

OFFICIAL

**AUSTRALIAN REINSURANCE POOL CORPORATION
ABN 74 807 136 872**

REINSURANCE AGREEMENT FOR ELIGIBLE CYCLONE LOSS

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REINSURANCE AGREEMENT FOR ELIGIBLE CYCLONE LOSS

This reinsurance treaty (the **Agreement**), which shall include the Schedule attached hereto (hereinafter called the Schedule), is made between the *General Insurer*, syndicate of *Lloyd's Underwriters* or *Unauthorised Foreign Insurer* named in Item 1) of the Schedule (hereinafter called the Reinsured) of the one part and the Australian Reinsurance Pool Corporation (hereinafter called the Corporation) of the other part with respect to contracts of insurance to the extent that they are *Pool Insurance Contracts*.

By signing this Agreement, and subject to its terms, the Reinsured confirms that it will cede to the Corporation in accordance with this Agreement all *Pool Insurance Contracts* issued or renewed after the *Commencement Date* until the *Date of Expiry*.

1. Reinsurance Period

- (a) This Agreement shall commence on the *Commencement Date* and shall continue until terminated in accordance with this Agreement, after which the Corporation will have no obligation to indemnify the Reinsured in respect of any *Pool Insurance Contracts* and any unearned *Reinsurance Premium* is to be returned in accordance with Clause 9(g). If this Agreement is terminated, it may continue with respect to *Pool Insurance Contracts* ceded during the *Reinsurance Period* until those *Pool Insurance Contracts* have expired only if the Corporation agrees in writing to continue cover with respect to those *Pool Insurance Contracts*. If the Corporation agrees to continue cover, the Corporation's right to terminate in this Clause 1 shall continue to apply with respect to those *Pool Insurance Contracts*.
- (b) If the Corporation considers that there has been or may have been an occurrence of one or more of the incidents set out in Clause 1(f), the *Members* may consider whether:
 - (i) one or more of the incidents set out in Clause 1(f) has occurred; and
 - (ii) if so, having regard to the occurrence of any such incidents, the circumstances in which they occurred and the likely prejudice that may be suffered by the Corporation and the Reinsured in the event that the Agreement is or is not terminated, whether it would be reasonable for the Corporation to terminate the Agreement due to the occurrence of one or more of the incidents set out in Clause 1(f).
- (c) The Corporation may terminate this Agreement if, at a meeting of *Members* it is resolved, by majority, to terminate the Agreement for one or more of the reasons set out in:
 - (i) Clauses 1(f)(i), 1(f)(iii) or 1(f)(iv), by giving the Reinsured not less than 6 months' written notice; or
 - (ii) Clause 1(f)(ii), immediately by giving written notice to the Reinsured; or

- (iii) Clause 1(f)(v), by giving the Reinsured 6 months' written notice if it is practicable to do so and otherwise as much notice as is reasonably practicable,

in which case this Agreement shall terminate at the date and time specified in the written notice given to the Reinsured and any unearned *Reinsurance Premium* is to be returned in accordance with Clause 9(g).

- (d) The Reinsured agrees that, in the event that the *Members* resolve to terminate the Agreement:
 - (i) any matter or thing done or omitted to be done by the *Members* in connection with that resolution to terminate and the termination itself does not, if the matter or thing was done or omitted to be done in good faith, subject a Member so acting personally to any action, liability, claim or demand; and
 - (ii) that the Corporation holds the benefit of Clause 1(d)(i) upon trust (as bare trustee) for each *Member* and each *Member* may enforce Clause 1(d)(i) and plead such clause in bar to any action, liability, claim or demand which may be brought against them.
- (e) The Reinsured may terminate this Agreement by giving the Corporation not less than 6 months' written notice of its decision to terminate the Agreement. The Agreement shall terminate with effect from the next 1 January that is at least 6 months after the written notice is given if the Reinsured is a syndicate of *Lloyd's Underwriters*, otherwise the Agreement shall terminate at the date and time specified in the written notice given pursuant to this sub-clause.
- (f) Without affecting any other rights or remedies available to it, the circumstances in which the Corporation may terminate this Agreement in accordance with this Clause 1 are:
 - (i) where the Reinsured has failed to comply with its *Material Obligations* under this Agreement and the Reinsured fails to remedy the non-compliance within 90 days after being notified in writing to do so;
 - (ii) where the Reinsured has committed fraud in connection with this Agreement;
 - (iii) where the Reinsured has repeatedly failed to comply with any of its obligations under this Agreement or to remedy any non-compliance with this Agreement over a period of at least 6 months;
 - (iv) if the Reinsured has failed to report or remit the full amount of the *Reinsurance Premium* within 30 days of a notice given under Clause 10(b); or

- (v) if the Corporation, acting reasonably, considers that termination is necessary due to the repeal or amendment, or proposed amendment or repeal of the *Act*.
- (g) For the purposes of Clause 1(f)(i), the material obligations of the Reinsured under this Agreement include, without limitation, its obligations to pay the *Reinsurance Premium* in accordance with Clause 8(a)(iii) and Clause 9(e)(ii), to facilitate audits in accordance with Clause 15(b), to manage claims in accordance with Clause 13(a) and to report *Exposure Details* in accordance with Clause 18.1.
- (h) The rights and obligations of both parties shall remain in full force until the *Date of Expiry*, after which:
 - (i) neither party has any further rights and obligations in relation to any *Pool Insurance Contracts*, including with respect to losses or liability arising under this Agreement during the *Reinsurance Period* which are yet to be settled; or
 - (ii) the rights and obligations of each party (including the Reinsured's obligation to pay the *Reinsurance Premium* and the obligation of the Corporation to indemnify the Reinsured in accordance with Clause 4) shall continue with respect to *Pool Insurance Contracts* until they have expired, but only by agreement of the Corporation under Clause 1(a).
- (i) Without limiting Clause 1(h), the following clauses survive the termination of this Agreement:
 - (i) Clause 13 (Claims Management);
 - (ii) Clause 14 (Claims Settlements) to the extent applicable to losses or liability arising under this Agreement during the *Reinsurance Period*;
 - (iii) Clause 15 (Inspection and Audit);
 - (iv) Clause 19 (Confidentiality);
 - (v) Clause 20 (Anti-Slavery);
 - (vi) Clause 21 (Dispute Resolution); and
 - (vii) Clause 24 (Governing Law and Jurisdiction).

2. Class of Business Covered

- (a) This Agreement shall apply only to *Pool Insurance Contracts* which are issued or renewed:
 - (i) by the Reinsured during the *Reinsurance Period*; or
 - (ii) which become *Transferred Contracts* in accordance with Clause 2(b).

- (b) If the Reinsured issues or renews *Pool Insurance Contracts* before the *Commencement Date* which are current as at the date specified in the certification referred to below in Clause 2(b)(iii) or acquires *Pool Insurance Contracts* from another insurer after the *Commencement Date*, those *Pool Insurance Contracts* shall become *Transferred Contracts* under this Agreement if and only if:
- (i) the Reinsured has notified the Corporation of its intention to include such *Pool Insurance Contracts* as *Transferred Contracts* and provided to the Corporation all relevant information requested by it;
 - (ii) the Corporation has agreed to such *Pool Insurance Contracts* becoming *Transferred Contracts* with effect from a specified date; and
 - (iii) the Reinsured gives to the Corporation a written certification in a form acceptable to the Corporation confirming that such *Pool Insurance Contracts* will become *Transferred Contracts* from that specified date.
- (c) *Pool Insurance Contracts* that become *Transferred Contracts* in accordance with Clause 2(b) will become *Transferred Contracts* on and from the *Transfer Date* and with respect to each *Transferred Contract*:
- (i) the *Reinsurance Premium* shall be calculated and payable during the *Quarter* in which the *Transfer Date* occurs only with respect to the period on and from the *Transfer Date* on a pro rata basis, with the *Reinsurance Premium* calculated on a pro rata, 365ths basis; and
 - (ii) the indemnity in Clause 4 shall only apply to *Eligible Cyclone Losses* from a *Cyclone Event* or series of *Cyclone Events* that begins on or after the *Transfer Date*.
- (d) In the event that it is determined that the Reinsured incurs an *Eligible Cyclone Loss* under a *Pool Insurance Contract*, the Reinsured will be entitled to cover under this Agreement in respect of that liability if the *Pool Insurance Contract* falls within the scope of Clause 2(a) or 2(b) (even if it may not have previously been identified as such a *Pool Insurance Contract* in information provided to the Corporation), provided that the Reinsured pays the relevant premium and otherwise agrees to comply with the terms of this Agreement in relation to that *Pool Insurance Contract*. For the avoidance of doubt, this sub-clause 2(d) only applies to a contract of insurance that was not identified as a *Pool Insurance Contract* where there was an inadvertent error or omission on the part of the Reinsured and provided that the error or omission is rectified immediately upon discovery and shall not impose any greater liability on the Corporation than would have attached if the error or omission had not occurred.

