

DATED

2014

[MANAGING AGENT]

and

[SERVICE PROVIDER]

MASTER AGREEMENT FOR THE  
PROVISION OF A VOLUME CLAIMS SERVICE  
ON BEHALF OF THE CLIENT

VERSION 1.0

TEMPLATE

**BETWEEN:**

- (1) **[NAME OF SERVICE PROVIDER]** (registered in England with number [X]) whose registered office is at [X] (the “**Service Provider**”); and
- (2) **[NAME OF MANAGING AGENT]** (registered in England with number [X]) whose registered office is at [X] (the “**Client**”),

together, the “**parties**” and “**party**” shall be construed accordingly.

**WHEREAS:**

- (A) Lloyd’s has established a shared outsourced claims management service (referred to as “**Volume Claims Service**” or “**VCS**”) for Lloyd’s managing agents.
- (B) The Client is operating in its capacity as employer of the Lead Underwriter of the insurance policies as designated under the Lloyd’s Claims Scheme (Combined).
- (C) The Service Provider is in the business of providing insurance claims services and has been accredited by Lloyd’s to provide the Volume Claims Service to Lloyd’s managing agents.
- (D) The Client wishes to appoint the Service Provider to provide the Service and the Service Provider is willing to accept such appointment upon the terms and conditions of this Agreement subject always to being an Accredited VCS Provider.

**IT IS AGREED** as follows:

**1 DEFINITIONS AND INTERPRETATION**

- 1.1 In this Agreement the following expressions shall have the following meanings unless the context otherwise requires:

**Accept:** acceptance that a Claim is an In-Scope Claim by the Service Provider in accordance with Part A of Schedule 1 and “**Accepted**” shall be construed accordingly.

**Accreditation Criteria:** the criteria issued by Lloyd’s under paragraph 12 of the Underwriting Byelaw to accredit providers of the Volume Claims Service to Lloyd’s managing agents.

**Accredited VCS Provider:** a provider of the Volume Claims Service to Lloyd’s managing agents which is accredited by Lloyd’s in accordance with the Accreditation Criteria.

**Agreement:** this agreement between the parties the terms of which are set out herein including all the Schedules and as may be amended from time to time in accordance with clause 23.

**Applicable Laws:** all applicable statutes and rules and regulations made thereunder in force from time to time, and in particular but without limitation, the Financial Services and Markets Act 2000 and the rules, regulations, guidance and codes of

practice of the Prudential Regulation Authority, Financial Conduct Authority and Lloyd's.

**Business Continuity Plan:** a plan to enable the Service Provider to continue to perform its obligations under this Agreement in the event that the Service Provider's ability to provide the Service is affected by a Disaster.

**Business Day:** a day (other than a Saturday or Sunday or bank or public holiday) on which banks are open for business in London.

**Claim:** a demand made by a person or their agent (the "Claimant") under a contract of insurance for a benefit or entitlement said to be due to the Claimant under that contract.

**Claims Handling Complaint:** a complaint by the Client that the Service Provider has not adequately discharged its duties in respect of Determining a VCS Claim.

**Claims Records:** has the meaning ascribed to it in paragraph 1.5(i) of Schedule 7.

**Claims Workflow Trigger:** a file generated from CLASS that notifies the Service Provider of claim movements for managing agents. The file is delivered by Xchanging to the Service Provider via secure file transfer protocol.

**CLASS:** the Claims Loss Advice and Settlement System operated by Xchanging.

**Client Data:** any information, data, text, drawings, diagrams, images or sounds, which are embodied in any medium which are: (i) supplied to the Service Provider by or on behalf of the Client or a member of its Group; or (ii) which the Service Provider generates on behalf of the Client pursuant to this Agreement.

**Client IPRs:** has the meaning ascribed to it in clause 10.1.

**Client Personal Data:** any personal data (as such term is defined in the Data Protection Act 1998) which is supplied by, or on behalf of, the Client to the Service Provider.

**Closed Claim:** a VCS Claim for which the Closure Work Item has been completed.

**Confidential Information:** the financial, technical, operational, staff, management or other data (including, for the avoidance of doubt, the Client Data), information or know-how of the other party.

**Control:** in relation to a body corporate, the power of a person to secure that the affairs of the body corporate are conducted in accordance with the wishes of that person: (a) by means of the holding of shares, or the possession of voting power, in or in relation to that or any other body corporate; or (b) as a result of any powers conferred by the articles of association or any other document regulating that or any other body corporate and "Change of Control" occurs if a person who controls any body corporate ceases to do so or if another person acquires Control of it.

**Data Protection Laws:** the Data Protection Act 1998 and all other applicable laws and regulations relating to the processing of personal data and privacy in any relevant jurisdiction where or from which the Service is provided including, where applicable, the guidance and codes of practice issued by the Information

Commissioner in the UK and equivalent guidance issued by his or her equivalents in other jurisdictions.

**Determine:** undertaking all activities reasonably necessary in order to promptly, fairly and efficiently accept or deny a VCS Claim in whole or in part, agree any amount payable and resolve finally and by agreement with the Claimant or its broker any open matter and “**Determination**” shall be construed accordingly.

**Disaster:** an event or series of events, internal or external to the Service Provider, which has a significant material negative effect on the Service Provider’s ability to perform any of its duties or obligations under this Agreement.

**Disclosing Party:** has the meaning ascribed to it in clause 9.6 (i).

**ECF 2:** version 2 of the Electronic Claims File system which is a combination of the Insurers’ Market Repository (“**IMR**”) and CLASS.

**Effective Date:** the date of this Agreement.

**Exit:** the Service Provider setting the ECF 2 triage category to blank following a request from the Client to pass back custody and control of a VCS Claim to the Client before the VCS Claim is completely Determined.

**Exit Management & Service Transfer Plan:** has the meaning ascribed to it in paragraph 3.5 of Schedule 8.

**Exit Transfer Manager:** has the meaning ascribed to it in paragraph 3.1 of Schedule 8.

**Financial Commitment:** 25% of the Total Financial Value.

**FCA:** the Financial Conduct Authority.

**Force Majeure Event:** has the meaning ascribed to it in clause 21.1.

**General Queries:** information requests from the Client or a third party involved in a VCS Claim which do not impact on the Service Provider’s ability to progress the VCS Claim and do not constitute a Hand-Off.

**Group:** in relation to a company, that company, its subsidiaries, its parent company and its parent company’s subsidiaries (each as defined in the Companies Act 2006) from time to time.

**Hand-Off:** where the Service Provider has made an Offer, a Referral or a request of a third party and the VCS Claim cannot be Determined until a response has been received by the Service Provider.

**Hand-Off Time:** the period from when a Hand-Off has started to when the response is received.

**Individual Claim Cost:** for each Closed Claim the sum of the Service Charges permitted for all the Work Items started.

**Individual Claim Standard:** for each Closed Claim 8 Working Hours plus the sum of the Service Hours permitted for the Investigation, Negotiation and Closure Work Items started.

**In-Scope Claim:** a Claim which meets:

- (a) each of the requirements set out in Section 1 below; and
- (b) each of the requirements in Section 2 below, unless the Client and the Service Provider and any second agreement party have agreed in writing that a requirement has been waived either in respect of the Claim in question or generally.

#### Section 1

- a. the Claim was notified to the Lead Underwriter via ECF 2;
- b. the Claim would be classified as a Standard Claim if the CTP segmentation rules were applied (as updated from time to time); and
- c. the Claim is within a class of business agreed in the applicable VCS Service Schedule.

#### Section 2

- a. the amount claimed by the Claimant is less than the financial threshold for complex claims for the relevant class of business as specified in the relevant Lloyd's Claims Scheme (Combined);
- b. the Claim itself is not subject to any litigation, arbitration or other contested civil proceedings;
- c. the Claim does not involve:
  - (i) allegations involving financial crime or fraud,
  - (ii) payments to or from entities subject to international sanctions, or
  - (iii) criminal proceedings relating to the claim;
- d. the Claim is not subject to specific investigation or enquiry by a Regulator;
- e. the Claim has not been made in respect of a person's death, brain injury, spinal injury, other serious personal injury or is not subject to a periodic payment order;
- f. the Claim is not a US Claim where there is a beneficiary under the Medicare, Medicaid or SCHIP Extension Act 2007.

**Intellectual Property Rights:** means all patents, rights to inventions, copyright and related rights, trade marks, service marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Lead Underwriter:** the underwriter of the leading Lloyd's syndicate (as defined in the Lloyd's Claims Scheme (Combined)).

**Lloyd's:** the society incorporated by Lloyd's Act 1871 by the name of Lloyd's whose principal place of business is at One Lime Street, London EC3M 7HA.

**Lloyd's Claims Management Principles and Minimum Standards:** the Claims Management Principles and related Minimum Standards which are in force and

which govern the management of Claims in the Lloyd's market as set out and published from time to time and issued by Lloyd's.

**Lloyd's Claims Scheme (Combined):** the scheme for handling Claims in the Lloyd's insurance market published on [www.lloyds.com](http://www.lloyds.com) and as amended from time to time.

**Lloyd's Regulations:** the byelaws, requirements and directions of Lloyd's as may be made from time to time.

**LMA:** the Lloyd's Market Association, a company limited by guarantee whose registered office is at Suite 426, One Lime Street, London EC3M 7DQ.

**Management Information:** the data supplied by the Service Provider to the SMF as specified in the Operations Guide or otherwise reasonably requested by the SMF from time to time.

**Market Systems:** ECF2, IMR, CLASS, Claims Workflow Triggers, Document File Viewer, Claims Workflow Services, Claims Agreement Screens and Claims Data Warehouse.

**Market Systems Outage:** a failure or degradation of one or more Market Systems impacting the Service Provider's performance of the Service.

**Model Clauses:** the set of model contract clauses approved by the European Commission and the UK Information Commissioner as offering adequate safeguards for the purposes of article 26(4) of the EU Directive on Data Protection and paragraphs 8 and 9, Schedule 4 of the Data Protection Act 1998.

**Offer:** a proposal made by the Service Provider to the Claimant intended to be in full and final settlement of all or part of the Client's liabilities under the relevant insurance contract.

**Operations Guide:** the guide issued from time to time by the SMF relating to the operation of the Service and the handling of VCS Claims under this Agreement.

**Performance Improvement Plan:** a plan describing how the Service Provider will improve its performance within agreed timeframes set out in the plan against the Service Standards.

**Performance Levels:** the levels used to assess the performance of the Service Provider as described in Part C of Schedule 1.

**Projected Service Charges:** the anticipated Service Charges for the Service Provider to conclude all VCS Claims open at the end of a Service Year based on the assumption that those VCS Claims shall each pass through all four Work Items.

**PRA:** the Prudential Regulation Authority.

**Quality Improvement Plan:** a plan describing how the Service Provider will improve its performance within agreed timeframes set out in the plan against the Quality Standards.

**Quality Standards:** the standards referred to in Schedule 7 of this Agreement and the Accreditation Criteria.

**Quality Standards Framework:** the framework under which the quality of the Service Provider's delivery of the Service shall be monitored by the SMF as set out in Schedule 7.

