Dispute resolution

- 26.5.1 If SAICORP and the CTP Insurer are unable to agree an amount payable by the CTP Insurer to SAICORP or vice versa, in connection with a claim specified in this Commercial Rule, the CTP Insurer must notify the Regulator in writing of the existence of the dispute and may

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request that the Regulator refer the matter to arbitration, whereupon the Regulator will (if agreed by SAICORP) refer the matter to arbitration to resolve the dispute in accordance with, and subject to, the Resolution Institute Arbitration Rules published by the Resolution Institute Australia (as amended and replaced from time to time).

26.5.2 The CTP Insurer agrees that any dispute referred to arbitration in accordance with Commercial Rule 26.5.1:

- (a) will be finally determined by the independent arbitrator in accordance with the Resolution Institute Arbitration Rules; and
- (b) the CTP Insurer must provide to the independent arbitrator its original file.

26.5.3 The CTP Insurer must immediately notify the Regulator in writing of the final outcome of any mediation or arbitration with SAICORP.

27 Working with the LGA

BACKGROUND:

- A. LGA, through the Local Government Association Workers Compensation Scheme, provides local Government authorities with a fully integrated claim, rehabilitation and work, health and safety service.
- B. LGA and the Regulator expect some Claims made against CTP Insurers under Policies will be made by Claimants who are also in receipt from LGA of benefits under the RTW Act. In those circumstances LGA may be entitled, under section 66 of the RTW Act, to a First Charge on any damages payable by CTP Insurers to the Claimants.

27.1 Notification requirements

27.1.1 The CTP Insurer acknowledges the LGA may use its best endeavours to notify the relevant CTP Insurer as soon as possible, but in any event within two Months of the LGA becoming aware of, any possible recovery of compensation paid by it under a LGA Claim which arises out of an Accident resulting in an RTW Injury to a Worker under the RTW Act.

27.1.2 The CTP Insurer must notify LGA if it becomes aware the LGA has failed to issue a notice to the CTP Insurer in accordance with Commercial Rule 27.1.1. The CTP Insurer must not take issue on any extension of time point provided that notice has been given to it within the three year statutory limit.

27.1.3 The CTP Insurer must use its best endeavours to notify LGA of any court conference date or trial date in any action involving a person who:

- (a) is a Claimant; and
- (b) has also made an LGA Claim.

27.2 Exchange of information

27.2.1 Subject to any restrictions imposed by law, medical reports obtained by a CTP Insurer with respect to each Worker or Claimant (as the case may be) must be provided to the LGA without charge.

27.2.2 Private investigators' and assessors' reports and documents to which legal professional privilege attaches must not be provided to the LGA unless the CTP Insurer has reached an agreement with the LGA to the contrary.

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27.3 Non-party discovery/subpoena

- 27.3.1 For the purposes of defending a claim brought by a Claimant against an insured person, the CTP Insurer may obtain LGA's file by way of non-party discovery.
- 27.3.2 In the event it is necessary for the CTP Insurer to obtain non-party discovery of LGA files relating to previous or subsequent claims, or in the alternative to subpoena LGA's files for a court hearing, the CTP Insurer must limit its application to the case management file (including Section 33 expense vouchers) and/or case management files relating to previous or subsequent claims. The documents sought from such files must be restricted to claim forms, medical reports, medical certificates and any determinations made from time to time and any court proceedings or correspondence arising out of those determinations.

27.4 Settlement

- 27.4.1 Where there is any dispute between a Worker and LGA as to the amount which the CTP Insurer will pay to LGA pursuant to a charge notified under section 66 of the RTW Act, the amount in dispute, upon an undertaking being given by the Worker and the Worker's solicitors the disputed amount will remain in the Worker's solicitor's trust account until resolution of such dispute, and be paid by the CTP Insurer to the Worker's solicitor.
- 27.4.2 Failing an undertaking referred to in Commercial Rule 27.4.1 being provided by both the Worker and the Worker's solicitor, the CTP Insurer must accept that the amount in dispute will be paid into Court.

27.5 Obligation to negotiate

- 27.5.1 The CTP Insurer must seek to negotiate a fair and reasonable settlement with each Worker who has made a Claim against the CTP Insurer under a Policy in circumstances where LGA has given a notice of First Charge to the CTP Insurer in relation to the Worker's Claim against the CTP Insurer.
- 27.5.2 If a Worker has a right to recover an amount from a CTP Insurer under Part 4 of the MV Act and elects not to pursue a Claim against the CTP Insurer, the CTP Insurer must make an offer to the Worker and seek to negotiate a fair and reasonable settlement with the Worker in accordance with Commercial Rule 27.5.1 as if the Worker had made a Claim against the CTP Insurer under Part 4 of the MV Act.

27.6 Dispute resolution

- 27.6.1 If LGA and the CTP Insurer are unable to agree an amount payable by the CTP Insurer to LGA in respect of a Claim that is the subject of a First Charge, the CTP Insurer must notify the Regulator in writing of the existence of the dispute and may request that the Regulator refer the matter to arbitration, whereupon the Regulator will (if agreed by LGA) refer the matter to arbitration to resolve the dispute in accordance with, and subject to, the Resolution Institute Arbitration Rules published by the Resolution Institute Australia (as amended and replaced from time to time).
- 27.6.2 The CTP Insurer agrees that any dispute referred to arbitration in accordance with Commercial Rule 27.6.1:
- (a) will be finally determined by the independent arbitrator in accordance with the Resolution Institute Arbitration Rules; and
 - (b) the CTP Insurer must provide to the independent arbitrator its original file which will comprise copies of the documents referred to in Commercial Rule 27.3.
- 27.6.3 The CTP Insurer must immediately notify the Regulator in writing of the final outcome of any mediation or arbitration with LGA.