3. Exclusions

This Agreement does not cover any loss or liability incurred by the Reinsured under any part of any contract of insurance that is not, or has ceased to be, a *Pool Insurance Contract* (including because it falls within an exclusion in section 8B of the *Act*) when the *Cyclone Event* that gives rise to the loss or liability commences, irrespective of whether the loss or liability is an *Eligible Cyclone Loss*.

4. Indemnity

- (a) The Corporation shall indemnify the Reinsured for its *Ultimate Net Loss* with respect to any *Cyclone Event*.
- (b) The *Reinsured Proportion* in relation to each in-force *Pool Insurance Contract*, for the purposes of calculating the *Ultimate Net Loss* in Clause 5, is the *Reinsured Proportion*:
 - (i) stated in the most recent determination made under section 38(2)(e) of the *Act* which has taken effect; or
 - (ii) if no such determination has been made or taken effect, the *Reinsured Proportion* as at the previous renewal or inception date for each *Pool Insurance Contract*.
- (c) In the event that the *Reinsured Proportion* applicable to a *Pool Insurance Contract* changes after its renewal or inception date, the *Reinsurance Premium* applicable to that *Pool Insurance Contract* shall be adjusted in accordance with Clause 9(h).

5. Ultimate Net Loss

The term *Ultimate Net Loss* shall mean the *Reinsured Proportion* of the sum of:

- (a) amounts actually paid by the Reinsured for *Eligible Cyclone Losses* (other than any loss or liability excluded under Clause 3) under and in accordance with the terms of the *Pool Insurance Contracts* to which this Agreement applies in accordance with Clause 2; and
- (b) *Claims Handling Expenses* to the extent that they have been paid by the Reinsured,

less the *Reinsured Proportion* of salvages and recoveries, except any reinsurances arranged to protect the Reinsured's *Retained Risk*.

6. Salvages

All salvages, recoveries or payments recovered or received by the Reinsured subsequent to any loss settlement hereunder shall be applied as if recovered or received by the Reinsured prior to the aforesaid settlement and all necessary adjustments shall be made by the parties hereto. Nothing in this clause shall be construed to mean that a recovery cannot be made hereunder until the

Reinsured's total liability in respect of *Eligible Cyclone Loss* has been ascertained.

7. Premium

- (a) The *Reinsurance Premium* payable to the Corporation by the Reinsured for each *Quarter* with respect to each *Pool Insurance Contract* to which this Agreement applies will be calculated by the Reinsured in accordance with Clause 2(c) and the methodology specified in Appendix A to this Agreement, which shall be set by the Corporation in compliance with section 8D of the *Act*.
- (b) The Corporation may change the *Reinsurance Premium* payable for *Pool Insurance Contracts* from time to time by providing at least 6 months' written notice to the Reinsured of the revised *Base Rates*, *Rate Modifiers*, *Rating Levels* or methods for calculating the *Reinsurance Premium*, with such changes to take effect on and from the beginning of the next *Quarter* for policies issued or renewed after those changes take effect, provided that the Corporation shall set the *Reinsurance Premium* in compliance with section 8D of the *Act*. The Corporation is not required to give 6 months' notice of a change to *Reinsurance Premium* arising solely from a change to the *Reinsured Proportion*.

8. Remittance of Premium and Provision of Information to the Corporation

- (a) By each respective *Remittance Date* during and after the *Reinsurance Period* for as long as there continues to be *Pool Insurance Contracts* to which this Agreement applies the Reinsured must:
 - (i) submit to the Corporation a statement setting out the total amount of *Reinsurance Premium* payable to the Corporation in respect of all *Pool Insurance Contracts* for the last *Quarter* ending prior to the *Remittance Date* together with the *Exposure Details* for each *Pool Insurance Contract* for which *Reinsurance Premium* is payable during that *Quarter* (the ***Remittance Statement***);
 - (ii) with respect to the *Reinsurance Premium* payable to the Corporation during a *Quarter*, the *Remittance Statement* must report the total amount of *Reinsurance Premium* for the *Quarter* based on the aggregate of *Processed Premium* in relation to each State or Territory and in each case in relation to Residential, Strata, Landlords or Small Business *Pool Insurance Contracts* in a format stipulated by the Corporation. The Corporation may change the format from time to time by providing at least 6 months' written notice to the Reinsured;
 - (iii) remit to the Corporation payment of the amount specified in the *Remittance Statement* as the total amount of the *Reinsurance Premium* payable to the Corporation in respect

of all *Pool Insurance Contracts* for the *Quarter* ending immediately prior to the *Remittance Date*;

- (iv) provide adequate written notification confirming payment of the total amount in the *Remittance Statement* to the Corporation by sending an email to the Corporation detailing the Agreement Number shown in the Schedule, the payment date and amount. The email address of the Corporation is shown in the Schedule under Notices;
 - (v) submit to the Corporation a *Quarterly Movement Report* if there have been any changes to *Pool Insurance Contracts* (including new business), during the *Quarter* which ends on the *Remittance Date*, that impact the *Reinsurance Premium* payable to the Corporation and that have not been notified to the Corporation; and
 - (vi) in response to any request from the Corporation, provide such reasonable additional information and assistance to the Corporation as it requires to confirm the accuracy or completeness of information contained in the *Remittance Statement*.
- (b) If the Reinsured fails to meet its obligation under Clause 8(a)(iii) by the *Remittance Date*, the *Reinsurance Premium* will be considered late under Clause 10.
 - (c) The first remittance of *Reinsurance Premium* pursuant to Clause 8(a)(iii) is due within 30 days of the end of the first *Quarter* after the *Commencement Date*.
 - (d) If the *Remittance Statement* provides that an amount is owed by the Corporation to the Reinsured which is greater than the *Notification Threshold*, a written explanation of the reason and reconciliation of this amount must also be submitted to the Corporation with the *Remittance Statement*.

9. Reinsurance Premium Adjustment

Adjustment due to endorsement or accounting practices

- (a) If, as a result of a *Pool Insurance Contract* covered under this Agreement being amended by way of endorsement or as a result of normal quarterly insurance accounting practices:
 - (i) an adjustment is required to the *Reinsurance Premium* payable; and
 - (ii) the Reinsured is:
 - A. entitled to a refund of the *Reinsurance Premium*; or
 - B. is obliged to pay an additional amount of *Reinsurance Premium*,

then there shall be a commensurate adjustment and set-off in the *Reinsurance Premium* payable by the Reinsured under this Agreement in respect of that *Pool Insurance Contract*.

The Reinsured shall include the relevant adjustment in the next due *Remittance Statement* provided by the Reinsured to the Corporation in accordance with Clause 8.

Adjustment due to errors or omissions under the *Notification Threshold*

- (b) If the Reinsured discovers or becomes aware of any error or omission which may have resulted in an error in the calculation or quarterly remittance of *Reinsurance Premium* to the Corporation, and the aggregate amount of overpayment or underpayment of *Reinsurance Premiums* is less than the *Notification Threshold*, then:
- (i) the Reinsured must resubmit the relevant *Remittance Statement* to the Corporation including the relevant adjustment; and
 - (ii) there shall be a commensurate adjustment and set-off in the *Reinsurance Premium* payable by the Reinsured under this Agreement in respect of that *Pool Insurance Contract*.