**Quarterly Service Statement:** a statement to be produced by the Service Provider containing the information described in section 2 of Schedule 3.

**Rate Card:** the document issued by the Service Provider stating its Service Charges for the applicable Service Year.

**Rebate:** the refund made by the Service Provider to the Client for all or part of the Service Provider's Service Charges in accordance with Part C of Schedule 1 when the Performance Levels are not met.

**Rebate Reduction:** a reduction to be applied to a Rebate due to the Client from the Service Provider in accordance with Part C of Schedule 1.

**Receiving Party:** has the meaning ascribed to it in clause 9.6 (i).

**Referral:** has the meaning ascribed to it in paragraph 7.1(b) of Part A of Schedule 1.

**Regulator:** any governmental, regulatory or other competent authority whether in the UK or overseas that has responsibility for regulating, overseeing, investigating, monitoring or enforcing any Applicable Laws including the PRA, FCA and Lloyd's.

**Relevant Requirements:** has the meaning ascribed to it in clause 14.1.

**Replacement Service Provider:** any replacement third party service provider appointed by, or on behalf of, the Client to provide the Service following the expiry or termination of this Agreement (whether in whole or in part).

**Reserving Philosophy:** the reserving philosophy to be followed by the Service Provider as set out in Schedule 6.

**Service:** the service to be provided by the Service Provider to the Client as described in Part A of Schedule 1, as may be varied from time to time in accordance with clause 13.

**Service Cessation:** has the meaning ascribed to it in clause 12.5.

**Service Charges:** the price for each Work Item as specified in the Rate Card and referenced through an applicable VCS Service Schedule.

**Service Hours:** the total number of Working Hours since the Work Item started but excluding any Hand-Off Time.

**Service Issue Complaint:** a complaint by the Client or the Service Provider to the SMF that the other party is not discharging its duties and obligations in respect of the Service.

**Service Months:** the number of full calendar months between the Service Start Date and the end of the Service Year.

**Service Management Complaint:** a complaint by the Client or the Service Provider to the SMF that the SMF is not discharging its duties and obligations concerning any matter arising out of or in connection with this Agreement.

**Service Management Function or SMF:** the Lloyd's team set up in accordance with Schedule 4.

**Service Provider IP:** the Intellectual Property Rights created by or on behalf of the Service Provider in connection with its provision of the Service including any specific policies, procedures, systems, applications, training materials, algorithms, methods, programming or systems developments carried out by the Service Provider or its Group but excluding any Client Data and Client IPRs.

**Service Review Panel or SRP:** the Lloyd's market group set up in accordance with Schedule 5.

**Service Standard:** the time allowed for the Service Provider to complete a Work Item as set out in Part B of Schedule 1.

**Service Start Date:** the date from which the Service starts in each Service Year as specified in the VCS Service Schedule.

**Service Year:** the 12 month period starting from 1 January in each calendar year.

**SRP Members:** has the meaning ascribed to it in paragraph 2 of Schedule 5.

**Total Financial Value:** the value of the Service that the Client agrees to buy from the Service Provider in each Service Year as itemised in the applicable VCS Service Schedule.

**Underperforming Claim:** a Closed Claim that fails to meet the Individual Claim Standard.

**Underwriting Byelaw:** Underwriting Byelaw (No.2 of 2003) made by the Council of Lloyd's on 4 June 2003 as may be amended from time to time.

**VCS Claim:** a Claim that has been Accepted into the Volume Claims Service by the Service Provider.

**VCS Service Schedule:** an annual side letter to this Agreement entered into between the parties in the format set out in Schedule 3 setting out the Total Financial Value based on the Rate Card for the applicable Service Year.

**Work Items:** the separate activities that form part of the Service as more particularly described in Part A of Schedule 1 under the headings: Acceptance, Investigation, Negotiation and Closure.

**Working Hours:** means the hours between 9.00 am to 5.00 pm in London on a Business Day.

**Xchanging:** means Ins-Sure Services Limited, a company incorporated in England and Wales (Registered number 4124846) whose registered office address is 34 Leadenhall Street, London, EC3A 1AX.

- 1.2 The definitions and rules of interpretation in this clause apply in this Agreement (unless the context otherwise requires).
- 1.3 The headings in this Agreement are for convenience only and shall not affect its construction.
- 1.4 A reference to a particular law is a reference to it as it is in force for the time being, taking account of any amendment, extension or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.5 The words “include”, “includes”, “including” and “in particular” shall be construed as if they were followed by the words “without limitation”.
- 1.6 The Schedules form part of (and are incorporated into) this Agreement and shall be construed and shall have the same full force and effect as if expressly set out in the body of the Agreement.

## **2 APPOINTMENT**

- 2.1 Each party warrants that it has full power and authority to enter into and perform its respective obligations under this Agreement.
- 2.2 The Client appoints, authorises and instructs the Service Provider, with effect from the Service Start Date, to provide the Service to the Client upon the terms and conditions of this Agreement.
- 2.3 The Client hereby delegates or sub-delegates to the Service Provider such of the Client's powers and duties and discretions as may be necessary to enable the Service Provider to carry out its obligations under this Agreement. For the avoidance of doubt, the Client shall have the right to remove any Claim immediately from VCS at any time upon notice to the Service Provider.
- 2.4 The Service Provider acknowledges and agrees that its appointment by the Client, and the delegation to it of the powers and discretions of the Client, shall be and remain subject to the overall control of the Client (including any other member of its Group). The Service Provider shall comply with the Client's instructions from time to time in respect of the exercise, or at the Client's discretion, withdrawal of such delegation of the Client's powers and discretions.

## **3 TERM**

- 3.1 This Agreement shall have effect from the Effective Date and shall continue in force until terminated in accordance with clauses 12, 20.2 or 21.4.

## **4 PROVISION OF SERVICE**

- 4.1 On and from the Service Start Date and subject to the completion of a VCS Service Schedule, the Service Provider shall provide to the Client the Service in accordance with this Agreement and the Operations Guide. The Service Provider shall at all times during the term of this Agreement comply with the Accreditation Criteria.
- 4.2 The Client shall:
  - (i) comply with all Applicable Laws;

- (ii) provide the Service Provider with, or with access to, all necessary materials, data and other information within its care, custody or control reasonably required by the Service Provider to enable it to provide the Service;
  - (iii) subject always to provision by the Service Provider of the information required in order to enable it to do so, procure for the Service Provider the number of licences required by the Service Provider's personnel to access and use ECF 2 to provide the Service to the Client, as agreed between the parties in the relevant VCS Service Schedule. The Service Provider shall ensure that its personnel comply at all times with the terms of the relevant ECF 2 licence and shall indemnify the Client in respect of any failure to do so; and
  - (iv) ratify any non-negligent act or thing properly and lawfully done or caused to be done by the Service Provider in good faith in providing the Service, provided that such act or thing is carried out in accordance with the terms of this Agreement.
- 4.3 The Service Provider shall provide the Service to the Client in accordance with this Agreement with all the best standards of skill, care and diligence in the industry and in a professional manner in compliance with all Applicable Laws, at all times acting in good faith and in the best interests of the Client. Subject to clause 4.2(iii) the Service Provider shall obtain, and at all times maintain, all necessary licences and consents required for the provision of the Service and shall provide evidence of the same to the Client or the SMF on request.
- 4.4 The Service Provider shall only use suitably skilled and appropriately experienced personnel in the performance of the Service and shall ensure that there will at all times be a sufficient number of such personnel available to provide the Service.
- 4.5 The Service Provider shall manage its directors, officers and employees in the performance of the Service diligently and efficiently and ensure that all directors, officers, employees and contractors of the Service Provider use the best standards of skill and care, act in a professional and efficient manner and in accordance with applicable standards of professional conduct and devote to such performance the time and attention that an insurance company acting reasonably would expect to be provided by a skilled and experienced provider of services of a similar nature.
- 4.6 The Service Provider shall provide Management Information to the SMF.
- 4.7 Where the Client is so requested by a Regulator or requires the Client Data in order to comply with Applicable Laws the Service Provider shall at the Client's request deliver or cause to be delivered to the Client or, as the Client may direct, the Client Data which the Service Provider has in its possession, custody or control.
- 4.8 The provision of the Service by the Service Provider to the Client shall be on a non-exclusive basis and the Service Provider shall not be restricted in its rights to provide any services similar to or competitive with the Service, to any other person. The Service Provider acknowledges that it is not being appointed as an exclusive supplier and nothing in this Agreement is intended to prevent the Client itself providing, or procuring a third party to provide, equivalent or similar services to the Service.
- 4.9 The Service Provider will not provide any Service nor will it make any payment or provide any benefit to the extent that the provision of any Service, making of any payment or provision of any benefit would breach or contravene any Applicable Laws, including any sanction, prohibition or restriction under United Nations resolutions or any trade, political or economic sanction published by the United

Kingdom government, the United States government or the European Union. The Service Provider's breach of this clause shall be deemed a material breach incapable of remedy for the purposes of clause 12.

- 4.10 The Service Provider (and any officer or employee of the Service Provider or any other member of its Group) may, in the proper performance of the Service, send and receive correspondence (in whatever form) for and on behalf of the Client and perform such other acts and things as are reasonably necessary to provide the Service. The Service Provider shall be entitled to use the Client's name as may be necessary for the proper performances of the Service.
- 4.11 The Service Provider shall provide its reasonable cooperation to any Regulator with jurisdiction over the Service Provider or the Client in relation to the Service Provider's Service, and the Service Provider shall as soon as reasonably practicable, to the extent permitted, notify the Client of any formal investigation which it becomes aware is carried out by any such Regulator in relation to the Service Provider's Service.
- 4.12 The Service Provider shall co-operate with all requests by a Regulator to audit the Service.
- 4.13 The Service Provider shall co-operate with the Client and the SMF in the resolution of any disputes with third parties.

## **5 CHARGES AND PAYMENT TERMS**

- 5.1 The Service Provider's Rate Card for the Service shall be set and published in accordance with Schedule 2.
- 5.2 The parties shall agree a VCS Service Schedule and the Client shall pay the Service Provider in accordance with the payment and invoicing provisions set out in Schedule 2.

## **6 GOVERNANCE**

- 6.1 The Service Provider acknowledges that its performance of the Service shall be monitored not only by the Client but also by the SMF. The SMF shall not become involved in or Determine any individual Claims.
- 6.2 The Client authorises the SMF as the Client's appointed agent to perform the functions set out in this Agreement to be performed by the SMF and agrees to be bound by the determinations of the SMF in relation to such functions. The Service Provider is authorised by the Client to accept any instructions or decisions by the SMF, whether oral and confirmed in writing or in writing from the outset, where those instructions or decisions relate to the functions set out in this Agreement to be performed by the SMF.
- 6.3 Save in the case of fraud (or death or personal injury caused by negligence) the Client and the Service Provider hereby waive all claims (whether existing at the date of this Agreement or arising at any time in the future including following termination or expiry of this Agreement) against Lloyd's and the SMF and/or members of the SRP and/or their employers arising out of or in connection with this Agreement and/or the Service.

