

Appendix A

1. Participation in the Residual Scheme

Extract from Section 3 of Market Agreement dated 1 May 2007

3. **Participation in the Residual Scheme and Calculation of Applicable Proportions**

- 3.1 Each Insurer writing Employees' Compensation Insurance will participate in the Residual Scheme and become a member of the Bureau and a Party to this Agreement by executing this Agreement as an original Party or by executing the Deed of Undertaking.
- 3.2 The Administrator shall determine the Applicable Proportions of each Insurer for each Policy Year in accordance with this Clause for approval by the Board.
- 3.3 Prior to the commencement of each Policy Year, the Administrator shall calculate the Applicable Proportions based on provisional statistics for Gross Written Premiums for Employees' Compensation Insurance provided to the Bureau by the Insurance Authority for the most recent preceding year but for this purpose there shall be excluded:-
 - (a) Gross Written Premiums shown as a negative figure which shall be accounted for as nil;
 - (b) Gross Written Premiums for an Insurer who has indicated in writing to the Insurance Authority, the Administrator and the Bureau that it has during the most recent preceding year ceased to write Employees' Compensation Insurance; these shall be accounted for as nil.
- 3.4 Any Insurer who has indicated to the Insurance Authority, the Administrator and the Bureau that it has ceased to write Employees' Compensation Insurance and who thereafter recommences writing Employees' Compensation Insurance shall forthwith notify the Insurance Authority, the Administrator and the Bureau and such Insurer shall participate in the Residual Scheme for subsequent Policy Years after the Policy Year in which it recommenced writing Employees' Compensation Insurance and become a Party to this Agreement for such subsequent Policy Years.
- 3.5 On receipt of statistics provided to the Bureau pursuant to Clause 3.3, the Administrator shall calculate the Applicable Proportions by expressing as a percentage the ratio of the Gross Written Premiums of each Insurer to the total of the Gross Written Premiums of all Insurers. On determination of the Applicable Proportion and approval thereof by the Board, the Administrator shall certify the amount of the Applicable Proportion for each Insurer and deliver to each Insurer a certificate to this effect. The certificate shall in the absence of manifest error be conclusive and binding for the purpose of this Agreement.

- 3.6 In the event that an Insurer has become Insolvent, the Administrator shall forthwith recalculate the Applicable Proportions excluding from the calculation the Gross Written Premiums of the Insolvent Insurer and shall certify the amount of the Applicable Proportions for each Insurer (other than the Insolvent Insurer) and shall after approval thereof by the Board deliver to each Insurer a certificate to this effect which shall take effect from the date specified in writing by the Administrator as being the earliest to occur of the events set out in the definition of "Insolvent" in Clause 1.2. Such specification by the Administrator shall for the purpose of this Agreement be conclusive in the absence of manifest error.
- 3.7 With effect from the date specified by the Administrator under Clause 3.6, the Applicable Proportions shall be those new Applicable Proportions calculated by the Administrator and shall have effect for the remainder of the Policy Year for the purposes of policies written pursuant to Clause 2. For the avoidance of doubt, this Clause shall not affect the liability of Insurers (including the Insolvent Insurer) under policies written pursuant to Clause 2 prior to calculation of new Applicable Proportions.
- 3.8 Each Insurer who has:-
- (a) refused Employees' Compensation Insurance to an employer who is seeking to become a Qualified Employer shall on request by that employer provide written evidence thereof to that employer;
 - (b) quoted a premium to an employer who is seeking to become a Qualified Employer for the required cover for which it has been offered Employees' Compensation Insurance of 30% (or such other percentage decided by the Board from time to time) or more above the Benchmark Premium Rate shall on request by that employer provide written evidence thereof to that employer;
 - (c) provided Employees' Compensation Insurance to the employer who is seeking to become a Qualified Employer during the last 5 years or the period since that employer commenced business whichever is the shorter shall on request by that employer provide written evidence of that employer's claims record for that period.