Adjustment due to errors or omissions over the *Notification Threshold*

- (c) If the Reinsured discovers or becomes aware of any error or omission which may have resulted in an error in the calculation or quarterly remittance of *Reinsurance Premium* to the Corporation, and the aggregate amount of overpayment or underpayment of *Reinsurance Premiums* is greater than the *Notification Threshold*, then the Corporation and the Reinsured will comply with the remainder of this Clause 9.
- (d) The Reinsured must, as soon as reasonably practicable after discovering or becoming aware of the error or omission:
- (i) re-submit its corrected premiums return for the relevant period(s) showing the correct *Reinsurance Premium* that should have been paid by the Reinsured (the **Required Premium**);
 - (ii) provide a satisfactory explanation for the reason for the error;
 - (iii) provide an audited account confirming the amount of the *Required Premium*; and
 - (iv) in the case of a refund request, provide bank details for the payment of the refund.
- (e) Where the Reinsured has remitted an amount of *Reinsurance Premium* to the Corporation that is different from the *Required Premium*, then:
- (i) in the case of an overpayment of *Reinsurance Premium* by the Reinsured, the Reinsured may submit a written request

to the Corporation that the amount of the overpayment be either:

- A. refunded to the Reinsured; or
 - B. set-off against future amounts owed to the Corporation under this Agreement, which, for the avoidance of doubt, the Corporation shall consider, but, in respect of which request the Corporation shall not be obliged to agree or accept; or
- (ii) in the case of an underpayment of *Reinsurance Premium* by the Reinsured, the Reinsured must, within 30 days of notifying the Corporation of the *Required Premium* in accordance with Clause 9(d)(i), remit the amount of the underpayment in full, plus any interest calculated at the *Interest Rate*. Such interest shall accrue daily on overdue amounts on a compound basis from the *Remittance Date* when the error occurred until actual payment, in full, of the overdue amount and the interest.
- (f) Where the identified overpayment (identified by either the Corporation or the Reinsured) occurred as a result of an error made by the Reinsured, the Corporation will not pay any amount to compensate the Reinsured for lost interest on the refund amount.

Adjustment due to termination

- (g) In the event that this Agreement is terminated pursuant to Clause 1 with respect to any *Pool Insurance Contracts* to which this Agreement applies in accordance with Clause 2, the Corporation undertakes to return to the Reinsured any *Reinsurance Premium* already paid with respect to the period after the termination takes effect for any *Pool Insurance Contracts* (if any) and shall cease to be liable for any *Eligible Cyclone Loss* occurring under those *Pool Insurance Contracts* after the termination takes effect. For clarity, this Clause 9(g) does not apply to any *Pool Insurance Contracts* which the Corporation has agreed to continue cover after termination in accordance with Clause 1(a) and, with respect to those *Pool Insurance Contracts*:
- (i) the Reinsured must continue to pay *Reinsurance Premium*; and
 - (ii) the Corporation continues to indemnify the Reinsured with respect to *Eligible Cyclone Loss*,

until the expiration or cancellation of the *Pool Insurance Contracts* in accordance with the other terms of this Agreement.

Adjustment due to change in Reinsured Proportion

- (h) In the event that the *Reinsured Proportion* applicable to a *Pool Insurance Contract* changes after its renewal or inception date, the *Reinsurance Premium* due in relation to that *Pool Insurance Contract* shall change with effect only from the date that the *Reinsured*

Proportion changed and any additional *Reinsurance Premium* paid or shortfall relating to the subsequent period must be refunded or paid (as applicable).

Limitations

- (i) In no circumstances shall any overpayment amounts be refunded by the Corporation, or permitted to be set-off as against amounts owed by the Reinsured to the Corporation, in respect of overpayments that occurred at a time that is 5 years or more prior to the date on which the error or omission was discovered by the Reinsured.
- (j) For the avoidance of doubt, Clause 9(i) shall apply with respect to any overpayments made to the Corporation.

10. Late Payment of Reinsurance Premium

- (a) If the Reinsured fails to provide to the Corporation a *Remittance Statement* or pay the full amount or any part of the *Reinsurance Premium* by the *Remittance Date*, the Corporation will issue a late reporting or payment notice.
- (b) If, 60 days after the *Remittance Date* the Reinsured has failed to report or remit the full amount of the *Reinsurance Premium*, the Corporation may issue a notice of intent to cancel this Agreement.
- (c) If the Reinsured has failed to report or remit the full amount of the *Reinsurance Premium* within 30 days of the notice issued under Clause 10(b), the Corporation may rely on the right of termination under Clause 1(f).

11. Currency and Rates

- (a) All amounts in this Agreement are stated and shall be paid in Australian dollars.
- (b) Regardless of whether the premium payable to the Reinsured in respect of *Pool Insurance Contracts* is remitted in a currency other than Australian dollars, the *Reinsurance Premium* must be paid to the Corporation in Australian dollars.
- (c) Where the Reinsured makes claims payments pursuant to *Pool Insurance Contracts* in a currency other than Australian dollars, the time at which the rate of exchange is determined for the purposes of this Agreement shall be the date on which the claim payment is made by the Reinsured and the rate of exchange shall be calculated using a mid-rate, as published by Bloomberg.

12. Notification of Claims

- (a) The Reinsured undertakes to:

- (i) following any declaration by the Corporation of a *Cyclone Event*, estimate the Corporation's liability under this Agreement in connection with the *Cyclone Event* on a monthly basis; and
 - (ii) advise the Corporation as soon as possible in the event that it estimates that the Corporation's liability under this Agreement is greater than the *Claims Notification Figure* in relation to a *Cyclone Event* together with an estimate of the Corporation's liability and thereafter keep the Corporation fully informed on a monthly basis of any *Material Developments* regarding the claim (including, without limitation, where the Reinsured's estimate of the Corporation's liability under this Agreement increases by 5% above any previous estimate provided to the Corporation).
- (b) The Reinsured undertakes to advise the Corporation of all claims under this Agreement by providing one or more *Claims Notification Reports* containing details of all amounts claimed. The Reinsured must provide a *Claims Notification Report* by each respective *Remittance Date* during and after the *Reinsurance Period* for as long as there continues to be *Pool Insurance Contracts* to which this Agreement applies. The *Claims Notification Report* shall:
- (i) be provided via the Corporation's web-based reinsurance management system or as otherwise required by the Corporation; and
 - (ii) be in a format and include such information and data as is required by the Corporation, including the following reports:
 - A. Policy Level Claims Report by Class of Business;
 - B. Unallocated Expenses Report; and
 - C. Summary Event Report by Class of Business,
 noting that *Claims Handling Expenses* relating to litigation must be reported in relation to each *Pool Insurance Contract* and other *Claims Handling Expenses* may be reported at a portfolio level for the relevant period.
- (c) The Corporation shall not be liable for any claim for an *Eligible Cyclone Loss* of which it has not been advised by the Reinsured before the expiry of 12 months from the date upon which the Reinsured received the first notice of the *Eligible Cyclone Loss* giving rise to that claim except to the extent of any delay arising from:
- (i) the Reinsured not knowing, and it not being reasonable for the Reinsured to know, that the *Eligible Cyclone Loss* arose under a *Pool Insurance Contract*; or
 - (ii) a dispute regarding the claim under the *Pool Insurance Contract*.

13. Claims Management

- (a) The Reinsured shall retain full responsibility for all claims handling under *Pool Insurance Contracts* and must conduct its claims handling (including diligently pursuing salvages and recoveries):
 - (i) in compliance with all applicable laws, regulations, licence requirements, regulatory guidance, industry claims handling frameworks and industry codes of practice (including, without limitation, the General Insurance Code of Practice); and
 - (ii) with the degree of skill and prudence that would reasonably and ordinarily be expected from a competent insurer who is compliant with Clause 13(a)(i).
- (b) Without limiting the generality of Clauses 12(a) and 13(a), the Reinsured shall:
 - (i) notify the Corporation; and
 - (ii) at the direction and request of the Corporation, keep the Corporation updated and informed on an ongoing basis at monthly intervals,

of all *Material Developments* in relation to any incurred claim or claims under, or anticipated to be made under this Agreement.
- (c) The Reinsured must promptly notify the Corporation in the event that it has identified or as soon as it becomes aware of any criminal conduct in connection with a claim under a *Pool Insurance Contract* and on a quarterly basis must provide reports to the Corporation, in a form acceptable to the Corporation, on fraud and AFCA dispute reporting, including reporting on any *Material Developments* in connection with such claims.
- (d) This Clause 13 survives termination of this Agreement.