## 7 LIABILITY

- 7.1 Nothing in this Agreement shall limit or exclude a party's liability for:
- (i) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
  - (ii) fraud or fraudulent misrepresentation; or
  - (iii) any liability which cannot be limited or excluded by applicable law.
- 7.2 Subject to clause 7.1, neither party to this Agreement shall have any liability to the other party, whether in contract, tort (including negligence) or breach of statutory duty, for any indirect or consequential loss, including any loss of revenue or profit and any loss of business, goodwill or reputation.
- 7.3 Save to the extent caused by an act or omission of the Service Provider or any of its agents, sub-contractors or systems, the Service Provider shall not be responsible or liable in respect of a failure to comply with its obligations under this Agreement to the extent caused by:
- (i) any downtime, unavailability, failure or malfunction of any computer hardware, equipment or software, or of any telephone line or other communication system, service, link or equipment operated and maintained by a third party (other than a sub-contractor or consultant of the Service Provider);
  - (ii) any error or corruption in any message received, transmitted, retransmitted or stored by electronic or other means for, by or on behalf of the Client;
  - (iii) any error or corruption in any of the Client's documentation; or
  - (iv) any failure by the Client or its agents to comply with its obligations under this Agreement.
- 7.4 All conditions, warranties and representations implied by statute or common law are excluded from this Agreement.
- 7.5 Subject to clauses 7.1 to 7.4 (inclusive) the Service Provider's liability to the Client, whether in contract, tort (including negligence) or breach of statutory duty or otherwise arising under or in connection with this Agreement:
- (i) in respect of each individual claim made by the Client, shall be limited to £2,000,000; and
  - (ii) in respect of the total aggregate liability for all claims made by the Client in a calendar year, shall be limited to £10,000,000.
- 7.6 Subject to clauses 7.1 to 7.5 (inclusive) the Client's total aggregate liability to the Service Provider, whether in contract, tort (including negligence) or breach of statutory duty or otherwise arising under or in connection with this Agreement shall be limited to £1 million.
- 7.7 For the purpose of this clause 7, the Service Provider and the Client are and shall each be deemed to be acting as agent for the benefit of its directors, officers and

employees, agents and contractors (and in the case of the Client, any syndicate(s) under its management from time to time).

## **8 INSURANCE**

- 8.1 The Service Provider shall at all times during the term of this Agreement and for a minimum of six years following its termination maintain professional indemnity insurance for a minimum limit of £10,000,000 per claim. The SMF shall annually review this insurance obligation to ensure that the Service Provider maintains a level of cover necessary to perform its Service and to comply with its obligations on a continuous basis in accordance with the terms and conditions set out in this Agreement.
- 8.2 The Service Provider shall at all times during the term of this Agreement maintain employer's liability insurance of not less than £5,000,000 per claim (or such other amount as is required by law from time to time) and public liability insurance of not less than £10,000,000 per claim.
- 8.3 At the SMF's or Client's written request, the Service Provider shall provide the SMF and/or the Client with written evidence of the cover provided and evidence that the premium has been paid.
- 8.4 Without prejudice to clause 8.1, if at any time the Service Provider is unable to procure the insurance, it shall without delay advise the Client and the SMF in writing and the Client shall be entitled to terminate this Agreement immediately by notice in writing to the Service Provider.
- 8.5 The Service Provider shall ensure that its consultants and contractors also maintain adequate insurance having regard to the obligations which they are contracted to fulfil.

## **9 CONFIDENTIAL INFORMATION**

- 9.1 Neither party shall during the continuance of this Agreement or at any time thereafter disclose to any third party any part of the Confidential Information and shall treat the same as confidential and shall use the same only in accordance with this Agreement to the extent necessary to perform its respective obligations or as the case may be to properly receive and make use of the full benefit of this Agreement.
- 9.2 Neither party shall without the prior written consent of the other party divulge any Confidential Information of the other party except to its employees, agents, sub-contractors, parent undertakings and subsidiaries who need to know the same for the purpose of carrying out their duties under this Agreement or as the case may be to properly receive and make use of the full benefit of this Agreement.
- 9.3 Any party disclosing Confidential Information pursuant to clause 9.2 shall procure that the person to whom Confidential Information is divulged keeps the Confidential Information concerned confidential in accordance with this clause 9.
- 9.4 Either party shall promptly notify the other party in writing if it becomes aware of any breach of confidence by any person to whom it divulges all or any part of the Confidential Information pursuant to clause 9.2 and shall give the other party at the first party's expense all necessary assistance in connection with any proceedings which may be instituted against any such person for breach of confidence.

- 9.5 The obligations under this clause 9 shall survive termination of this Agreement for a period of 7 years.
- 9.6 The restrictions on use and disclosure contained in clauses 9.1 to 9.5 above shall not apply, or as the case may be shall cease to apply, to Confidential Information which:
- (i) at the date of its disclosure to either party ("**Receiving Party**") by the other party ("**Disclosing Party**") was already in the public domain; or
  - (ii) subsequent to its receipt by the Receiving Party enters the public domain other than by reason of any breach of this Agreement by the Receiving Party; or
  - (iii) at the date of its disclosure was already lawfully known to the Receiving Party as evidenced by its written records and had not been obtained from the Disclosing Party or any member of the Disclosing Party's Group; or
  - (iv) is at any time after the Effective Date obtained by either party from any third party in circumstances where that third party:
    - a) did not acquire the same from the other party hereto whether directly or indirectly, and
    - b) is able to disclose the same without any breach of any agreement with or duty owed to the other party hereto; or
  - (v) is required to be disclosed by any Applicable Laws or order of any court of competent jurisdiction or recognised stock exchange or regulatory authority; or
  - (vi) is independently developed or acquired by the Receiving Party or members of its Group independently of anything provided by the Disclosing Party.
- 9.7 All Confidential Information which is delivered or disclosed pursuant to this Agreement shall be and remain the property of the Disclosing Party and all tangible (including any electronic data provided to the Service Provider by the Client) copies of the Confidential Information shall, at the Disclosing Party's option, be promptly returned to it upon written request or destroyed (to the extent possible without requiring the Receiving Party to destroy any of its computer hardware). The Receiving Party shall be entitled to retain copies of the Confidential Information to the extent that the same is required pursuant to any accounting, legal and/or regulatory requirements to which the Receiving Party is subject in any jurisdiction or automatically backed up.

## 10 INTELLECTUAL PROPERTY RIGHTS

- 10.1 The Client (or its licensor(s)) shall retain all rights and title and other Intellectual Property Rights in the Client Data ("**Client IPRs**"). Nothing in this Agreement shall transfer to the Service Provider any Client IPRs and the Service Provider shall have no right to use Client IPRs or Client Data except as necessary to perform its obligations under this Agreement. The Service Provider acknowledges and agrees that the Client Data constitutes or includes Confidential Information and shall remain the property of the Client. The Service Provider further agrees that it shall not disclose any Client Data or materials to any third party, except to the extent permitted under this Agreement.

- 10.2 The Service Provider shall retain all rights and title and other Intellectual Property Rights in the Service Provider IP. Nothing in this Agreement shall transfer to the Client any Service Provider IP and the Client shall have no right to use any Service Provider IP. The Client acknowledges and agrees that the Service Provider IP constitutes or includes Confidential Information and shall remain the property of the Service Provider. The Client further agrees that it shall not disclose any Service Provider IP or materials to any third party, except to the extent permitted under this Agreement.
- 10.3 Subject to clauses 9 and 10.1, the Service Provider shall have an on-going right and licence to use the Client Data during the term of this Agreement for the purposes of properly performing the Service but not otherwise.
- 10.4 Save for the licence set out in clause 10.3, the parties acknowledge and agree that this is an agreement for services, and that no Intellectual Property Rights of either party shall be transferred, assigned or licensed to the other party or any other person, or impaired, in any manner under or in connection with this Agreement.

## **11 DATA PROTECTION**

- 11.1 The parties shall, in performing their respective obligations under this Agreement, comply with the Data Protection Laws and neither party shall put the other in breach of any such Data Protection Laws.
- 11.2 In relation to any personal data (as defined in the Data Protection Act 1998 (the "Act")):
- (i) the Service Provider shall process such data and information only in accordance with this Agreement or otherwise in accordance with the Client's instructions; and
  - (ii) the Service Provider shall implement such technical and organisational measures as are necessary to protect against unauthorised or unlawful processing of such data and information and against accidental loss or destruction of, or damage to, such data and information.
- 11.3 The Client:
- (i) represents and warrants on the date of this Agreement and undertakes throughout the term of this Agreement that it has obtained and will procure the obtaining of all necessary consents and other legal entitlements to pass onto the Service Provider and its Group (such consents and entitlements to include onward transmission and sub-processing as described in sub-clause 11.3 (ii) below) any Client Personal Data supplied to any member of the Service Provider's Group under this Agreement; and
  - (ii) acknowledges and agrees that the Service Provider and its Group may disclose Client Personal Data, including sensitive personal data (as defined under the Act), to third parties including medical practitioners and loss adjustors who are required to receive such data for the purposes of processing VCS Claims under this Agreement and that those third parties may sub-process data.
- 11.4 The Service Provider will not transmit Client Personal Data to a country or territory outside the European Economic Area unless otherwise specified in the VCS Service Schedule in relation to specified categories of Claim provided that the Service

Provider does so in compliance with Data Protection Laws including by using the Model Clauses.

- 11.5 The Service Provider shall permit the SMF (upon reasonable prior notice and not more than once per year) by its duly authorised representatives, to inspect and audit the Service Provider's data processing activities in relation to the Service, and shall use its reasonable endeavours to comply with all reasonable requests or directions of the Client or its representatives during or as a result of such audit, to enable the Client to verify that the Service Provider is in full compliance with its data processing obligations under this Agreement.
- 11.6 The Service Provider shall be liable for and shall indemnify the Client and its Group against any third party claims, actions, liabilities, losses, damages and reasonable expenses (including legal expenses) incurred by the Client or its Group which arise directly out of any non-compliance with any part of the Data Protection Laws by the Service Provider or its employees, agents or contractors. The Client shall be liable for and shall indemnify the Service Provider and its Group against any third party claims, actions, liabilities, losses, damages and reasonable expenses (including legal expenses) incurred by the Service Provider or its Group which arise directly out of any non-compliance with any part of the Data Protection Act 1998 by the Client or its employees, agents or contractors.

