



Agreement

FOR

**Reviewer Administration Services
and Dispute Resolution Services**

BETWEEN

Accident Compensation Corporation

AND

FairWay Resolution Limited

July 2019

FYW

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AGREEMENT FOR REVIEWER ADMINISTRATION SERVICES AND DISPUTE RESOLUTION SERVICES

This Agreement is made on the day of July 2019

Between **Accident Compensation Corporation**

a statutory corporation continued by the Accident Compensation Act 2001 ("ACC")

and **FairWay Resolution Limited**

a duly incorporated company having its registered office at Level 4, 142 Lambton Quay, Wellington 6140 ("the Supplier")

Agreement to Commence on: **1 July 2019**

Agreement to Expire on: **30 June 2022 (Initial Date of Expiry)**

Services Included in this Agreement: **Reviewer Administration Services and Dispute Resolution Services**

KEY TERMS

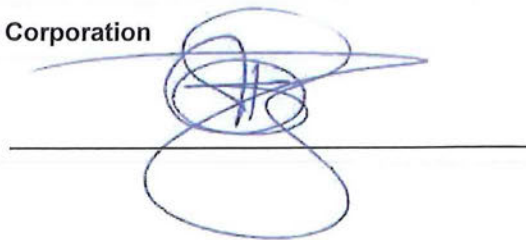
1. The AC Act allows for claimants, employers and levy payers to apply to ACC for a review of certain decisions of ACC.
2. ACC is accordingly establishing a panel of service providers:
 - 2.1. to provide reviewer administration services; and/or
 - 2.2. to provide dispute resolution services.
3. If Reviewer Administration Services are included in the list above under the heading "Services included in this Agreement", ACC and the Supplier have agreed that Supplier will provide Reviewer Administration Services as further described in Schedule 1 (Scope of Services) by allocating Reviewers to undertake Review Services subject to the Supplier entering into and complying with the provisions of this Agreement.
4. If Dispute Resolution Services are included in the list above under the heading "Services included in this Agreement", ACC and the Supplier have agreed that the Supplier to provide Dispute Resolution Services to ACC as further described in Schedule 1 (Scope of Services), subject to the Supplier entering into and complying with the provisions of this Agreement.
5. The Supplier has agreed to provide ACC with the Services on the terms and conditions as set out in this Agreement.
6. The Supplier will provide the Services as detailed in this Agreement, at the rates set out in Schedule 2 - Pricing Schedule and in accordance with the Key Performance Indicators set out in Schedule 3 - Service KPIs and SLAs.

Signed for and on behalf of Accident Compensation Corporation

Name: Scott Pickering

Title: Chief Executive

Date: 10/07/2019



Signed for and on behalf of FairWay Resolution Limited

Name: *Rhys West*

Title: *CEO*

Date: *12/07/2019*



RELEASED UNDER THE
OFFICIAL INFORMATION ACT

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GENERAL PROVISIONS

1. TERM OF THIS AGREEMENT

- 1.1. The Term of this Agreement shall commence on 1 July 2019 (the "Commencement Date") and shall continue up to the close of 30 June 2022 (the "Initial Term Expiry Date"), unless terminated earlier in accordance with the provisions of this Agreement.
- 1.2. The Term of this Agreement may be extended by up to three further periods of two years each and the date of expiry of such extension terms will be the "Extension Term Expiry Date". If all extension options are exercised, the maximum term of this Agreement is nine years.
- 1.3. Prior to the Initial Term Expiry Date or an Extension Term Expiry Date (as applicable), ACC may provide notice to the Supplier to extend the Term of this Agreement by exercising a renewal option (as described in clause 1.2), which will have the effect of amending the Initial Term Expiry Date or Extension Term Expiry Date (as applicable). Any decision to extend the Term of this Agreement will be based on:
 - 1.3.1. ACC being satisfied with the performance of the Services by the Supplier; and
 - 1.3.2. all other provisions of this Agreement either continuing to apply during such extended Term or being renegotiated to the satisfaction of both parties.
- 1.4. There is no obligation on the part of ACC to extend the term of the Agreement, even if the Supplier has satisfactorily performed all of the Services. ACC will use its best endeavours to tell the Supplier at least 6 months before the Initial Term Expiry Date or an Extension Term Expiry Date whether the Term will be extended.
- 1.5. For the avoidance of doubt, where a Referred Matter has not yet been completed on the Date of Expiry:
 - 1.5.1. the Supplier will continue to provide Services in relation to the Referred Matter in accordance with the terms and conditions in this Agreement, until the Referred Matter has been completed; and
 - 1.5.2. the Supplier will be entitled to invoice ACC for the Fees applicable to the Referred Matter in accordance with the terms of this Agreement.