14. Claims Settlements

- (a) All claims settlements made by the Reinsured:
 - (i) are to be reported to the Corporation each *Quarter*; and
 - (ii) provided they are within the terms of the relevant *Pool Insurance Contract* and the terms of this Agreement and subject to the Reinsured complying with Clause 14(b), shall be binding upon the Corporation and amounts falling to the share of the Corporation shall be payable by it.
- (b) The Corporation may request at any time, and the Reinsured must provide as soon as practicable but within 60 days, reasonable evidence:

- (i) of the amount paid under the relevant *Pool Insurance Contract*; and
- (ii) that any amount paid under a *Pool Insurance Contract* was paid in accordance with the terms of that *Pool Insurance Contract*.

In the event that the Corporation considers that there to be insufficient evidence of the above matters or that any claim settlement was otherwise within the terms of this Agreement, it may raise a dispute regarding its obligation to make a payment in relation to the claim settlement in accordance with Clause 21. If the dispute is resolved on the basis that the claim settlement is not binding upon the Corporation, no amount shall be payable by the Corporation and, to the extent that the Corporation has already made a payment to the Reinsured for that amount, the Reinsured must promptly return that amount to the Corporation.

- (c) If the Reinsured fails to comply with Clause 14(b), the Corporation may issue a notice of non-compliance stipulating the steps that the Corporation requires the Reinsured to take to remedy its non-compliance.
- (d) If the Reinsured has failed to take the steps set out in a notice under Clause 14(c) within 30 days after the date of that notice, the Corporation may issue a notice of intent to terminate this Agreement.
- (e) If the Reinsured has failed to take the steps set out in a notice under Clause 14(c) within 60 days after the date of that notice, the Corporation may rely on the right of termination under Clause 1(f).
- (f) Claims will normally be settled by the Corporation on a quarterly basis within 30 days of the end of each *Quarter*.
- (g) Notwithstanding Clause 14(f), the Reinsured may request, on a monthly basis, payment by the Corporation of amounts that would otherwise represent its monthly share of any *Quarterly* settlement where those amounts have been paid by the Reinsured and claims paid on losses of the Reinsured during the month from any *Cyclone Event* to which this Agreement responds exceeds the *Cash Loss Figure* stated in Item 7) of the Schedule. Such payment will be made within 14 days of the request being agreed to by the Corporation (acting reasonably and promptly).
- (h) For the purposes of determining the *Cash Loss Figure*, the Reinsured must report to the Corporation during the 7 days prior to 1 June each year the Reinsured's 'Net Earned Premium' in Australia last reported to APRA or another prudential regulator with respect to a concluded 12 month period.

15. Inspection and Audit

- (a) The Corporation or its duly authorised representatives or the officials or other authorised representatives of Australian National Audit Office

may, at any mutually convenient time during normal office hours, inspect and take copies of:

- (i) such of the Reinsured's underwriting, accounting and claims records and documents as specifically relate to the business covered under this Agreement; and
- (ii) any other materials to the extent reasonably required by the Corporation having regard to the rights and obligations under this Agreement.

Such right of inspection shall continue as long as either party remains under any liability to the other arising out of this Agreement.

- (b) The Corporation or its duly authorised representatives or the Australian National Audit Office, may, upon giving at least 30 days' written notice, undertake an audit of the Reinsured's documents, records, files, manuals, guides and information (in any form) that relate to *Pool Insurance Contracts* to which this Agreement applies or to the performance of the Reinsured's obligations under this Agreement. In relation to any such audit:
 - (i) the Reinsured must provide access for the conduct of that audit;
 - (ii) if conducted at the offices of the Reinsured, the audit must be conducted during normal business hours; and
 - (iii) the Reinsured must facilitate (including by maintaining sufficient IT capabilities) remote desktop audits, video conferencing, scanning and the use of data transfer portals between the Reinsured and the Corporation.
- (c) If, as a result of the inspection of documents or conduct of an audit pursuant to Clause 15(a) or 15(b), the Corporation identifies an error or deficiency in data, information or processes:
 - (i) the Corporation shall notify the Reinsured of that error or deficiency;
 - (ii) within 30 days of receiving the notice, if the notice identifies that there is an additional amount owing by either party, that party must pay the additional amount to the other party; and
 - (iii) the Reinsured must otherwise use reasonable endeavours to seek to address any error or deficiency identified by the Corporation in the written notice.

16. Amendments to the Act

If the liability of the Reinsured under a *Pool Insurance Contract* increases because of an amendment to the *Terrorism and Cyclone Insurance Act 2003* (Cth), the indemnity provided by Clause 4 of this Agreement will include such increase in the Reinsured's liability to the extent caused by the amendment to the Act, subject to all terms of this Agreement.

17. Alterations

Without limiting any right of termination in Clause 1 and in addition to its right in Clause 7(b) to change the *Reinsurance Premium* payable, the Corporation may otherwise amend this Agreement:

- (a) by replacing the Schedule each year with effect from 1 July by giving the Reinsured notice prior to the commencement of that year; and
- (b) otherwise at any time by giving the Reinsured not less than 6 months' notice in writing of the amendments which it proposes to make after a market consultation process.

The amendments shall come into force at the date and time specified in the written notice given to the Reinsured pursuant to this clause (the **Effective Date**). The Agreement as amended shall only apply to *Pool Insurance Contracts* that incept or renew on or after the *Effective Date*.

18. Privacy and Data

18.1 Reporting

The Reinsured must provide the *Exposure Details*, that must be provided to the Corporation pursuant to Clause 8(a)(i), via the Corporation's web-based reinsurance management system or as otherwise required by the Corporation in a format stipulated by the Corporation.

18.2 Data sharing

- (a) All data received by the Corporation:
 - (i) may be used by the Corporation or its *Authorised Persons* for the purposes of administering the *Scheme*; and
 - (ii) may be shared with other Commonwealth Government departments or agencies only to the extent it can be aggregated and de-identified and then only shared on that basis for the purpose of supporting services, policies, programs, analysis and research that relate to natural hazard management (including emergency management) and/or resilience.
- (b) To the extent that any *Intellectual Property Rights* arise or subsist in any data or information shared with or obtained by the Corporation, the Reinsured grants to the Corporation (or, as applicable, procures for the Corporation the grant of) a worldwide, perpetual, irrevocable, non-exclusive, transferable, royalty-free, sub-licensable right and licence to use such *Intellectual Property Rights* for the *Permitted Uses*.

18.3 Privacy

Each party shall:

- (a) comply with the *Privacy Act* and, in the case of the Reinsured, any other *Privacy Laws* applicable to it;
- (b) not collect *Personal Information* or use any *Personal Information* received in connection with this Agreement other than for the purpose of performing its obligations under this Agreement;
- (c) take reasonable steps within its power and authority to protect against unauthorised access to, or loss or alteration of, any *Personal Information* received from the other party; and
- (d) notify the other party within 48 hours of becoming aware of an *Eligible Data Breach* involving data received from the other party.

18.4 Data security

Each party must (and must ensure its employees and officers) establish, maintain and enforce appropriate:

- (a) policies, procedures, and standards; and
- (b) controls, technical and organisational measures and safeguards,

to protect against unauthorised access to, or loss or alteration of, any data received from the other party.

18.5 Reinsured's data warranties

- (a) The Reinsured warrants that:
 - (i) it has received all authorities and consents required to provide any data it provides to the Corporation (including *Exposure Details*) in accordance with this Agreement, including under the terms of insurance policies it issues;
 - (ii) it will notify its customers that:
 - A. data relating to them and potentially containing their personal information will be shared with the Corporation; and
 - B. the Corporation may share data relating to them in the manner described above in Clause 18.2;
 - (iii) it has, and will maintain, such permissions as it may be required to obtain pursuant to the *Privacy Laws* or any contractual arrangements to permit the Corporation to use any data and information shared with or obtained by the Corporation or provided by the Reinsured in accordance with this Agreement; and
 - (iv) it has and at all times will comply with *Privacy Laws*.