## **12 TERMINATION**

- 12.1 Either party shall be entitled to terminate this Agreement and any applicable VCS Service Schedule at any time forthwith by giving written notice if the other party:
- (i) suspends, or threatens to suspend, payment of its debts or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1996;
  - (ii) enters into or applies for one or more of a moratorium, winding up, administration, liquidation (of any kind, including provisional), or composition or arrangement with creditors; or
  - (iii) commits a material breach of this Agreement and either such material breach is incapable of remedy or, where capable of remedy, the defaulting party fails to remedy such breach within 30 days of notice.
- 12.2 The Client may terminate this Agreement and any applicable VCS Service Schedule at any time forthwith upon written notice in the event:
- (i) the Service Provider is no longer an Accredited Service Provider;
  - (ii) the Client is required to do so by a Regulator;
  - (iii) the SMF confirms that the Service Provider has failed to implement successfully its Performance Improvement Plan in accordance with paragraph 1.3(a) of Part C of Schedule 1;
  - (iv) there has been a Change of Control of the Service Provider; or
  - (v) there has been a sale of the whole or a substantial part of the business or assets of the Service Provider.

- 12.3 In the event of termination in accordance with clauses 12.1,12.2 or 21.4, subject to the Client's obligation to pay any Service Charges under or in connection with an Exit Management & Service Transfer Plan:
- (i) the Client shall be released from its Financial Commitment and will only be liable for Service Charges reasonably incurred by the Service Provider up to the date of termination; and
  - (ii) the Service Provider shall refund to the Client within 30 days of the date of termination any Service Charges paid in advance by the Client but not incurred by the Service Provider prior to such date and any applicable Rebates.
- 12.4 This Agreement shall automatically terminate if there is no valid VCS Service Schedule in force.
- 12.5 For the avoidance of doubt the Client may at its sole discretion and without cause choose not to put any Claims into the Service before the end of this Agreement or the end of the Service Year ("**Service Cessation**"). The Client shall notify the Service Provider in writing if it does not intend to put any Claims into the Service.
- 12.6 The Service Provider must notify both the Client and the SMF of its intention not to continue to provide the Service in the following Service Year by giving no less than 3 months' written notice before the start of the new Service Year.
- 12.7 Any termination of this Agreement shall take effect without prejudice to the rights and obligations of the parties accruing before termination and shall not affect the continuance of obligations and liabilities intended by this Agreement to survive such termination.
- 12.8 On termination of this Agreement the Service Provider shall, at the Client's option, either continue to provide the Service in respect of any VCS Claims under the Service Provider's control, Exit any VCS Claims to the Client or move them to a Replacement Service Provider as agreed in the Exit Management & Service Transfer Plan.
- 12.9 The parties agree that they do not anticipate that the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended) or any other associated legislation will apply to the Service provided by the Service Provider (including, for the avoidance of doubt, on entry, termination or expiry of this Agreement or applicable VCS Service Schedule).
- 12.10 The Service Provider shall indemnify and keep fully and effectively indemnified on demand the Client and each member of its Group against any claims, demands, actions, proceedings, settlement and all losses, costs, charges, penalties, awards, expenses and liabilities suffered or incurred by such indemnified person which arise out of or in connection with the employment and/or termination of employment of any employees or former employees of the Service Provider or its agents or suppliers or sub-contractors engaged in connection with the Service.
- 12.11 The Client agrees to indemnify and keep fully and effectively indemnified on demand the Service Provider against any claims, demands, actions, proceedings, settlement and all losses, costs, charges, penalties, awards, expenses and liabilities suffered or incurred by the Service Provider upon its entry into this Agreement and which arise out of or in connection with the employment and/ or termination of employment of any

employees or former employees of the Client, its agents or suppliers or sub-contractors engaged in connection with the Service.

### **13 CHANGE CONTROL PROCESS FOR THE SERVICE AND AGREEMENT**

- 13.1 Changes to the Service or to this Agreement may be requested by the Client, the Service Provider or the SMF. In the event of a change request from either the Service Provider or the Client, the party seeking the change shall provide written notification to the SMF with a copy to the other party, specifying the change requested. In the event that the SMF requests a change it shall provide written notification of its request to the parties, specifying the change requested.
- 13.2 The following change control procedure shall apply in the event of a request under clause 13.1:
- (i) the SMF shall, in consultation with the Service Provider and the SRP, evaluate the requested change and shall either reject the request or request further investigations;
  - (ii) upon request from the SMF, the Service Provider shall investigate the likely impact of the proposed change to the Service, the Agreement, the Service Standards and the Service Charges and shall, acting reasonably and in good faith, provide its response to the SMF;
  - (iii) the Service Provider shall be entitled to charge the SMF up to £300 per Business Day for investigations pursuant to clause 13.2(ii) for any time it spends in excess of one Business Day provided it has obtained the SMF's prior written consent;
  - (iv) following further investigations the SMF shall, in consultation with the Service Provider and the SRP, either approve or reject the change;
  - (v) no request for a change shall constitute an amendment to the Service or Agreement unless and until it is set out in writing and signed on behalf of the parties; and
  - (vi) the implementation timescales and any applicable costs shall be negotiated in good faith by the SMF and the Service Provider.
- 13.3 Any requests by the Client for additional services outside of the scope of the Service shall be agreed in a separate agreement between the parties and shall not be subject to this Agreement.

### **14 MIGRATION OF SERVICE / EXIT MANAGEMENT**

Within one calendar month of written notice from either party or the invocation of Service Cessation by the Client, the Service Provider shall, in conjunction with the Client and the SMF, develop an Exit Management & Service Transfer Plan in accordance with the framework set out in Schedule 8.

### **15 ANTI-BRIBERY**

- 15.1 The Service Provider shall:
- (i) comply with all Applicable Laws relating to anti-bribery and anti-corruption including the Bribery Act 2010 ("Relevant Requirements");

- (ii) have and shall maintain in place throughout the term of this Agreement its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements and will enforce them where appropriate; and
- (iii) without delay report to the Client any request or demand for any undue financial advantage of any kind received by it in connection with the performance of this Agreement.

15.2 Breach of this clause 15 shall be deemed a material breach not capable of remedy for the purposes of clause 12.

15.3 For the purposes of this clause 15, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), section 5(5) and 6(6) of that Act and section 8 of that Act respectively.

## 16 NOTICES

16.1 Without prejudice to any other method available for the giving of notice or to any acknowledgement by any party that it has received the same, any notice or other communication to be given under this Agreement shall be in writing and shall be delivered or sent to:

(i) in the case of the Service Provider:

Address:

Attention:

(ii) in the case of the Client:

Address:

Attention:

(iii) in the case of the SMF:

Address:

Attention:

or in the case of any party, such other address as may be notified from time to time by that party to the other party in accordance with this clause 16.1.

16.2 Any notice shall be valid if delivered by hand or pre-paid first class post (airmail if sent to or from an address outside the United Kingdom) and:

- (i) if delivered by hand shall conclusively be deemed to have been given or served at the time of dispatch if delivered on a Business Day or (if not so delivered) on the next following Business Day; and

- (ii) if sent by pre-paid post in the manner described above shall conclusively be deemed to have been received on the second Business Day after the posting of the same (or on the third Business Day if sent to or from an address outside the United Kingdom).

## **17 DISPUTE RESOLUTION**

### ***Claims Handling Complaint Resolution***

17.1 In the event that the Client wishes to register a Claims Handling Complaint:

- (i) the Client shall give the Service Provider written details of the complaint, setting out its nature and full particulars, together with the relevant supporting documentation;
- (ii) the Service Provider shall evaluate the particulars of the complaint and both parties shall use all reasonable endeavours to seek to resolve the issue; and
- (iii) if after 90 calendar days of submitting a Claims Handling Complaint to the Service Provider, the Client remains dissatisfied with the Service Provider's response then the Client may, at its own cost, require that the parties proceed to mediation in accordance with clause 17.4.

### ***Service Issue Complaint Resolution***

17.2 In the event that either the Client or the Service Provider wishes to register a Service Issue Complaint:

- (i) either the Service Provider or the Client shall give the SMF written details of the complaint with a copy to the other setting out its nature and full particulars, together with relevant supporting documentation;
- (ii) the SMF will evaluate the particulars of the complaint and consult with the SRP and notify the parties of its findings within 15 Business Days of receipt of the Service Issue Complaint;
- (iii) if either party remains dissatisfied with the SMF's response then that party may require the SMF to refer the matter to a member of the executive team at Lloyd's (such member to be nominated by the SMF);
- (iv) the nominated member of the executive team shall issue his findings within 15 Business Days of receipt of the referral; and
- (v) if after 30 Business Days of submitting a Service Issue Complaint to the SMF, the Service Provider or the Client remain dissatisfied with the executive team's response then the Service Provider or the Client may, at its own cost, require that the parties proceed to mediation in accordance with clause 17.4.

### ***Service Management Complaint Resolution***

17.3 In the event that the Client or the Service Provider wishes to register a Service Management Complaint:

- (i) either the Service Provider or the Client shall give the SMF written details of the complaint with a copy to the other setting out its nature and full particulars, together with relevant supporting documentation;
- (ii) the SMF will evaluate the particulars of the complaint and consult with the SRP and notify the parties of its findings within 15 Business Days of receipt of the Service Management Complaint;
- (iii) if the Client or Service Provider remains dissatisfied with the SMF's response then that party may require the SMF to refer the matter to a member of the executive team at Lloyd's (such member to be nominated by the SMF);
- (iv) the nominated member of the executive team shall issue his findings within 15 Business Days of receipt of the referral; and
- (vi) if after 30 Business Days of submitting a Service Management Complaint to the SMF, the Service Provider or the Client remain dissatisfied with the executive team's response then the Service Provider or the Client may, at its own cost, require that the parties proceed to mediation in accordance with clause 17.4.

17.4 In the event that the parties fail to satisfactorily resolve the complaint in accordance with clauses 17.1, 17.2 or 17.3, they shall proceed to mediation provided by the CEDR (Centre for Dispute Resolution), or such other body as the parties may agree in writing.

## **18 DISASTER RECOVERY**

The Service Provider shall, at its own cost, establish and at all times maintain a Business Continuity Plan. The Service Provider shall, on request from the Client or the SMF, provide the Client and/or the SMF with a copy of the Service Provider's then current Business Continuity Plan and a copy of its auditor's report on the effectiveness of the Business Continuity Plan. The Service Provider shall test its Business Continuity Plan at least annually to ensure year round reliability. The Service Provider shall implement its Business Continuity Plan in the event of a Disaster affecting its ability to provide the Service.

## **19 AUDIT**

19.1 Without prejudice to any other provisions of this Agreement, the SMF or its representatives may upon service of prior notice of not less than 28 days undertake an audit to ensure the Service Provider's compliance with this Agreement and the Quality Standards Framework, provided that the Client procures that:

- (i) the SMF or its representatives have not already undertaken four audits within the calendar year. For the avoidance of doubt, this shall not include separate Client audits in accordance with clause 19.3;
- (ii) if the SMF wishes to appoint a third party to undertake the audit, it will only select a third party which is not a direct competitor of the Service Provider and shall notify the Service Provider in advance of the proposed appointment;
- (iii) the disruption caused to the Service Provider and its Group and their business officers and employees shall be kept to a minimum; and

- (iv) any person exercising any right under this clause 19, complies with the Service Provider's health and safety policy whilst on its premises.

The Service Provider shall provide all reasonable assistance and co-operation to auditors, reviewers or inspectors.