2. SCOPE OF SERVICES

- 2.1. This Agreement is for the supply of Services, as detailed further in Schedule 1 - Scope of Services.
- 2.2. The Supplier acknowledges that:
 - 2.2.1. it is being appointed as part of a panel to provide services to ACC and ACC will be appointing other suppliers to provide services the same or similar to the Services; and
 - 2.2.2. ACC does not guarantee the Supplier any minimum level of Referred Matters under this Agreement.
- 2.3. The Supplier shall not have or make any claim against ACC for orders placed with an alternative supplier, in accordance with clause 2.2.1.
- 2.4. Nothing shall prevent ACC from at any time inviting or not inviting the Supplier to prepare a proposal, either individually or as part of a collaborative group or as part of a tender, for the provision of additional services.
- 2.5. If additional Services are to be supplied for the remainder of the Agreement, requirements and KPIs will be outlined in writing and attached to this Agreement as a Variation.

3. RELATIONSHIP OF PARTIES

Independent Contractor

- 3.1. The Supplier is an independent contractor, contracted by ACC to provide the Services described in this Agreement. Nothing contained or implied in this Agreement shall be construed as creating, and neither party shall state, imply or do anything to suggest, that this Agreement creates an



employer/employee partnership or principal/agent relationship between ACC and the Supplier or any of its proprietors, officers, employees or subcontractors.

Privity of Contract

- 3.2. Nothing in this Agreement is intended to confer any enforceable rights or benefits on an ACC Customer or any Reviewer or any person providing Dispute Resolution Services.

Complete Agreement

- 3.3. This Agreement represents the whole of the agreement between the parties, and any provisions in tenders, correspondence or other documents prior to the date of this Agreement and all representations are excluded.

No Adverse Comments

- 3.4. Neither ACC nor the Supplier:

- 3.4.1. will make any oral or written statement or comment to the media or any member of the public in relation to the operation of this Agreement which criticises the other party, or any other supplier of these Services, or public opinion of the other party or which brings the other party into disrepute; or
- 3.4.2. Will publicly display (for example on websites or social networking sites) objectionable or derogatory comments about the Services, this Agreement, each other or any of the party's personnel, and will ensure its personnel do not do so.

If such a statement or comment is made or displayed, that party will, at the request and with the prior agreement of the other party, promptly make an appropriate retraction or take such other remedial steps as are appropriate and reasonable in the circumstances. This will be without prejudice to any other rights, remedies or actions available to the other party. Nothing in this clause 3.4 will apply to any statement or comment made by the Supplier in the proper exercise of its provision of the Services in relation to a Referred Matter, provided such statement is only made to ACC or a party to the Referred Matter.

4. RESPONSIBILITIES OF PARTIES

- 4.1. The Supplier agrees to:

- 4.1.1. provide the Services in accordance with the provisions of this Agreement, including the KPIs and the relevant provisions of the AC Act; and
- 4.1.2. advise ACC immediately if an Insolvency Event occurs (or is likely to occur) in respect of the Supplier, or on the bankruptcy or liquidation of the Supplier.

- 4.2. ACC agrees to:

- 4.2.1. pay the Supplier for the Services as required by this Agreement and in accordance with and subject to the provisions of this Agreement at the Fees specified in Schedule 2 - Pricing Schedule;
- 4.2.2. provide the Supplier with any information the Supplier has reasonably requested to enable the delivery of the Services;
- 4.2.3. comply with all Law applicable to it as well as the *Standards of Integrity and Conduct* issued by the State Services Commission (www.ssc.govt.nz); and
- 4.2.4. carry out any obligations or responsibilities specifically allocated to ACC in this Agreement, including those specified in any Schedule.