19. Confidentiality

- (a) Subject to any disclosure contemplated in Clause 18, the *Act* or the *Regulations* or permitted by Clause 19(b) or 19(c), each of the Corporation and the Reinsured undertake that it shall not, at any time, disclose to any person any *Confidential Information* of the other party.
- (b) Either party may publish or otherwise make publicly available the identity of the parties to this Agreement. For the avoidance of doubt, the Corporation may publish the name and contact details of the Reinsured on the Corporation's website for the purposes of the *Act*.
- (c) Either party may disclose the other party's *Confidential Information*:
 - (i) to its employees, officers, representatives, *Actuaries*, modelling consultants, auditors, lawyers, accountants or other professional advisers who need to know such information for the purposes of carrying out the party's obligations under the *Act* and this Agreement and who are subject to an obligation of confidentiality no less onerous than the obligation under this Clause 19;
 - (ii) that is or has become available in the public domain without breach by the other party of its confidentiality obligations under this Clause 19 or at law;
 - (iii) as may be required by law or a court of competent jurisdiction;
 - (iv) to the federal Parliament, any governmental or regulatory agency, department or authority, including, for the avoidance of doubt, *APRA* in all cases subject to Clause 18 and, in the case of the Corporation, only to the extent that it has the power to do so pursuant to section 11 of the *Act* or is compelled to do so; and
 - (v) on an aggregated and de-identified basis, to its employees, officers, representatives, professional advisers, reinsurers or retrocessionaires who need to know such information for the purposes establishing or administering the party's reinsurance or retrocession program and who are subject to an obligation of confidentiality no less onerous than the obligation under this Clause 19.
- (d) Other than permitted by Clause 19(b) or 19(c) or contemplated in Clause 18, the *Act* or the *Regulations*, neither party shall use the other party's *Confidential Information* for any purpose other than to perform its obligations under this Agreement.

20. Anti-Slavery

- (a) Each party must comply with its obligations under the *Modern Slavery Act* including taking actions in accordance with its own compliant

policies, procedures, systems and frameworks to identify and address the risks of *Modern Slavery* in its operations and supply chains.

- (b) Each party may (acting reasonably) request information from the other party in order for the requesting party to comply with its reporting obligations under the *Modern Slavery Act* and the other party must ensure its responses to such requests are complete, accurate and provided in a timely manner.
- (c) Each party will notify the other party in writing as soon as reasonably practicable after it becomes aware of, or has a reasonable basis for suspecting:
 - (i) instances of *Modern Slavery* in its operations or supply chain related to this Agreement; and
 - (ii) other instances of *Modern Slavery* in its operations and supply chain that can reasonably be expected to have a material and adverse impact on the other party; and
 - (iii) where such instances of *Modern Slavery* are related to this Agreement, within such reasonable timeframes as are agreed with the other party, undertake, at its own cost, remediation actions to address those instances of *Modern Slavery* and provide regular status updates to the other party on the progress of such remediation actions. Any remediation action related to this Agreement must address *Modern Slavery* occurrences.
- (d) The notification obligation in Clause 20(c)(i) is, to the extent that it relates to instances of *Modern Slavery* occurring during the *Reinsurance Period*, a continuing obligation separate and independent from the other obligations of the parties and which survives the termination of this Agreement.

21. Dispute Resolution

- (a) In the event of any dispute, claim, difference or controversy in connection with this Agreement or its subject matter or the conduct of either party prior to this Agreement (excluding any question relating to the existence or validity of this Agreement and any dispute about termination of this Agreement in accordance with Clause 1) (a ***Dispute***), the *Dispute* must be resolved as described in this Clause 21.
- (b) If a *Dispute* arises then a party must, if it wants to pursue the *Dispute*, give notice in writing to the other party specifying:
 - (i) the *Dispute*;
 - (ii) particulars of the *Dispute*; and
 - (iii) the position which the party believes is correct**(Dispute Notice).**

- (c) If a *Dispute Notice* is given, then:
- (i) the parties must procure that their authorised representatives meet and undertake genuine and good faith negotiations within 14 days after the date on which the *Dispute Notice* is given (or any longer period agreed by the parties in writing), with a view to resolving the *Dispute*; and
 - (ii) any agreement reached between the representatives must be reduced to writing and signed by or on behalf of each party and will be final and binding on the parties.
- (d) If, by the expiration of 14 days after the date on which a *Dispute Notice* is given (or any longer period agreed by the parties in writing):
- (i) the *Dispute* remains unresolved (in whole or in part); or
 - (ii) either party or its representative refuses or fails to meet and undertake negotiations in accordance with Clause 21(c)(i),
- then the *Dispute* must, if either party wishes to pursue its resolution (and whether or not Clause 21(c) has been complied with), be referred to mediation. Either party may give written notice under this Clause 21(d) and both parties must use reasonable endeavours to attempt to resolve the *Dispute* through mediation for which:
- (iii) the mediator will be an independent person mutually agreed upon by the parties, but in the absence of agreement within 7 days of the date of the written notice under Clause 21(d), a mediator selected by the President of the Law Society of New South Wales shall be appointed;
 - (iv) the mediation will be held in Sydney, Australia;
 - (v) the mediation will be conducted in accordance with rules agreed between the parties, but in the absence of agreement within 21 days of the date of the written notice under Clause 21(d), in accordance with the Mediation Rules of The Resolution Institute at that time.
- (e) If the parties have unsuccessfully attempted to resolve a *Dispute* by mediation pursuant to Clause 21(d), or acting in good faith either party determines that the *Dispute* cannot be resolved by mediation and gives written notice of their determination to the other party within 21 days of the written notice referred to in Clause 21(d), the parties agree that the *Dispute* shall be referred to the arbitration of three arbitrators for which:
- (i) one arbitrator shall be chosen by each party and the third arbitrator, who shall act as Chairperson, shall be a nominee of the President, for the time being, of the Resolution Institute;
 - (ii) the Chairperson shall have the deciding vote in the absence of a majority;

- (iii) the arbitrators may determine any question that arises for determination in the course of proceedings by reference to considerations of general justice and fairness;
 - (iv) the arbitration shall be held in Sydney, Australia; and
 - (v) the arbitration shall be conducted in accordance with and subject to the provisions of the *Commercial Arbitration Act 2010* (NSW).
- (f) Neither party may institute any court proceedings (except proceedings for interlocutory relief or proceedings related to a dispute about the existence, validity or termination of this Agreement in accordance with Clause 1) unless and until such time as that party has complied with Clauses 21(b) to 21(e).
- (g) The parties may agree to refer a dispute about the existence, validity or termination of this Agreement in accordance with Clause 1 to arbitration in accordance with Clause 21(e).
- (h) Until a *Dispute* or any proceedings related to a dispute about the existence, validity or termination of this Agreement in accordance with Clause 1 is resolved, whether by agreement between the parties or by the decision of the arbitrators appointed under Clause 21(e) or by a court order, the parties are obliged to continue to perform their obligations under this Agreement.

22. GST and Taxes

22.1 Definitions and interpretation

"GST" and other terms in this clause have the meaning ascribed to those terms by the *A New Tax System (Goods and Services Tax) Act 1999* (as amended from time to time) or any replacement or other relevant legislation and regulations.

22.2 Payments

The amount of any *Reinsurance Premium* calculated in accordance with this Agreement is exclusive of GST. In addition to any amount shown as payable, wherever the supplier (whether the Corporation or the Reinsured) ("Supplier"), or the representative of the GST group to which the Supplier belongs, is liable for GST in relation to any supply made by or through the Supplier under or in connection with this Agreement, the Supplier shall, subject to the other provisions of this Clause 22, be entitled to receive from the other party an additional amount equal to that GST at the same time as any other consideration is to be first provided for the supply.