- 19.2 The Service Provider shall bear all its own costs and expenses arising from any such audit, review or inspection.
- 19.3 The Client shall have the right to elect to undertake its own separate audit and have the same audit rights as conferred on the SMF in this clause 19, provided that the Client shall obtain the prior written consent of the SMF (which shall not withhold any reasonable request for consent) and be responsible for paying the reasonable and proper costs and expenses incurred by the Service Provider in connection with any such audits.
- 19.4 Notwithstanding clauses 19.1 and 19.4, in the event of suspected fraud by the Service Provider or where an audit is requested by or on behalf of a Regulator, the Client or the SMF may carry out an audit at any time and on any number of occasions and the Service Provider shall provide all reasonable assistance and co-operation and bear all its own costs and expenses arising from such audit.
- 19.5 The Service Provider recognises that the Client, as regulated under the Financial Services and Markets Act 2000, must be in a position to comply with the rules and guidance of the PRA and FCA. Accordingly, the Service Provider shall:
- (i) behave in an open and co-operative manner in all its communications with the PRA and/or FCA in relation to the Client's business; and
  - (ii) permit the PRA and/or FCA to enjoy access to its premises, records, systems, employees, officers and auditors and to receive information relating to the Service provided to the Client where the same are required by the PRA and/or FCA pursuant to and in accordance with its powers and duties under the Financial Services and Markets Act 2000 for any purposes relating to compliance by the Client pursuant to the Client's obligations under the Financial Services and Markets Act 2000 and any rules or guidance of the PRA and/or FCA, or in the case of the PRA and FCA, the discharge of their respective duties, powers or functions in connection with the Client's business.
- 19.6 In accordance with clause 19.5 the Service Provider shall, unless otherwise required by the PRA and/or FCA, keep the Client fully informed of the requests and actions made by the PRA and/or FCA and, where reasonably possible, give the Client the opportunity to assess and participate in any dealings between the Service Provider and the PRA and/or FCA which concern the Client's business. The Client agrees to meet all reasonable costs and expenses incurred by the Service Provider in relation to it complying with the provisions of clause 19.6 above.

## **20 SUB-CONTRACTING**

- 20.1 The Service Provider may not sub-contract the performance of all or any material part of its obligations under this Agreement to a third party, other than a Group company, without the prior written consent of the SMF. The SMF shall not provide such consent without consultation with the SRP.

- 20.2 If the SMF does consent to a sub-contracting arrangement in accordance with 20.1 above, the Client shall have the option to terminate this Agreement provided it exercises such option within one month of notification of the consent by the SMF, in which case the Client shall be released from its Financial Commitment and will only be liable for Service Charges reasonably incurred by the Service Provider up to the date of termination of this Agreement.
- 20.3 Notwithstanding the appointment of any sub-contractor, the Service Provider shall remain liable for all acts or omissions in relation to the proper performance of the Service in accordance with this Agreement as if the Service Provider had performed the Service itself.
- 20.4 Nothing in this clause 20 will prevent the Service Provider from appointing individuals who are independent contractors to assist in the performance of the Service provided such independent contractors are under the direct control of and are employed under contract by the Service Provider.

## **21 FORCE MAJEURE**

- 21.1 Neither party will be liable for delay in performing its obligations under this Agreement or for failure to perform its obligations under this Agreement if the delay or failure results from circumstances beyond its reasonable control, which shall be deemed to include for these purposes acts of God or war, governmental regulations, fire, flood, explosion, accident, civil commotions, interruption of electricity supply or breakdown of a machine, system or transmission line maintained or operated by any third party ("**Force Majeure Event**"). For the avoidance of doubt, a Market Systems Outage shall not constitute a Force Majeure Event and will be subject to Part C of Schedule 1 (Rebate Reduction).
- 21.2 The party claiming a Force Majeure Event shall as soon as practicable serve notice on the other party and the SMF specifying the nature and extent of the circumstances giving rise to the Force Majeure Event.
- 21.3 The party claiming to be prevented or delayed in the performance of any of its obligations by reason of the Force Majeure Event shall use all reasonable endeavours to bring the Force Majeure Event to a close or to find a solution whereby the Agreement may be otherwise performed.
- 21.4 If a party is prevented or delayed from performing its obligations by a Force Majeure Event for a continuous period in excess of 60 Business Days, the parties in conjunction with the SMF will enter into good faith discussions with a view to alleviating the situation or to agreeing upon such alternative arrangements as may be fair and reasonable. If the parties fail to agree upon a course of action within a further period of 30 Business Days then either party may immediately terminate this Agreement by serving written notice on the other.
- 21.5 The Service Provider may not claim relief under this clause 21 if the Force Majeure Event is one which a prudent Service Provider should reasonably have foreseen and provided for the case in question, or if it is attributable to a failure by the Service Provider to comply with the provisions of its Business Continuity Plan.

## **22 ASSIGNMENT**

Neither party shall be entitled at any time to assign, transfer, charge or otherwise deal with all or any of its rights and/or obligations under this Agreement (including

granting, declaring, creating or disposing of any interest under this Agreement or any such right or obligation) without the prior written consent of the other party.

## **23 VARIATION**

The provisions of this Agreement may only be varied from time to time by written agreement between the parties and the SMF and in accordance with clause 13.

## **24 SEVERANCE**

In the event that any terms, conditions or provisions of this Agreement shall be found by any court or administrative body of a competent jurisdiction to be invalid, unlawful or unenforceable to any extent, such term, condition or provision shall to that extent be severed from the remaining provisions which shall continue to be valid, legal and enforceable to the fullest extent permitted by law.

## **25 WAIVER**

Failure by either party to enforce at any time any of the provisions, rights or remedies in this Agreement shall not be deemed to be a waiver of the party's rights hereunder nor in any way affect the validity of the whole or any part of this Agreement nor prejudice the parties' rights to take subsequent or further action.

## **26 ENTIRE AGREEMENT**

26.1 This Agreement sets out the entire agreement and understanding between the parties in respect of the provision of the Service by the Service Provider to the Client.

26.2 Each party acknowledges and agrees (for itself and on behalf of each other member of that party's Group) that in entering into this Agreement, it has not relied and is not relying upon any representation, statement, assurance or warranty, whether oral or written, of any person (whether party to this Agreement or not) other than those expressly set out in this Agreement and the applicable letter of accreditation.

26.3 If and to the extent that any part of this clause 26 should be held not to exclude reliance upon any representation, statement, assurance or warranty, whether oral or written, of any person (whether party to this Agreement or not) other than those expressly set out in this Agreement, each party (for itself and on behalf of each other member of that party's Group) unconditionally and irrevocably waives any claim or remedy which it or they have in relation to any such representation.

26.4 This clause 26 shall not exclude any liability for (or remedy in respect of) fraudulent misrepresentation.

## **27 THIRD PARTY RIGHTS**

27.1 Except as stated in this Agreement (including in relation to the SMF) no person will have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any part of this Agreement and nor will the consent of any person other than the Client and the Service Provider be needed to vary this Agreement other than expressly stated in clause 13 and/or clause 23.

## **28 GOVERNING LAW AND JURISDICTION**

- 28.1 This Agreement, and any non-contractual obligations arising out of or in connection with this Agreement, shall be governed by and construed in accordance with English law.
- 28.2 Subject always to clause 17, the Parties irrevocably agree that the courts of England shall have exclusive jurisdiction to settle any dispute arising out of or in connection with the Agreement.

**IN WITNESS OF WHICH** this Agreement has been executed by or on behalf for the parties on the date set out above.

SIGNED for and on behalf of )  
[ LIMITED/PLC ] )  
DIRECTOR )

Date:

SIGNED for and on behalf of )  
[ LIMITED/PLC ] )  
DIRECTOR )

Date:

TEMPLATE

## SCHEDULE 1

### THE SERVICE AND SERVICE STANDARDS

#### Part A: The Service

##### 1 Determination of VCS Claims

In Determining a VCS Claim, the Service Provider shall at all times:

- progress the VCS Claim quickly, fairly and in accordance with the requirements of all relevant Regulators;
- maintain consistent, timely and accurate reserves representing the most likely ultimate probable cost in respect of the VCS Claim having regard to the Reserving Philosophy; and
- establish and maintain effective and professional communications with all stakeholders and provide Claimants with clear and regular updates to keep them appropriately informed during the lifecycle of the VCS Claim.

Such Determination shall ordinarily include:

- a. obtaining all documentation and information reasonably necessary;
  - b. setting an appropriate Determination strategy and budget;
  - c. at appropriate times, setting of prudent reserves in respect of the VCS Claim having regard to the Reserving Philosophy;
  - d. appointing any necessary experts or service providers to assist or to advise in the Determination of the VCS Claim;
  - e. careful consideration of whether the VCS Claim is valid under the terms of the relevant contract of insurance having regard to appropriate regulatory requirements of customer care;
  - f. liaising and negotiating with the insured (via its broker) and making offers to the Claimant based on communications and the consideration of all material facts; and
  - g. carrying out all necessary administration in respect of the VCS Claim including the instruction for payment of monies and retaining appropriate records.
- 2 The Service Provider will perform the Acceptance Work Item and Determine each VCS Claim by undertaking one or more of the other directly chargeable Work Items described at paragraphs 3 through 5 below as required by the individual circumstances of that VCS Claim.

##### 3 Acceptance Work Item

- 3.1 The Acceptance Work Item will commence when the Service Provider receives its first notification of a Claim via a Claims Workflow Trigger.

- 3.2 The Service Provider shall undertake such activities as may be necessary to decide whether a Claim submitted to it by the Client is an In-Scope Claim and, if it is, Accept that Claim as a VCS Claim and if it is not, reject the Claim. The Service Provider must Accept all In-Scope Claims. For the avoidance of doubt, the Service Provider shall have the right to assume that the relevant insurance premium has been paid for a Claim unless the Client advises otherwise.
- 3.3 The Acceptance Work Item will conclude when the Service Provider has Accepted or rejected the Claim.

#### **4 Investigation Work Item**

- 4.1 The Investigation Work Item will commence upon the Service Provider Accepting the Claim as a VCS Claim unless the Service Provider has enough information to make an Offer in full or partial settlement of a VCS Claim. If, after concluding Acceptance, the Service Provider has enough information to make an Offer in full or partial settlement of a VCS Claim then the Service Provider shall not commence the Investigation Work Item and will proceed directly to the Negotiation Work Item.
- 4.2 The Investigation Work Item will include the following activities:
- a. obtaining all documentation and information reasonably necessary;
  - b. setting an appropriate Determination strategy and budget;
  - c. at appropriate times, setting of prudent reserves in respect of the VCS Claim having regard to the Reserving Philosophy as set out in Schedule 6;
  - d. appointing any necessary experts or service providers to assist or to advise in the Determination of the VCS Claim. If any expert(s) or service provider(s) are named on the relevant slip, the Service Provider shall use those named expert(s) or service provider(s). The Service Provider shall otherwise be entitled to appoint experts or service providers of its choosing, providing quality and value, unless the Client specifies the use of particular expert(s) or service provider(s) in which case the Service Provider shall use those experts or service providers specified by the Client; and
  - e. careful consideration of whether the VCS Claim is valid under the terms of the relevant contract of insurance having regard to appropriate regulatory requirements of customer care.