2. Functions of the Board

Extract from Section 7 of Market Agreement dated 1 May 2007

7. **Board**

The functions of the Board shall be:-

- (a) to monitor the implementation and the operation of the Residual Scheme;
- (b) to review the number of high risk groups;
- (c) to liaise with consultants to determine the premium for the high risk groups and to determine the Benchmark Premium Rate and the percentage referred to in Clauses 4.1(a)(ii) and 4.2;
- (d) with the assistance from Underwriting Committee to formulate and approve the underwriting standards and criteria for policies issued pursuant to the Residual Scheme;
- (e) with the assistance from Claims Committee to formulate and approve the claims handling standards and procedures;
- (f) to appoint and remove the Appointed Service Provider and the Administrator;
- (g) to consider the appropriateness and cost of arranging reinsurance protection for the Residual Scheme and to approve any reinsurance programme for any Policy Year;
- (h) to appoint professional advisors including actuarial, legal, loss adjusters, rehabilitation etc. for the operation of the Residual Scheme;
- (i) to decide on the mode of operation of the Settlement Pool, the Cash Flow Account and the Administration Account and to approve the borrowing of amounts from the Cash Flow Account and thence the transfers from the Cash Flow Account to the Settlement Pool and from the Settlement Pool to Insurers;
- (j) to fix contributions to the Cash Flow Account;
- (k) to review decisions of the Administrator, the Appointed Service Provider, the Underwriting Committee and the Claims Committee;
- (l) to review and resolve complaints;
- (m) to invite persons to be observers at meetings of the Board without a right to vote if necessary; and
- (n) to handle incidental matters.

3. Functions of Appointed Service Provider

Extract from Section 10 of Market Agreement dated 1 May 2007

10. Appointed Service Provider

The functions of the Appointed Service Provider shall be:-

- (a) to be responsible for accepting risks and handling claims including preparation of policies on behalf of all Insurers;
- (b) to follow the underwriting and claims procedures and guidelines laid down by the Underwriting Committee and Claims Committee and approved by the Board and seek the instructions from them in cases beyond the procedures and guidelines;
- (c) to assist the Administrator in providing premium quotations to the employers;
- (d) to issue policies to Qualifying Employers;
- (e) to handle and pay claims (settlement authority including WP settlement, handling of common law claims, regular review of claim reserves, declination of claims, claims procedure, details of claim data required and regular review of service providers' performance) on policies issued during its Term of Service; and
- (f) to handle incidental matters.

4. Functions of Administrator

Extract from Section 11 of Market Agreement dated 1 May 2007

11. Administrator

The functions of the Administrator shall be:-

- (a) to administer, manage and enforce this Agreement and the Residual Scheme;
- (b) to determine Applicable Proportions for approval by the Board;
- (c) to determine whether the employers meet the criteria of Qualifying Employer in accordance with this Agreement;
- (d) to specify and receive application forms and other documentation and

information from potential Qualifying Employers and to circulate the same to Insurers;

- (e) to collect premiums and collect the annual membership fee and pay return premiums, claims and expenses of the Residual Scheme;
- (f) to issue quarterly statements and annual accounts upon receipt of information from the Appointed Service Provider;
- (g) to gather information on complaints regarding pricing and acceptance and disputes on claims and pass it to the relevant Committees for handling;
- (h) to manage the Administration Account, Settlement Pool and Cash Flow Account;
- (i) to collect claims data from the Appointed Service Provider annually and pass them to the appropriate consultants for reviewing the premium benchmark of high risk groups;
- (j) to manage the transfer of cash between the Cash Flow Account and the Settlement Pool in accordance with the respective shares of each Insurer with final approval from the Board;
- (k) to liaise between the Appointed Service Provider and the Qualifying Employer in relation to the issue of policies;
- (l) to provide assistance to the Appointed Service Provider in processing claims and make payments from a Settlement Pool of claims agreed to be settled and to provide support to the Underwriting and Claims Committee and to implement their decisions and generally to provide support to the Bureau;
- (m) to make calls on Insurers for any shortfall on a Settlement Pool;
- (n) to calculate and pay interest on the Cash Flow Account and to repay contributions to the Cash Flow Account to Insurers who have ceased to write Employees' Compensation Insurance;
- (o) on instructions from the Board to advise the Insurance Authority of any breach by an Insurer of its obligations under this Agreement which if remediable is not remedied within 30 days of a notice requiring remedy;
- (p) to arrange publicity in respect of the Residual Scheme in a manner approved by the Board; and
- (q) to handle incidental matters to any of the foregoing.