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Annexure A**Discharge**

In consideration of the settlement figure specified below, the applicant agrees to accept the said sum in full satisfaction and discharge of all actions, proceedings, claims, demands (including costs) and damages which the applicant or its insured may now have or may later have against the respondent or any of its servants or agents in respect of arising out of the incident described below. Accordingly the applicant hereby releases and discharges the respondent and its servants or agents, from all actions, proceedings, claims, demands and damages whatsoever arising out of or in any way connected with the said incident, whether known or anticipated or not.

Schedule

Applicant's Name: [Insert]

Insured person: [Insert]

Respondent: [Insert]

Settlement Figures: [Insert]

Incident: [Insert]

Dated this day of

[Insert execution clauses for the CTP Insurer and SAICORP]

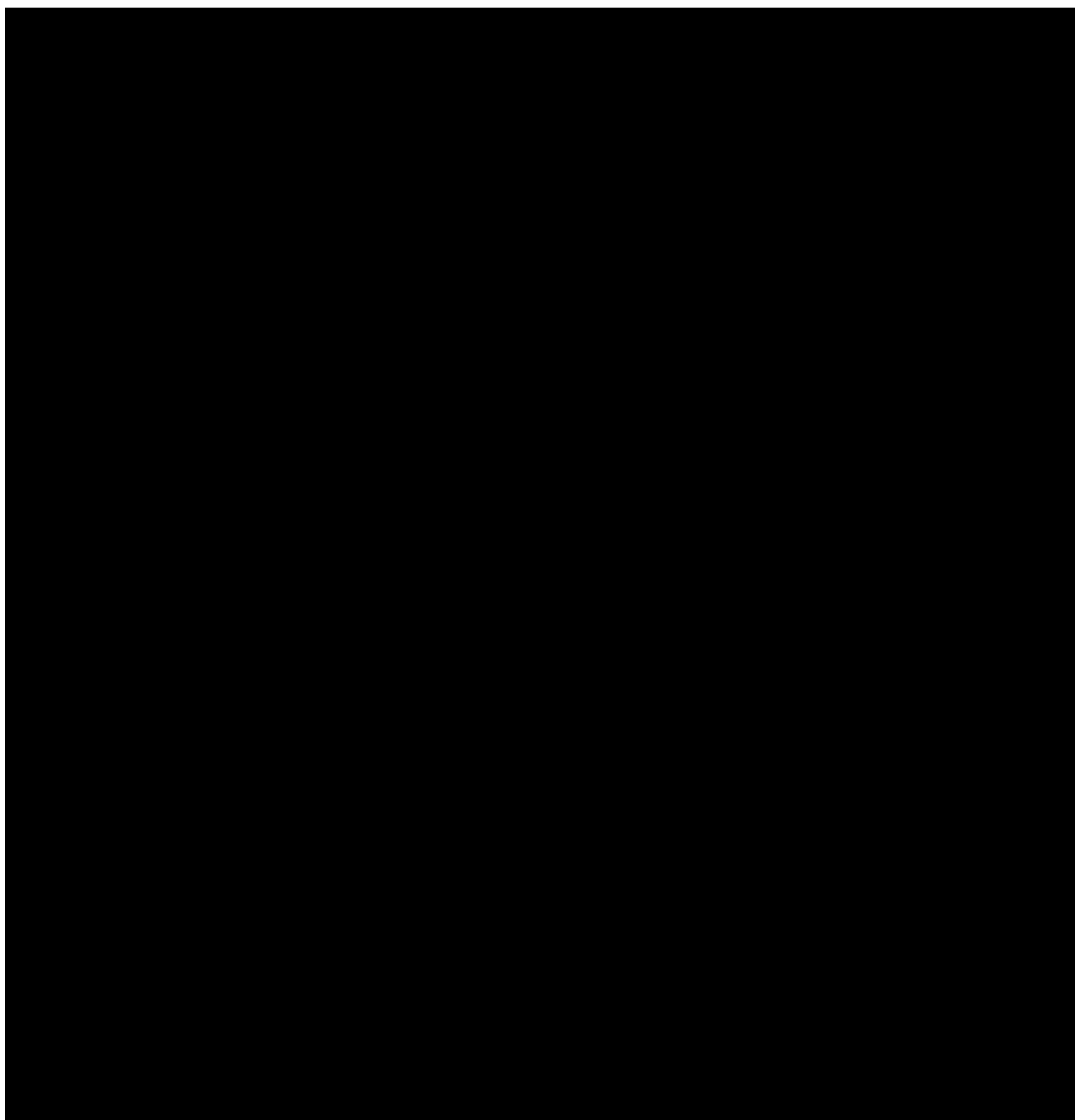
EXECUTED AS A DEED

THE COMMON SEAL of)
THE TREASURER AS DELEGATE)
OF THE MINISTER FOR TRANSPORT,)
INFRASTRUCTURE AND LOCAL GOVERNMENT)
FOR AND ON BEHALF OF THE CROWN IN)
RIGHT OF THE STATE OF SOUTH AUSTRALIA)
was hereunto affixed)
in the presence of:)



The Treasurer hereby approves clause 26 (Confidentiality) of this document for the purposes of clause 13(2) of Schedule 1 of the *Freedom of Information Act 1991* (SA).

.....
Signed by The Treasurer



ANNEXURE A – CTP INSURER DEED