The Investigation Work Item will conclude when the Service Provider has completed all the activities above and the Service Provider considers that it has all of the documentation and information necessary to make an Offer in full or partial settlement of the VCS Claim or an instruction to Exit the VCS Claim has been received.

#### **5 Negotiation Work Item**

- 5.1 The Acceptance or Investigation Work Item (as appropriate) must be concluded before the Negotiation Work Item can commence. The Negotiation Work Item will commence coincident with the end of Acceptance or Investigation as appropriate.

- 5.2 The Negotiation Work Item may include a series of communications between the Service Provider and the Claimant and further consideration by the Service Provider of all the material facts or information presented in respect of the VCS Claim.
- 5.3 The Service Provider shall only make an Offer that complies with the delegated claims settlement authorities specified in the applicable Service Year Schedule, unless agreed otherwise by the Client in respect of a particular VCS Claim.
- 5.4 The Negotiation Work Item will conclude when either:
- a. an Offer is accepted by the Claimant; or
  - b. an instruction to Exit the VCS Claim has been received.

## **6 Closure Work Item**

- 6.1 The Closure Work Item will commence when an Offer has been accepted by the Claimant or an instruction to Exit the VCS Claim has been received.
- 6.2 Where a settlement requires one or more indemnity payments to be made, the Service Provider shall request the broker to raise an ECF settlement transaction and take the steps necessary to agree the ECF 2 transaction.
- 6.3 The Closure Work Item will conclude when either:
- a. payment instructions have been made for the last anticipated indemnity payment for this VCS Claim;
  - b. an instruction to Exit the VCS Claim has been concluded; or
  - c. the Service Provider declines a VCS Claim in accordance with the Client's instructions following a Referral

## **7 Ancillary Services**

- 7.1 To support the operation of the Service, the Service Provider shall perform the following ancillary activities which are not separately chargeable:
- a. raise payment instructions to settle fees and expenses relating to a VCS Claim within 30 days of receipt of an undisputed invoice;
  - b. notify the Client within 8 Working Hours of identifying that any of the following occur (each a "Referral" and "Refer" and "Referred" shall be construed accordingly) in respect of a VCS Claim:
    - (i) the VCS Claim ceases to be an In-Scope Claim;
    - (ii) a complaint has been made by the Claimant either in respect of the handling of the VCS Claim or its outcome;
    - (iii) conditions warranting an ex-gratia payment review;
    - (iv) there is a conflict of interest;
    - (v) denial of coverage is proposed by the Service Provider;
    - (vi) non-acceptance by the Claimant of the final Offer;
    - (vii) the insured does not want to settle;
    - (viii) there are other matters that the Service Provider reasonably believes would be of material interest to the Client.

Following receipt of the Referral the Client shall instruct the Service Provider whether or not the VCS Claim should be Exited and the Service Provider shall confirm the decision to the Client in writing. The Service Provider is not obliged to continue Determination of a VCS Claim which is no longer an In-Scope Claim;

- c. handle complaints where, in accordance with paragraph 7.1(b), the Service Provider is to continue Determining the VCS Claim after a complaint has been made. The Service Provider shall handle complaints in accordance with the requirements of the Regulators including the UK Personal Lines Claims and Complaints Handling Code;
- d. notify the Client in writing of a subrogation or salvage opportunity within 8 Working Hours of its identification unless the parties have entered into a separate agreement for the handling of subrogation and salvage;
- e. support the Client in developing and executing a VCS Service Schedule in accordance with section 2 of Schedule 2;
- f. issue to the Client quarterly in arrears a Quarterly Service Statement;
- g. report to the SMF the data that the Service Provider used in the Quarterly Service Statement , in the format that is described in the Operations Guide;
- h. support the SMF with the process of monitoring the Service Provider against the Service Standards and the Quality Standards, through:
  - (i) provision of the Management Information; and
  - (ii) facilitating the conduct of the SMF's thematic reviews, regulatory reviews and audits;
- i. attend monthly performance review meetings with the SMF to present performance reports and raise any service related issues;
- j. comply with and support the dispute resolution procedures as set out in clause 17 of this Agreement;
- k. develop and execute an Exit Management & Service Transfer Plan in accordance with Schedule 8; and
- l. contribute to the further development of the Volume Claims Service.

## Part B: The Service Standards

- 1 The Service Provider shall provide the Service in accordance with the following timed Service Standards:
  - 1.1 **Acceptance Work Item:** within 8 Working Hours of the Client submitting a Claim to the Service Provider, the Service Provider must decide whether the Claim is an In-Scope Claim and, if it is, Accept that Claim as a VCS Claim and if it is not, reject the Claim by resetting the ECF triage category to blank.

- 1.2 **Investigation Work Item:** must be concluded within 16 Service Hours of its commencement.
- 1.3 **Negotiation Work Item:** must be concluded within 16 Service Hours of its commencement.
- 1.4 **Closure Work Item:** must be concluded within 8 Service Hours of its commencement.
- 2 In the event of a large loss, as signified by the Lloyd's market Strategic Claims Group issuing a catastrophe code, the SMF in consultation with the Client and the Service Provider shall, where necessary, prioritise and adjust standards accordingly.

### **Part C: Service Standards - Rebates:**

#### **1. Client Performance Level**

- 1.1 Should both 1.5% and 14 (both thresholds to be exceeded) of the Client's VCS Claims which become Closed Claims in a calendar quarter be Underperforming Claims:
  - a. a Rebate shall be payable to the Client for each of its Underperforming Claims in that calendar quarter in accordance with paragraph 3 below; and
  - b. the Service Provider shall submit a Performance Improvement Plan to the SMF within 5 Business Days of issuing the applicable Quarterly Service Statement. The Service Provider shall have 5 Business Days from submitting its Performance Improvement Plan to obtain the SMF's approval, such approval not to be unreasonably withheld or delayed.
- 1.2 If the Service Provider fails to submit a Performance Improvement Plan in accordance with paragraph 1.1b, it will be deemed a material breach incapable of remedy and the Client may terminate the Agreement in accordance with clause 12.1(iii).
- 1.3 If the Service Provider fails to obtain the SMF's approval in accordance with paragraph 1.1b it shall have 3 Business Days from notice of the SMF's decision to obtain the Client's approval, such approval not to be unreasonably withheld or delayed. If the SMF and the Client do not approve the Performance Improvement Plan, it will be deemed a material breach incapable of remedy and the Client may terminate the Agreement in accordance with clause 12.1(iii).
- 1.4 If the Service Provider fails to meet the client performance level in paragraph 1.1 above in any of the 3 subsequent calendar quarters and/or fails the Performance Improvement Plan:
  - a. the Client may terminate the Agreement in accordance with clause 12.2(iii); and
  - b. a Rebate shall be payable to any of the Service Provider's client(s) with Underperforming Claims in that calendar quarter in accordance with paragraph 3 below.

#### **2. Service Provider Performance Levels**

- 2.1 In the event that:

- (i) between 1.5% and 5% of all the Service Provider's VCS Claims which become Closed Claims in a calendar quarter are Underperforming Claims a Rebate shall be payable to any of the Service Provider's client(s) with Underperforming Claims in that calendar quarter in accordance with paragraph 3 below; or
  - (ii) more than 5% of all the Service Provider's Claims which become Closed Claims in a calendar quarter are Underperforming Claims:
    - a. a Rebate shall be payable to any of the Service Provider's client(s) with Underperforming Claims in that calendar quarter in accordance with paragraph 3 below; and
    - b. the Service Provider shall submit a Performance Improvement Plan to the SMF within 5 Business Days of issuing the applicable Quarterly Service Statement to be approved by the SMF, such approval not to be unreasonably withheld or delayed.
- 2.2 If the Service Provider fails to meet the 1.5% performance level referred to in paragraph 2.1(i) above in any of the 3 subsequent calendar quarters it shall submit a Performance Improvement Plan to the SMF within 5 Business Days of issuing the applicable Quarterly Service Statement to be approved by the SMF, such approval not to be unreasonably withheld or delayed.
- 2.3 If the Service Provider either (i) fails to develop the Performance Improvement Plan in 2.1(ii)b. or 2.2 and obtain the SMF's approval; or (ii) fails the approved Performance Improvement Plan, it may have its accreditation in respect of the handling of VCS Claims withdrawn or the SMF may, in its sole discretion, permit the Service Provider to implement a further Performance Improvement Plan.
- 2.4 Should more than 5% of all Acceptance Work Items completed by the Service Provider in a calendar quarter fail to meet the relevant Service Standard, the Service Provider shall submit a Performance Improvement Plan within 5 Business Days of issuing the applicable Quarterly Service Statement. The Service Provider shall have 5 Business Days from submitting its Performance Improvement Plan to obtain the SMF's approval, such approval not to be unreasonably withheld or delayed.
- 2.5 Should more than 5% of all Closure Work Items completed by the Service Provider in a calendar quarter fail to meet the relevant Service Standard, the Service Provider shall submit a Performance Improvement Plan within 5 Business Days of issuing the applicable Quarterly Service Statement. The Service Provider shall have 5 Business Days from submitting its Performance Improvement Plan to obtain the SMF's approval, such approval not to be unreasonably withheld or delayed.
- 2.6 In the event that:
- a. the Service Provider fails to submit a Performance Improvement Plan and obtain the SMF's approval in accordance with paragraph 2.4 and/or 2.5;
  - b. the Service Provider fails the Performance Improvement Plan implemented in accordance with paragraph 2.4 and/or 2.5; or
  - c. the Service Standard for Acceptance and/or Closure is not met in any of the 3 subsequent calendar quarters,

the Service Provider may have its accreditation in respect of the handling of VCS Claims withdrawn.

- 2.7 For the avoidance of doubt, the Service Provider shall not be required to pay a Rebate for an Underperforming Claim if it has already incurred a Rebate for the same Underperforming Claim.

### **3 Rebate Calculation**

- 3.1 Where a Rebate is payable the level of the Rebate shall be calculated as follows:

- (i) if the Individual Claim Standard is not met the Rebate due will be 50% of the Individual Claim Cost;
- (ii) if the Individual Claim Standard plus 8 Service Hours is not met the Rebate due will be 75% of the Individual Claim Cost;
- (iii) if the Individual Claim Standard plus 16 Service Hours is not met the Rebate due will be 100% of the Individual Claim Cost.

### **4 Rebate Reduction**

- 4.1 From time to time the Service Provider may request the SMF to reduce or waive a Rebate where a breach of the Service Standards is due to circumstances beyond the Service Provider's control but such circumstances do not constitute a Force Majeure.
- 4.2 In the event of a Market Systems Outage, the Service Provider shall as soon as practicable notify the SMF in writing specifying the nature and extent of the circumstances giving rise to the Market Systems Outage and details of the Closed Claims for which a Rebate Reduction is requested.
- 4.3 The SMF will review the request and, where it considers it reasonable based on all the information available, may agree a reduction or a waiver to be applied to the Rebate and shall notify the parties in writing of such decision.