22.3 Claims

- (a) The *Ultimate Net Loss* will be reduced by the amount of any decreasing adjustment under the GST legislation to which the Reinsured is entitled on settlement of claims to its insureds or on recoveries from any third parties, and any input tax credit to which the

Reinsured is entitled for any acquisition relating to, or for the purpose of, settlement of a claim.

- (b) Notwithstanding Clause 22.2, the Reinsured is not entitled to any additional amount under this Clause 22 in relation to any supply on which GST is payable directly or indirectly as a result of or in relation to the Reinsured's failure to disclose, or accurately disclose, to the Corporation its entitlement to an input tax credit for the premium.
- (c) The Reinsured must, as soon as practicable after entering into this Agreement, notify the Corporation of the extent to which the Reinsured is entitled to input tax credits (expressed as a percentage) in relation to acquisitions it makes from the Corporation under this Agreement (**Entitlement**). The Reinsured must notify the Corporation as soon as practicable of any change in the *Entitlement*. The Reinsured represents that any *Entitlement* notified to the Corporation is accurate and correct.

22.4 Changes in Legislation

If the effect of the GST as stated above is changed as a result of any new amendment, enactment, interpretation or application of any law, the parties hereto must as soon as possible and in the utmost good faith negotiate appropriate amendments to this Agreement.

22.5 Foreign Withholding Taxes

If any deduction or withholding for any tax of a non-Australian authority shall at any time be required or compelled by law in respect of any *Reinsurance Premiums* or other amounts due or paid by the Reinsured to the Corporation under this Agreement, the Reinsured will pay to the relevant non-Australian authority the full amount required to be withheld, deducted or otherwise paid before penalties attach thereto or interest accrues thereon, and the Reinsured shall be required to pay to the Corporation any additional amounts as may be necessary in order that the net amounts paid to the Corporation pursuant to the terms of this Agreement after such deduction, withholding or payment (including any required deduction or withholding of tax on or with respect to such additional amount), shall be not less than the amounts then due and payable to the Corporation under the terms of this Agreement, before the withholding, deduction or payment of such tax.

23. Notices

- (a) Any notice or other communication which may be given, served or made under or in connection with this Agreement:
 - (i) must be in writing and addressed or emailed to the address referred to in Clause 23(b) below;
 - (ii) is sufficient if executed by the party giving, serving or making the notice or on its behalf by any attorney, director, secretary, other duly authorised officer or solicitor of such party; and

- (iii) will be deemed to be served, given or made:
 - A. (in the case of prepaid post) on the fifth *Business Day* after the date of posting;
 - B. (in the case of delivery by hand) on delivery; and
 - C. (in the case of email) unless the party sending the email knows or reasonably ought to suspect that the email and the attached communication were not delivered to the addressee's domain specified in the email address notified for the purposes of this Clause 23 (including due to receipt of an automated message), or the email was not, in fact delivered, on the *Business Day* not less than 24 hours after the email was sent.
- (b) The address and email of each party is specified in Item 6) of the Schedule.

24. Governing Law and Jurisdiction

This Agreement will be governed by and construed in accordance with the laws of New South Wales for the time being in force and, subject to Clause 21, the parties submit to the non-exclusive jurisdiction of the courts of New South Wales in respect of all matters arising out of this Agreement and waive any right they may have to object to an action being brought in these courts, to claim that an action has been brought in an inconvenient forum, or to claim that these courts do not have jurisdiction.

25. Definitions

In this Agreement, the following definitions apply:

Act means the *Terrorism and Cyclone Insurance Act 2003* (Cth) and may be referred to in the Agreement either by its full name or as the *Act*.

Actuaries means the firms of actuaries contracted by the Corporation or the Australian Government Actuary, which may be used from time to time.

APRA means the Australian Prudential Regulation Authority.

Authorised Persons means agents of the Corporation, the *Actuaries* and any other professional advisers or experts engaged by or assisting the Corporation in connection with the performance or assessment of its functions, this Agreement or risks associated with this Agreement. For the avoidance of doubt, *Authorised Persons* include any reviewing actuaries, actuarial advisers, legal advisers, internal or external audit advisers, Geoscience Australia, Australian Climate Service, Home Affairs (EMA), National Recovery and Resiliency Agency, James Cook University - Cyclone Testing Station, the Commonwealth Treasury Department and/or modelling advisers.

Base Rate means, in relation to a *Reinsurance Premium Calculation Date*, the relevant base rate for wind, flood and storm surge risks applicable at that time, being the base rates set out in Appendix A to this Agreement or as

subsequently notified to the Reinsured by the Corporation in accordance with Clause 7(b).

Business Day means a day that is not a Saturday, Sunday or public holiday and on which banks are open for business generally in Sydney, New South Wales, Australia.

Cash Loss Figure means the amount stated at item 7) of the Schedule with respect to a year commencing from 1 July, being an amount that is to be determined by:

- (a) taking the greater of \$500,000 and 3% of the Reinsured's 'Net Earned Premium' in Australia last reported to APRA or another prudential regulator with respect to a concluded 12 month period; or
- (b) the Corporation if the information required to determine the amount in accordance with (a) above is not available or provided to the Corporation.

Claims Handling Expenses means expenses of litigation, if any, and all other loss expenses of the Reinsured (other than office expenses and salaries of employees of the Reinsured but including costs of 'in-house' assessors fees (including allowances for travel, accommodation and overtime), provided these do not exceed the usual fee of outside experts for similar services) reasonably and necessarily incurred by the Reinsured as a result of the assessment, management, conduct, rejection, defence or settlement of a claim by the insured, to the extent to which the claim is:

- (a) under a *Pool Insurance Contract* to which this Agreement applies; and
- (b) in respect of a liability that arises (or is alleged to arise) solely with respect to *Eligible Cyclone Loss*.

Claims Notification Figure means the amount described as such in item 4) of the Schedule.

Claims Notification Report means a report that must be provided under Clause 12(b) in a form and including such information as is required by the Corporation and notified to the Reinsured, which report must include (without limitation) individual policy identifiers, class of business, *GNAF* (where available), date and time of loss, claims paid, claims outstanding and type of loss.

Commencement Date means that date as stated in the Schedule.

Confidential Information means, in relation to a party, any information:

- (a) that is confidential by its nature or that another party to whom the information has been given knows, or ought to know, is confidential; and
- (b) relating to the business, strategies, pricing, products, customers, insureds, distributors, suppliers, employees, contracts or other affairs of that party,

other than information that is publicly available prior to the date of this Agreement or which has become publicly available other than by breach of any

duty or obligation. For the avoidance of doubt, it may include claims data and other information the party is required to share pursuant to this Agreement.

Corporation means the Australian Reinsurance Pool Corporation, a corporate Commonwealth entity established under the *Terrorism and Cyclone Insurance Act 2003* (Cth).

Cyclone Event means a cyclone event the commencement of which is declared by the Corporation pursuant to subsection 8F(1) of the *Act*.

Date of Expiry means the time and date on which this Agreement shall terminate, being the first to occur of:

- (a) the time and date specified in a written notice given to the Reinsured in accordance with Clause 1(c); or
- (b) the effective date of a termination by the Reinsured pursuant to Clause 1(e).

Dispute has the meaning given to it in Clause 21(a).

Effective Date has the meaning given to it in Clause 17.

Eligible Cyclone Loss has the same meaning as in the *Act*.

Eligible Data Breach has the same meaning as in Part IIIC of the *Privacy Act*.

Entitlement has the meaning given to it in Clause 22.3(c).

Exposure Details means, in relation to a *Remittance Statement*, the aggregated and policy level data as specified by the Corporation and notified to the Reinsured, including, without limitation, the policy identifier, *GNAF* location (where available), policy rateable sums insured and declared values split by building, contents, and business interruption (if applicable) and cyclone excess in relation to each *Pool Insurance Contract* to which that *Remittance Statement* relates.