- 4.3. Both parties agree to:

- 4.3.1. act in good faith and demonstrate honesty, integrity, openness and accountability in their dealings with each other;
- 4.3.2. consult with each other whenever and as often as may be appropriate on matters affecting their respective obligations;



- 4.3.3. notify each other immediately of any actual or anticipated issues regarding the Services or this Agreement that could:
 - 4.3.3.1. significantly impact on the Services or Fees; or
 - 4.3.3.2. receive media attention.
- 4.4. Nothing in this Agreement shall affect the statutory obligations of any party or shall bind any party to do or refrain from doing anything in a manner that is not consistent with the Law.

5. PERFORMANCE OF SERVICES

- 5.1. The Supplier will:
 - 5.1.1. ensure the stipulated time, cost and quality objectives of ACC, as specified under this Agreement are met;
 - 5.1.2. provide all expertise and resources necessary to deliver the Services;
 - 5.1.3. take all steps necessary to clarify ACC's requirements for the Services;
 - 5.1.4. ensure the Services are performed by contractors and/or personnel who have the knowledge, qualifications, skill base and experience appropriate for the provision of the Services, and who have been trained and briefed appropriately to provide the Services;
 - 5.1.5. perform the Services so as to comply with the relevant parts of the AC Act, any Service specifications and other instructions, information and documents provided by ACC under this Agreement, provided the Supplier's performance is not inconsistent with the ability of Reviewers to act independently in conducting Review Services;
 - 5.1.6. advise ACC immediately if the Supplier becomes aware of any matter which may change or delay the performance of the Services. The advice must include detailed particulars of the likely change or delay and recommendations to minimise any adverse effect from it;
 - 5.1.7. not make any Material alteration to, addition to, or omission from the work approved by ACC at any stage of the Services without ACC's prior agreement; and
 - 5.1.8. ensure that all reports and other written communications to ACC are clear, thorough, complete and acceptable to ACC in both form and substance.
- 5.2. The Supplier acknowledges that its performance of the Services is critical in ensuring an effective process for ACC Customers. ACC may at all times evaluate the Services provided by the Supplier, and the Supplier will provide information reasonably requested to enable ACC to undertake an effective and objective performance evaluation. The parties shall provide each other with regular constructive and objective feedback on the performance of Services, in order to optimise the benefits and address any issues. The basis for ACC's assessment of the Supplier's performance will be the monthly performance reporting provided by the Supplier in measuring the delivery of Services as detailed in Schedule 1 - Scope of Services and Schedule 3 - Service KPIs and SLAs. ACC will use the reports provided by the Supplier to monitor the Supplier's performance.
- 5.3. In performing the Services, the Supplier shall co-operate fully with other suppliers involved with providing Services to ACC for the purpose of facilitating, to the maximum extent possible, the provision of Services by both the Supplier and those other suppliers to ACC. To avoid doubt, in providing such assistance the Supplier will not be required to disclose its Confidential Information or its Intellectual Property Rights to any third party suppliers.
- 5.4. The Supplier agrees to meet the Service deliverables contained in the Key Performance Indicators at Schedule 3 - Service KPIs and SLAs.
- 5.5. In addition to its monitoring under clause 5.2, ACC will evaluate the Services provided by the Supplier on a quarterly and annual basis, or at any other time, following notice to the Supplier in writing of its intention to do so. ACC may use such methods and processes as it considers appropriate to enable an effective and objective evaluation of the Supplier's performance against the KPIs. The Supplier will provide such information reasonably requested by ACC for the purpose of the evaluation. ACC will inform the Supplier of the provisional results of the evaluation, give the

Supplier a reasonable opportunity to comment, and take reasonable account of any comment before finalising the evaluation and providing a copy to the Supplier.

- 5.6. In addition to the monitoring and evaluation processes described in this clause 5, the parties will:
- 5.6.1. conduct monthly and quarterly meetings to discuss the provision of the Services and the operation of this Agreement, including any concern that ACC may have about the level of performance revealed through the Supplier's monthly reports or as a result of a quarterly or annual review or a performance evaluation, and any concern the Supplier may have about the operation of this Agreement or its relationship with ACC;
 - 5.6.2. meet at any other time as necessary to resolve any performance issues as they arise; and
 - 5.6.3. generally provide each other with regular constructive and objective feedback on the performance of Services and the operation of the dispute resolution process, to optimise the effective performance of the Services by the Supplier and to address any issues.