## SCHEDULE 2

### SERVICE CHARGES

#### 1. Charging Mechanism

1.1 The Service Provider's Service Charges shall be based on classes of business and where appropriate indemnity thresholds. Notwithstanding the exceptions noted herein the Service Charge for the provision of the Service will be incurred for each of the following Work Items if started:

- a. Acceptance
- b. Investigation
- c. Negotiation
- d. Closure

For the avoidance of doubt, the Client shall be responsible for all third party expert costs incurred in respect of its VCS Claims.

1.2 No Service Charge will be incurred for the Closure Work Item when a VCS Claim is Exited.

1.3 The Service Provider may only charge for the Closure Work Item once per VCS Claim. The Service Provider shall manage the fee and third party expense invoice process at no charge to the Client.

1.4 The Service Provider shall set its Rate Card and provide a copy to the SMF by no later than the 30 September prior to the start of each Service Year. The Rate Card shall apply to all Work Items for Claims that enter the VCS during the Service Year regardless of whether such Work Items are concluded in a subsequent Service Year.

1.5 The Service Provider may reduce its Service Charges during a Service Year by issuing a new Rate Card and providing a copy to the SMF and the Client. The new Service Charges shall apply from the start of the next calendar month for Claims Accepted into Service from that month until the next Rate Card change.

1.6 The Service Provider cannot increase its Service Charges during a Service Year.

1.7 If the Client requires on-going support or other ancillary assistance after termination of this Agreement for whatever reason the Service Provider shall charge the Client at the time and materials rate set out in the Exit Management & Service Transfer Plan.

#### 2 VCS Service Schedule

2.1 The Client shall spend the higher of: a) the Financial Commitment less any Rebates or b) the total Service Charges incurred in the Service Year less any Rebates.

2.2 The Service Provider shall provide the Service up to the Total Financial Value stated in the applicable VCS Service Schedule, plus an additional 10% margin subject to paragraph 1.4 above.

2.3 The Service Provider may, at its discretion, accept:

- a. additional Work Items that will exceed the Total Financial Value in the applicable VCS Service Schedule plus 10% margin; and/or
- b. an amendment to the Total Financial Value in the applicable VCS Service Schedule. The Service Provider shall notify the Client within 5 Business Days from receipt of a request from the Client whether it is willing to amend the VCS Service Schedule. Any amendment to the VCS Service Schedule will come into effect on the first day of a mutually agreed calendar month.

### **3 Invoicing and Payment**

- 3.1 On the first day of each calendar month from the Service Start Date until the end of the Service Year, the Client will pay the Service Provider an amount equal to the Total Financial Value divided by the number of Service Months as may be varied by the parties in writing and notified to the SMF.
- 3.2 The Service Provider shall issue a Quarterly Service Statement to the Client within 10 Business Days of the end of the March, June and September quarters and within 20 Business Days of the end of the December quarter.
- 3.3 Where the Service Provider accepts Work Items that exceed the VCS Service Schedule (as per paragraph 2.4a above) these shall be reported to the Client through the Quarterly Service Statement.
- 3.4 Where the Service Provider accepts an amendment to the VCS Service Schedule (as per paragraph 2.4b above) the Client shall amend its remaining monthly payments to meet the new Total Financial Value.
- 3.5 The December Quarterly Service Statement will itemise the Service Charges, Rebates and any Rebate Reductions incurred for each Service Year until all the VCS Claims for the applicable Service Year have completed the Closure Work Item.
- 3.6 In the December Quarterly Service Statement the Service Provider shall include a calculation of the Projected Service Charges. Within one calendar month of issuing the December Quarterly Service Statement the Service Provider shall return to the Client an amount equal to the Total Financial Value less the sum of a) the incurred Service Charges (less any applicable Rebates and Rebate Reductions) for the Service Year plus b) the Projected Service Charges.
- 3.7 When the Service Provider completes the Closure Work Item on the last VCS Claim for a Service Year, the Service Provider shall return to the Client any unused portion of the Total Financial Value. This payment shall be made within one calendar month of the next Quarterly Service Statement.
- 3.8 In the event the Client fails to pay the Service Provider any undisputed sums within the agreed payment terms the Client shall be liable to pay interest on the overdue amount at a rate equal to two per cent per annum above the base rate of the Bank of England. Interest is to run from 30 days of the date payment of the undisputed sum fell due up to the date on which payment is received by the Service Provider.



## IMR User Licences

[Client] confirms that they will purchase [x] licences for the operation of VCS by [Service Provider] in order that [Service Provider] can fulfil its obligations under the Agreement.

## Delegated Authority Limits

[Service Provider] shall be authorised to settle Claims up to the limit of authority specified herein, unless agreed otherwise in writing by the Client in respect of a particular VCS Claim.

## [Transfer of Personal Data – Please seek legal advice before completing this section]

[Insert any agreed transfer of personal data outside the EEA – to include details of the parties and the locations where possible].

[The parties shall be permitted to announce the provision of the VCS Service to the Client provided that any such announcement shall be approved in advance by both parties].

[The parties agree to waive the Service Standards for the first calendar month after the Service Start Date]. (NB: This wording is only permitted for use during the 2014 Service Year).

Please confirm your acceptance of the above by signing both copies of this letter and returning one to me.

Yours sincerely

*[Add Client Signature]*

.....

Signed

Title:

Date:

**[Service Provider] agrees to the above terms and shall provide the Service to [Client] in accordance with the Agreement**

*[Add Service Provider Signature]*

.....

**Signed**

**Title:**

**Date:**

## Section 2: QUARTERLY SERVICE STATEMENT TEMPLATE

The March, June & September Quarterly Service Statements should include the following:

- Claim Work Items completed (total and £)
  - Acceptance Work Items completed (total and £)
  - Investigation Work Items completed (total and £)
  - Negotiation Work Items completed (total and £)
  - Closure Work Items completed (total and £)
- Claims completed (total)
- Claims outside Performance Level (total)
- Completed within Performance Level for MA (%age of total)
- Completed within Performance Level for market (%age of total)
- Rebate due (£)
- Agreed Financial Commitment (£)
- Current paid (£)
- Quarterly payment breakdown (£)
- Total spent (£)
- Claims currently in service (Total)
- Incomplete claim estimate (£)
- Total spent + Incomplete claim estimate (£)
- Balance remaining uncommitted (£)
- Additional payment/refund due (£)

The December Quarterly Service Statement should include the following:

- Claim Work Items completed (Total and £)
  - Acceptance Work Items completed (Total and £)
  - Investigation Work Items completed (Total and £)
  - Negotiation Work Items completed (Total and £)
  - Closure Work Items completed (Total and £)
- Claims completed (Total)
- Claims outside Performance Level (Total)
- Completed within Performance Level for MA (%age of total)
- Completed within Performance Level for market (%age of total)
- Rebate due (£)
- Less SMF agreed Rebate Reduction (£)
- Annual Service Total
- Agreed Financial Commitment (£)
- Current Paid (£)
- Quarterly payment breakdown (£)
- Total spent (£)
- Claims currently in service (Total)
- Incomplete claim estimate (£)
- Total spent + Incomplete claim estimate (£)
- Balance remaining uncommitted (£)
- Additional payment/refund due (£)

## SCHEDULE 4

### Service Management Function

#### 1. The SMF

In accordance with the terms of this Agreement, the SMF shall be responsible for:

- (a) monitoring and managing the performance of the Service Provider;
- (b) arranging and chairing monthly service review meetings with the Service Provider;
- (c) managing reviews of VCS Claims Determination quality;
- (d) facilitating the financial management of the Volume Claims Service;
- (e) handling Service Issue and Service Management Complaints;
- (f) arranging SRP meetings;
- (g) obtaining input and recommendations from the SRP on material decisions;
- (h) managing the strategic development of the Volume Claims Service; and
- (i) monitoring the erosion of the Service Provider's aggregate liability.

The duties and responsibilities of the SMF relate to the overall management of the Service. The SMF shall not Determine any Claims or become involved in any dispute between the Client and Service Provider in respect of the Determination of a Claim.

The SMF shall be staffed and run by Lloyd's.

#### 2. Matters reserved to the SMF

The matters to be dealt with by the SMF are as follows:

##### 2.1 Monitoring and managing the performance of the Service Provider

- a. production and publication of Management Information on a monthly basis to the SMF;
- b. monitoring the performance of the Service Provider against the Service Standards; and
- c. chairing of monthly performance review meetings between the SMF and the Service Provider.

##### 2.2 Arranging and chairing monthly service review meetings with the Service Provider

Arranging and chairing performance review meetings with the Service Provider to review performance reports and discuss service related issues.

##### 2.3 Managing reviews of VCS Claims Determination quality

- a. managing a programme of thematic reviews of the quality of the Service in accordance with the Quality Standards Framework; and
- b. commissioning of independent reviews and reports at Lloyd's expense in relation to the performance of the Service by the Service Provider.

##### 2.4 Facilitating the financial management of the Volume Claims Service

- a. recording and monitoring of the Client's VCS Service Schedule and reviewing any changes to this as a result of any agreement between the parties to increase it;
- b. reporting to the Client at Client and market level on a monthly basis Management Information relating to the Service; and
- c. monitoring the performance of the Service Provider on a monthly basis.

## 2.5 Handling Service Issue and Service Management Complaints

Handling complaints in accordance with the provisions at clauses 17.2 and 17.3 of this Agreement.

## 2.6 Arranging Service Relationship Panel meetings

Arranging the SRP meetings which shall include scheduling the meetings, preparing agendas, Management Information and taking minutes.

## 2.7 Obtaining input and recommendations from the SRP on material decisions

Obtaining input and recommendation from the SRP on material decisions regarding the performance and development of the Volume Claims Service as per schedule 5 of this Agreement.

## 2.8 Managing the strategic development of the Volume Claims Service

- a. setting of the strategic roadmap for the Volume Claims Service and development of the Service. The SMF shall work closely with the Service Provider and the SRP in this respect; and
- b. managing contract reviews and implementing and approving any changes to the Agreement or the Service in line with the process set out in clause 13 (Change Control) of this Agreement.

## 2.9 Monitoring the erosion of the Service Provider's aggregate liability

Monitoring the erosion of the Service Provider's aggregate liability stated in clause 7.5 of this Agreement.

## **3 Reporting**

The SMF shall provide a monthly report to the Service Review Panel.

## **4 Exclusion of Liability**

Save in the case of fraud (or death or personal injury caused by negligence) the parties hereby waive all claims (whether existing at the date of this Agreement or arising at any time in the future including following any termination of this Agreement) against employees and contractors of Lloyd's arising out of or in connection with this Agreement and/or the Service.