Flood Premium Component means, in relation to a *Pool Insurance Contract* and *Quarter*, the amount calculated by:

- (a) applying the applicable *Base Rate* for flood risks based on the applicable *Rating Level* to the *Rateable Sum Insured* for that *Pool Insurance Contract* on that date to determine the base cost for the applicable *Rateable Sum Insured*; and
- (b) multiplying that base cost by any *Rate Modifiers* for flood risks applicable to that *Pool Insurance Contract*,

in each case determining the applicable *Base Rate*, *Rating Level*, *Rateable Sum Insured* and *Rate Modifiers* by reference to the *Pool Insurance Contract* when it was first covered under this Agreement during the *Quarter*.

General Insurer has the same meaning as in the *Act*.

GNAF means the Geocoded National Address File as maintained by Geoscape Australia.

Intellectual Property Rights means all present and future rights conferred in law, which may subsist anywhere in the world, in relation to any copyright, trade marks, designs, and domain names, inventions, know how and Confidential Information/confidential information, and other results of intellectual activity in

the industrial, commercial, scientific, literary or artistic fields, including rights to apply for or to have registered any such rights (as applicable).

Interest Rate means the interest rate specified in the Schedule.

Lloyd's Underwriter has the same meaning as in the *Act*.

Material Developments means, in relation to any estimated liability or actual or anticipated claims, any developments which:

- (a) will affect or are likely to affect the extent of the Corporation's liability by changing, in aggregate, the Corporation's liability by more than 5% from any amount previously reported;
- (b) will impact or are likely to impact the management of claims; or
- (c) will give rise to or are likely to give rise to any adverse finding by a regulatory body in relation to handling of claims.

Material Obligations means obligations which, if not performed, would deprive a party of a substantial benefit under this Agreement and includes, without limitation, the obligations identified as material obligations in Clause 1(g).

Member has the same meaning as in the *Act*.

Modern Slavery has the meaning given to it in the *Modern Slavery Act*.

Modern Slavery Act mean the *Modern Slavery Act 2018* (Cth).

Notification Threshold means the monetary threshold for the purposes of Clauses 8 and 9 as specified in the Schedule.

Permitted Uses means the Corporation's business and project purposes from time to time, being:

- (a) performing and commissioning analysis in relation to and creating predictions based on data and/or information, modelling and related purposes and developing reinsurance pricing models and premium rates;
- (b) assessment of insured/reinsured exposures for purposes of exposure aggregation and control, cost allocation, catastrophe risk pricing, reserving and capital management;
- (c) the negotiation, placement and administration of any retrocession program of the Corporation; and
- (d) the purposes contemplated in Clause 18.2(a) and any other purpose connected with the *Scheme*.

Personal Information has the same meaning as in the *Privacy Act*.

Pool Insurance Contract has the same meaning as in the *Act*.

Privacy Act mean the *Privacy Act 1988* (Cth).

Privacy Laws means the *Privacy Act* and any other applicable laws relating to the collection, storage, use, and disclosure of personal or other information.

Processed Premium means the written premium (which may not yet be earned premium) that has been entered into the Reinsured's IT platform as paid or payable by a policyholder to the Reinsured.

Quarter means any period of 3 calendar months ending on 31 March, 30 June, 30 September, or 31 December.

Quarterly Movement Report means a report in a form and including such information as is required by the Corporation regarding the new business of Reinsured (being *Pool Insurance Contracts* first issued during the *Quarter*), renewals, endorsements or extensions to the cover introduced during the *Quarter* that have an impact on the premium payable under *Pool Insurance Contracts*, and cancellations of *Pool Insurance Contracts* which took effect. A *Reinsurance Premium* payable to the Corporation for each *Pool Insurance Contract* and the total across each record in the *Quarterly Movement Report* must reconcile to the *Remittance Statement* submitted to the Corporation.

Rate Modifiers means, in relation to a *Reinsurance Premium Calculation Date*, the rates specified as applying to relevant risk factors in relation to wind, flood and storm surge risks applicable at that time, being the rates referred to in Appendix A of this Agreement or as subsequently notified to the Reinsured by the Corporation in accordance with Clause 7(b).

Rateable Sum Insured means the sum insured to be used in the reinsurance premium calculation. Specifically this is defined as:

- (a) For residential buildings, the replacement cost of the building. It includes all elements of the construction that are included in the coverage. Specific examples of elements of the construction that may be covered by the policy that would be included in the *Rateable Sum Insured* include:
- (i) sheds;
 - (ii) decks and pergolas;
 - (iii) swimming pools;
 - (iv) gates and fences; and
 - (v) driveways and retaining walls.

Where additional benefits are provided to the customer that are not part of the property itself, then these should be excluded from the *Rateable Sum Insured*. Some examples of additional benefits that would be excluded from the *Rateable Sum Insured* are:

- (vi) demolition and debris removal;
- (vii) additional living expenses;
- (viii) council fees, architect's fees and related construction expenses costs; and
- (ix) sum insured event buffers and build back better allowances

The *Rateable Sum Insured* should be gross of GST. It should exclude any adjustments that may be made for underinsurance unless these adjustments have been agreed with the customer and reflected in the sum insured provided to them as part of the policy.

- (b) For total replacement policies (where there is no sum insured provided to the customer) the Reinsured must use and provide to the Corporation an estimate of the sum insured that is consistent with the above definition.
- (c) For residential contents the *Rateable Sum Insured* is the insured value of the contents consistent with basis of cover provided (new for old vs indemnity). Where valuables/specified items are captured as a separate item, then the sum insured should include the value of these items at their agreed sub-limit. Portable item coverages that provide cover for damage to residential contents that occurs exclusively outside the home building are not required to be included separately, provided that the portable items covered already fall within the contents sum insured for damage within the home building.

The *Rateable Sum Insured* should be gross of GST.

- (d) For small business buildings, the *Rateable Sum Insured* is the replacement cost of the building. It should include all elements of the construction that are included in the coverage. Specific examples of elements of the construction that may be covered by the policy that would be included in the rateable sum insured include:

- (i) sheds;
- (ii) gates and fences; and
- (iii) driveways and retaining walls.

Where additional benefits are provided to the customer that are not part of the property itself, then these should be excluded from the *Rateable Sum Insured*. Some examples of additional benefits that would be excluded are:

- (iv) demolition and debris removal;
- (v) council fees, architects fees and related construction expenses costs; and
- (vi) sum insured event buffers and build back better allowances.

For customers that are registered for GST the *Rateable Sum Insured* should be net of GST. For other customers the *Rateable Sum Insured* should be gross of GST. The *Rateable Sum Insured* should exclude any adjustments that may be made for underinsurance unless these adjustments have been agreed with the customer and reflected in the sum insured provided to them as part of the policy.

- (e) For Small Business contents, the *Rateable Sum Insured* is the insured value of the contents consistent with basis of cover provided (new for old vs indemnity). Contents includes stock, where covered by the Reinsured.

For customers that are registered for GST the *Rateable Sum Insured* should be net of GST. For other customers the *Rateable Sum Insured* should be gross of GST.

- (f) For Small Business 'Business Interruption', the *Rateable Sum Insured* is the annualised gross revenue or gross profits, depending on the rating basis used by the Reinsured. For example, \$50,000 total gross revenue of business interruption cover for a 6-month period will be reported to the Corporation annualised at \$100,000. Where the cover includes Additional Increased Cost of Working (AICOW) then this should be provided separately.
- (g) For strata, the *Rateable Sum Insured* is the replacement cost of the building plus the sum insured for common contents. The rateable sum insured must include allowance for the costs of:
- (i) lifts;
 - (ii) common property equipment such as gyms and BBQ areas;
 - (iii) fences;
 - (iv) swimming pools;
 - (v) retaining walls;
 - (vi) driveways;
 - (vii) demolition and debris removal; and
 - (viii) rebuild costs (council fees etc.).

The *Rateable Sum Insured* should be gross of GST. It should exclude any adjustments that may be made for underinsurance unless these adjustments have been agreed with the customer and reflected in the sum insured provided to them as part of the policy.

Pricing of product benefits additional to the *Rateable Sum Insured* are addressed through a 'Coverage Level' factor within the rating formula.

Rating Level means, in relation to a *Pool Insurance Contract* on a *Reinsurance Premium Calculation Date*, the rating or hazard level determined in accordance with guidance provided by the Corporation applicable at the time.