6. CHANGE PROCESS

- 6.1. ACC may make a written request to the Supplier to change, reject, cancel or suspend any Service and the Supplier shall take all reasonable steps to comply, provided they can do so within their contractual obligations to third parties.
- 6.2. In the event of any such request, ACC will reimburse the Supplier for any expenses to which they are committed (at the rates specified in this Agreement), and will pay a pro-rata proportion of an agreed quotation for Services already supplied.
- 6.3. If additional Services are required, the parties will follow the procedures and disciplines in clause 2 and clause 5 above.
- 6.4. If any such request is made due to an error or omission by the Supplier or the Supplier's subcontracted service provider, or due to any Services not meeting the requirements or specifications described or referred to in this Agreement, then the Supplier will promptly meet the request at no cost to ACC.
- 6.5. Any agreement to change, reject, cancel or suspend any Service under this clause 6 must be given effect by means of a Variation to this Agreement under clause 18, and the provisions of that Variation will apply accordingly.

7. STANDARD OF SERVICES

- 7.1. The Supplier will perform the Services in accordance with Good Industry Practice.
- 7.2. The Supplier must ensure that the Services delivered by the Supplier:
 - 7.2.1. are suitable for their intended purposes;
 - 7.2.2. comply with the requirements for the Services set out in this Agreement; and
 - 7.2.3. comply with all relevant Laws including the AC Act, Privacy Act 1993, Employment Relations Act 2000 and the Health and Safety at Work Act 2015.
- 7.3. The Supplier will ensure that it regularly monitors and reviews its systems and procedures used in the delivery of the Services. Any weaknesses identified will be documented and remedial action will be undertaken immediately.
- 7.4. The Supplier will continuously identify and implement quality improvements in the delivery of the Services to ACC and its customers.

8. REVIEWERS

- 8.1. This clause 8 applies where Reviewer Administration Services are included in the list at Page 1 of this Agreement.
- 8.2. Where the Supplier is requested to provide Reviewer Administration Services, the Supplier will provide ACC with a list of individuals who have indicated to the Supplier their interest in acting as Reviewers. ACC will provide a Letter of Engagement to each Reviewer acceptable to it. The Letter of Engagement will set out that ACC engages the Reviewer to undertake Review Services in accordance with Part 5 of



the AC Act until the Reviewer indicates otherwise to the Supplier (the Supplier will then notify the same to ACC).

- 8.3. The Supplier shall ensure that Reviewer Services are provided only by the Reviewers who have received and agreed to a current Letter of Engagement with ACC.
- 8.4. The Supplier may, at any time during the Term, notify ACC of the names of additional individuals who have indicated to the Supplier their interest in providing Review Services. ACC will arrange a Letter of Engagement to be provided to each of the additional individuals.

9. ACCOUNT MANAGEMENT

- 9.1. ACC's Contract Manager and the Supplier's Key Account Manager (together called the "Contract Managers"), as named in Schedule 4 - Contact Details, are responsible for managing this Agreement, including:
 - 9.1.1. managing the relationship between the parties;
 - 9.1.2. overseeing the effective implementation of this Agreement; and
 - 9.1.3. being the first point of contact for any issues that arise.
- 9.2. The Supplier's Key Account Manager will be responsible nationally for:
 - 9.2.1. day to day operational enquiries;
 - 9.2.2. overall performance of the Supplier;
 - 9.2.3. maintaining performance expectations as outlined in Schedule 3 - Service KPIs and SLAs;
 - 9.2.4. identification of potential savings;
 - 9.2.5. co-ordination of all reporting requirements; and
 - 9.2.6. co-ordination of the business review meetings.
- 9.3. If a party changes a Contract Manager it must tell the other party, in writing, the name and contact details of the replacement within five (5) Working Days of the change. A Variation does not need to be executed for changes to the Contract Manager.
- 9.4. Each party will ensure that a representative (such representative to be notified to the other party) will be contactable between 7am to 7pm on all Working Days). If a party's designated representative is temporarily unavailable (for example, due to leave or illness), that party will notify the other party of an alternative contact.