## SCHEDULE 5

### SERVICE REVIEW PANEL TERMS OF REFERENCE

#### 1. The Service Review Panel

The Service Review Panel (or “SRP”) is a forum to represent the interests of clients of the Volume Claims Service. The SRP Members (defined below) shall provide input and recommendations to the SMF on material decisions regarding the performance and development of the Volume Claims Service.

1.1 In accordance with the terms of this Agreement, the SRP shall:

- (a) review high level management information on the Volume Claims Service and the service providers’ performance against Performance Levels;
- (b) provide input and recommendations to the SMF on performance issues relating to the Volume Claims Service identified through the monthly SMF reports or raised by clients;
- (c) review proposed changes to the Agreement or Service and providing input and recommendations to the SMF on such proposed changes; and
- (d) provide input and recommendations to the SMF on the development of the Volume Claims Service including contributing to the definition of the strategic roadmap for the Volume Claims Service.

#### 2. Membership of the Service Review Panel

2.1 The SRP shall comprise the following representatives (“SRP Members”):

- a. Clients of the Service - a maximum of three representatives as agreed by the users of the Volume Claims Service;
- b. LMA - one representative to be nominated by the LMA; and
- c. Lloyd’s - one representative from the SMF.

#### 3. Meeting Proceedings

3.1 The SRP shall meet at least quarterly at such time, date and place as arranged by the SMF.

3.2 The SRP meetings shall be chaired by a client of the Service. As the SRP is a body that represents the interests of VCS clients, the Chair will hold the role of facilitator.

3.3 There shall be no voting in SRP meetings.

#### 4. Exclusion of Liability

4.1 Save in the case of fraud (or death or personal injury caused by negligence) the parties hereby waive all claims (whether existing at the date of this Agreement or

arising at any time in the future including following any termination of this Agreement) against SRP Members arising out of or in connection with this Agreement and/or the Service.

TEMPLATE

## SCHEDULE 6

### CLAIMS RESERVING PHILOSOPHY

The Service Provider is required to follow the Claims Reserving Philosophy (“**Reserving Philosophy**”) when providing the Service.

The Service Provider’s adherence to the Reserving Philosophy as set out below is intended to ensure that it establishes a case reserve that is prudent and based upon an exposure based approach immune from background factors such as inflation or change in legislation:

- Incremental changes in reserves which are not supported by adequate evidence are not acceptable to the Volume Claims Service.
- In all cases, reserving must comply with the Lloyd’s Claims philosophy and Lloyd’s Claims Reserving Minimum Standards and other applicable accounting and regulatory requirements.
- The reserve set should not seek to discount on a time value for money basis nor should it anticipate for or take credit of subrogation, salvage or recovery opportunities.
- The recording of reserves should be completed in a consistent, timely and accurate manner taking into account both indemnity and expenses thereby eliminating future uncertainty and possible negative development and utilising the most current information available.
- Each review of a claim file should consider the adequacy of the loss and expense reserves. If new information has been introduced, its effect on the reserves must be evaluated and dealt with in line with the Performance Levels.
- The accurate differentiation between indemnity loss values (policy obligation) and expert fee values (expenses) is essential in providing the Service Provider, SMF and the Client the opportunity to adequately manage the Claim and the external third party experts utilised in resolving the VCS Claim.
- Indemnity and expenses should be recorded as follows:
  - (i) the policy obligation (Indemnity amounts) and applicable defence costs (in respect of professional indemnity policies), should be recorded as the indemnity reserve / payment values within the constraints of the policy’s indemnity limits;
  - (ii) the costs of third party experts (supervisory costs) should be recorded separately as fee reserve / payment values which are in addition to the indemnity amounts;
  - (iii) expenses for separate Third Party Experts should be recorded for each individual expert and not consolidated into one record; and
  - (iv) Third Party Experts’ names and geographical locations must be recorded by the Service Provider in a consistent manner.

## SCHEDULE 7

### QUALITY STANDARDS FRAMEWORK

The Quality Standards shall, for the purposes of this Agreement, be deemed to apply to the Service Provider and the Service Provider shall provide the Service in accordance with the Quality Standards. The Service Provider agrees that its compliance with the Quality Standards shall be monitored by the SMF in accordance with the framework as set out in this Schedule.

#### 1. Thematic Reviews of Claim Determination Quality

1.1 The Service Provider agrees that its provision of the Service will be assessed in part through thematic file reviews and the SMF is responsible for managing a programme of such reviews on behalf of VCS clients.

1.2 The thematic file reviews may cover the following aspects of the Quality Standards:

- a. indemnity leakage;
- b. management of Third Party Experts;
- c. fraud identification and sanctions monitoring;
- d. reserving;
- e. validation of Claims accepted into service;
- f. performance of the Acceptance Work Item;
- g. performance of the Investigation Work Item;
- h. performance of the Negotiation Work Item;
- i. performance of the Closure Work Item;
- j. complaints;
- k. documentation and file management including:
  - (i) quality of data fields / data capture accuracy;
  - (ii) evidence of the decision making process;
  - (iii) diary management;
- l. compliance with all applicable Lloyd's, local and international regulations and standards including those listed at paragraph 1.4 below;
- m. effective use of Hand-Offs to Determine VCS Claims;
- n. identification and notification of subrogation and salvage opportunities;
- o. proactive Determination of claims; and
- p. keeping Claimants appropriately informed during the lifecycle of VCS Claims.

1.3 The thematic reviews may also assess compliance with the following specific Service Standards:

- a. responding to General Queries within 8 Working Hours of receipt of the query;
- b. instructing the settlement of all requests for fees and expenses settlement within 30 days from the receipt of the request;
- c. providing Management Information as the SMF requires on a monthly basis and within 5 Business Days from the end of the month being reported, as detailed in the Operations Guide; and
- d. Determining VCS Claims using no more than the maximum number of Hand-Offs permitted, which are 0 for the Acceptance Work Item, 4 for the Investigation Work Item, 3 for the Negotiation Work Item and 2 for the Closure Work Item.

- 1.4 The thematic file reviews will also review adherence with the requirements of Regulators, the Lloyd's Claims Management Principles and Minimum Standards and the UK Personal Lines Claims and Complaints Handling Code.
- 1.5 The Service Provider shall:
  - (i) support all thematic file reviews by making available all books, records, documentation and such other information as the SMF or its appointed representative may reasonably require ("**Claims Records**"). The SMF or its appointed representative will select VCS Claims for review at random and reserves the right to request a further VCS Claims sample if so required; and
  - (ii) provide all reasonable assistance to the SMF or its appointed representative by making relevant staff available and responding to all reasonable requests in a timely manner.
- 1.6 The SMF will give the Service Provider 28 days' written notice of the thematic review and 7 days' written notice of the Claims Records to be made available for such review.
- 1.7 If the SMF is not satisfied with the performance of the Service Provider based on the outcome of thematic file reviews the Service Provider shall submit a Quality Improvement Plan to the SMF within 5 Business Days of receipt of a request from the SMF. If the Service Provider fails to (i) submit a Quality Improvement Plan, or (ii) obtain the SMF's approval within 5 Business Days from submitting the Quality Improvement Plan, such approval not to be unreasonably withheld or delayed; or (iii) fails to meet the agreed actions set out in an approved Quality Improvement Plan, the Service Provider's accreditation as an Accredited VCS Provider may be withdrawn.

## 2 VCS Accreditation

- 2.1 The Service Provider must maintain its status as an Accredited VCS Provider to provide the Service.
- 2.2 In addition to meeting requirements of the quality of claims adjusting the Service Provider must comply with all Accreditation Criteria in order to demonstrate suitability to provide the Service.
- 2.3 If the SMF is not satisfied with the performance of the Service Provider against the Accreditation Criteria (including the Quality Standards) and the Service Standards, it can recommend to the Lloyd's Franchise Board that the Service Provider's accreditation as an Accredited VCS Provider is withdrawn. The SMF will send its proposed recommendation to the Service Provider and the Service Provider will have the right to make representations to the Lloyd's Franchise Board before it exercises its decision.
- 2.4 The Service Provider must advise the SMF if at any point it is not, or expects not to be, in compliance with the Accreditation Criteria.
- 2.5 The SMF will annually assess the Service Provider's compliance with the Accreditation Criteria ("**Accreditation Review**"). The Service Provider shall:
  - (i) support all such reviews by making available all books, records, documentation and such other information relevant to the operation of the Volume Claims Service as the SMF or its appointed representative may reasonably require; and

- (ii) provide all reasonable assistance to the SMF or its appointed representative by making relevant staff available and responding to all reasonable requests in a timely manner.

The SMF will give the Service Provider 28 days' written notice of the Accreditation Review and 7 days' written notice of any data/information requests.

TEMPLATE

## SCHEDULE 8

### EXIT MANAGEMENT

- 1 In the event of termination, Service Cessation or the parties not agreeing a new VCS Service Schedule, the parties and the SMF will cooperate in good faith and as required to effect a controlled and orderly transition from the Service. As required by the circumstances, this transition may include the transfer of certain Claims, In-Scope Claims and VCS Claims under the control of the Service Provider.
- 2 Both parties shall take reasonable care to minimise the costs of termination and transfer of the Service.
- 3 The Service Provider shall:
  - 3.1 Appoint a suitably qualified and experienced individual (the **Exit Transfer Manager**) to lead the termination and transfer of the Service, including the development and implementation of the Exit Management & Service Transfer Plan.
  - 3.2 Provide on-going support and other ancillary assistance for a period of up to three months post termination so as to assist with continuity if required by the Client at the Client's expense.
  - 3.3 Deliver or cause to be delivered to the Client or, as the Client may direct, all of the Client Data which the Service Provider has in its possession, custody or control. The Service Provider shall be entitled to retain its own records and data relating to the provision of the Service and copies of any Client Data which it is required to keep for statutory, regulatory, legal or accounting purposes.
  - 3.4 Effect the transfer of any incompletely Determined VCS Claims and In-Scope Claims, to the Client or its Replacement Service Provider at no additional cost beyond that to be charged for the Work Item in progress at the time the Exit Management & Service Transfer Plan is invoked.
  - 3.5 Develop an Exit Management & Service Transfer Plan.

Within one calendar month of notice from either party, the Service Provider and the Client shall in conjunction with the SMF negotiate in good faith and agree an **Exit Management & Service Transfer Plan** including:

- (i) all necessary information to effect a smooth hand-over of the Service to either the Client or its Replacement Service Provider;
- (ii) the respective obligations of the parties;
- (iii) the timetable for the transfer of the Service including milestones, resource plans, criteria to be met and details of dependencies on the Client and the SMF;
- (iv) details of the Service or components of the Service being terminated;
- (v) details of any work in progress the Service Provider will deliver to the Client or its Replacement Service Provider if required;

- (vi) details of each party's responsibilities and obligations:
  - (a) up to the expiry date of any notice period
  - (b) on and after the expiry date of any notice period
  - (c) during any parallel running of the Service by the parties;
- (vii) details of any agreed on-going support and other ancillary assistance for the Client by the Service Provider; and
- (viii) the Service Provider's time and materials rate for any post termination support.

TEMPLATE