Regulations means the *Terrorism and Cyclone Insurance Regulations 2003* (Cth).

Reinsurance Period means the period commencing on the *Commencement Date* and ending on the *Date of Expiry*.

Reinsurance Premium means the amount of premium payable by the Reinsured to the Corporation for a *Pool Insurance Contract* during a *Quarter* under and calculated in accordance with this Agreement.

Reinsured means the *General Insurer, Lloyd's Underwriter or Unauthorised Foreign Insurer* named in the Schedule as the Reinsured.

Reinsured Proportion means, at a particular time, 100% less the *Retained Percentage* at that time.

Remittance Date means each date that is 30 days after the end of each *Quarter* during the Reinsurance Period.

Remittance Statement has the meaning given by Clause 8(a)(i).

Required Premium has the meaning given to it in Clause 9(d)(i).

Retained Percentage means, at a particular time:

- (a) the percentage specified as such in the most recent written notice from the Corporation to the Reinsured to enable the Corporation to comply with one or more directions under section 38(2)(e) of the *Act* relating to the extent to which risk is to be retained by the Reinsured; or
- (b) if no such notice has been given, the percentage specified at item 3) in the Schedule.

Retained Risk means the total amount of *Eligible Cyclone Loss* for which the Reinsured remains liable under *Pool Insurance Contracts* to which this Agreement applies.

Risk Period Proportion means, in relation to a *Pool Insurance Contract* and a *Quarter*, the number of days during that *Quarter* for which this Agreement applied to the *Pool Insurance Contract* (including any renewal of that contract) divided by the total number of days during the *Quarter*.

Scheme means the cyclone reinsurance scheme established under the *Act*.

Storm Surge Premium Component means, in relation to a *Pool Insurance Contract* and *Quarter*, the amount calculated by:

- (a) applying the applicable *Base Rate* for storm surge risks based on the applicable *Rating Level* to the *Rateable Sum Insured* for that *Pool Insurance Contract* on that date and dividing that amount by 100 to determine the base cost for the applicable *Rateable Sum Insured*; and
- (b) multiplying that base cost by any *Rate Modifiers* for storm surge risks applicable to that *Pool Insurance Contract*,

in each case determining the applicable *Base Rate*, *Rating Level*, *Rateable Sum Insured* and *Rate Modifiers* by reference to the *Pool Insurance Contract* when it was first covered under this Agreement during the *Quarter*.

Sub Limits means, in relation to a *Pool Insurance Contract* at a particular time, any amounts specified as such for that *Pool Insurance Contract*.

Transfer Date means, in relation to a *Transferred Contract*, the date specified in the written certification referred to in Clause 2(b)(iii).

Transferred Contract has the meaning given to it in Clause 2(b). For the avoidance of doubt, *Pool Insurance Contracts* transferred to the Reinsured pursuant to Division 3A of the *Insurance Act 1973* (Cth) will only become *Transferred Contracts* in the circumstances described in Clause 2(b).

Ultimate Net Loss has the meaning given to it in Clause 5 of this Agreement.

Unauthorised Foreign Insurer has the same meaning as in the Act.

Wind Premium Component means, in relation to a *Pool Insurance Contract* and *Quarter*, the amount calculated by:

- (a) applying the applicable *Base Rate* for wind risks based on the applicable *Rating Level* to the *Rateable Sum Insured* for that *Pool Insurance Contract* on that date and dividing that amount by 100 to determine the base cost for the applicable *Rateable Sum Insured*; and

- (b) multiplying that base cost by any *Rate Modifiers* for wind risks applicable to that *Pool Insurance Contract*,

in each case determining the applicable *Base Rate*, *Rating Level*, *Rateable Sum Insured* and *Rate Modifiers* by reference to the *Pool Insurance Contract* when it was first covered under this Agreement during the *Quarter*.

26. Interpretation

- (a) Unless specifically expressed otherwise, references in this Agreement to:
 - (i) legislation, including subordinate legislation, are to those statutes, regulations, instruments, enactments, and promulgations as amended, varied or re-enacted (including by Ministerial Direction) from time to time;
 - (ii) licence requirements, regulatory guidance and industry codes of practice are to those requirements, guidance and codes as amended, varied or re-issued from time to time;
 - (iii) dates and times specified in this Agreement are to be interpreted as references to the date and time in Sydney, Australia (subject to the Act and Regulations);
- (b) Terms which are capitalised, italicised or in bold in the Agreement are defined in Clause 25 of this Agreement.

27. Lloyd's underwriters

If the Reinsured is a syndicate of *Lloyd's Underwriters*:

- (a) the managing agent for the syndicate of *Lloyd's Underwriters* shall enter into and act under this Agreement for and on behalf of each *Lloyd's Underwriter* of the syndicate;
- (b) the address and email of the managing agent for the syndicate of *Lloyd's Underwriters* shall be specified in Item 6) of the Schedule for the Reinsured for the purposes of Clause 23(b);
- (c) the managing agent for the *Lloyd's Underwriters* must, on request by the Corporation, specify the proportion of the total liability of the syndicate of *Lloyd's Underwriters* that is attributable to each *Lloyd's Underwriter* for any period of time (with 100% of liability being attributed across all of the *Lloyd's Underwriters* in the syndicate); and
- (d) the *Lloyd's Underwriters* of the syndicate shall be collectively treated as the Reinsured for the purposes of this Agreement, except that the liability of each *Lloyd's Underwriter* to the Corporation during any period of time shall be limited to that *Lloyd's Underwriter's* proportion of the total liability of the syndicate as notified to the Corporation pursuant to Clause 27(c).

SCHEDULE ATTACHING TO AND FORMING PART OF THE REINSURANCE AGREEMENT FOR ELIGIBLE CYCLONE LOSS

AGREEMENT NO:

- 1) Name of Reinsured (Preamble):
Company Number: ABN
Insurance Licence Number: (AFSL Licence)
- 2) Commencement Date (Clause 1): 1 January 2023
- 3) Retained Percentage: 0%
- 4) Notification Threshold (Clauses 8 and 9): AUD 50,000
- 5) Claims Notification Figure (Clause 12): AUD5 million per cyclone event for the Reinsured's share
- 6) Interest Rate: 200 basis points above the Reserve Bank of Australia official cash rate (applicable from time to time)
- 7) Cash Loss Figure (Clause 14(g)):
- 8) Notices (Clause 23):

The Corporation:

Address:

Telephone:

Email:

Australian Reinsurance Pool Corporation

PO Box Q1432
Queen Victoria Building NSW 1230 Australia

+612 8223 6777

enquiries@arpc.gov.au

The Reinsured:

Company Number: ABN

Attention:

General Telephone:

General Email:

Contact Person 1 (Document Administration):

Telephone:

Email Address:

Contact Person 2 (Reinsurance Administration):

Telephone:

Email Address:

APPENDIX A - ATTACHING TO AND FORMING PART OF THE REINSURANCE AGREEMENT FOR ELIGIBLE CYCLONE LOSS

Calculation and reporting of *Reinsurance Premium* payable to ARPC

The Reinsured is to calculate the cyclone *Reinsurance Premium* payable to the Corporation based in accordance with the methodology (including the premium formulae, rating tables and rate modifiers) notified to the Reinsured by the Corporation via its web-based reinsurance management system (PACE). The formulae, tables and modifiers are accessible using the Reinsured's Username and Password for the PACE system.

The methodology (including the premium formulae, rating tables and rate modifiers) may be amended by the Corporation from time to time by giving at least 6 months' notice in writing.

Different rating tables and modifiers are applicable for the various classes of eligible insurance.

The Reinsured is required to provide an aggregated premium *Remittance Statement* and policy level premium *Quarterly Movement Report* to the Corporation via its web-based reinsurance management system in a format stipulated by the Corporation.

The premium formulae, rating tables and rate modifiers will enable the Reinsured to calculate an annual cyclone *Reinsurance Premium* on all relevant transactions in the *Quarterly Movement Report*. The Reinsured should adjust the calculated annual *Reinsurance Premium* for policy term on a pro-rata basis.

The *Reinsurance Premium* should be calculated by the Reinsured on a *Processed Premium* basis.