10. CONFLICTS OF INTEREST AND INDEPENDENCE

Avoiding Conflicts of Interest

- 10.1. The Supplier warrants that as at the Commencement Date, it has no Conflict of Interest in providing the Services or entering into this Agreement.
- 10.2. The Supplier must do its best to avoid situations that may lead to a Conflict of Interest arising.

Obligation to tell ACC

- 10.3. The Supplier must tell ACC immediately, and in writing, if any Conflict of Interest arises in relation to the Services or this Agreement. If a Conflict of Interest does arise the parties must discuss, agree and record in writing whether it can be managed and, if so, how it will be managed. Each party must pay its own costs in relation to managing a Conflict of Interest.
- 10.4. The Supplier will at all times during the Term of this Agreement use its best endeavours to ensure that no action is taken by itself, its personnel and sub-contractors which could or might result in or give rise to the existence of conditions prejudicial to or in conflict with the interests of ACC if such action touches upon or relates to the performance of this Agreement.

Independence

- 10.5. To the extent applicable, the Supplier must comply with the AC Act, and must ensure that Reviewers comply with the Reviewer's duties under section 138 of the AC Act. The Supplier shall:



- 10.5.1. act independently and impartially when performing the Services; and
- 10.5.2. disclose to ACC any previous involvement that a Reviewer has had in any Referred Matter (other than as a Reviewer) that the Supplier is aware of, when a Referred Matter is Referred to the Supplier by ACC, and prior to the Supplier allocating the Referred Matter to a Reviewer.

10.6 For the avoidance of doubt, the parties agree that the following situations, without limitation, are a Conflict of Interest:

- 10.6.1 A director, shareholder, employee or contractor of the Supplier has previously provided advocacy services, or advice about ACC matters to a person who has applied for a review or has a dispute with ACC which is the subject of a Referred Matter which is referred to the Supplier for either Reviewer Administration Services or Dispute Resolution Services. In this situation, the parties agree that Supplier will immediately decline the Referred Matter and return it to ACC for allocation to another supplier.
- 10.6.2 A person providing Dispute Resolution Services and acting as a Reviewer in respect of the same Referred Matter (whether or not the person is engaged or employed by the same supplier in respect of these services).

11. ISSUE RESOLUTION

- 11.1. Any issues or complaints raised by ACC will be directed to the Supplier's Key Account Manager or where the issue or complaint relates to health and safety, to the Supplier's health and safety representative referred to in clause 32.3.2 for action. The Supplier will:
 - 11.1.1. respond to the issue or complaint raised and will rectify it within reasonable timeframes where it is appropriate or necessary to do so; and
 - 11.1.2. advise ACC within 24 hours of receiving notification of the issue or complaint as to the course of action (if any) and expected time required to resolve the issue.

12. INVOICING, PAYMENT AND CREDITS

- 12.1. The Supplier is entitled to raise a GST invoice to be forwarded to ACC for the Services detailed in this Agreement on completion of that Service (as described in Schedule 2 – Pricing Schedule), or at such other time agreed between the parties in writing, as long as ACC has agreed in writing to the charge for that Service.
- 12.2. The Supplier will raise and forward to the appropriate ACC cost centre, preferably in an electronic format, any relevant consolidated GST invoices. The Supplier will raise no more than one consolidated GST invoice per month.
- 12.3. Each invoice must clearly provide the following information:
 - 12.3.1. Service details and review reference numbers;
 - 12.3.2. ACC Cost Centre;
 - 12.3.3. unit cost;
 - 12.3.4. total cost;
 - 12.3.5. quantity;
 - 12.3.6. description;
 - 12.3.7. details of any expenses permitted to be claimed, as described in Schedule 2 – Pricing;
 - 12.3.8. order reference;
 - 12.3.9. information required by Inland Revenue to ensure that this is a legitimate tax invoice for the purposes of the Goods and Services Tax Act 1985; and
 - 12.3.10. any other information reasonably requested by ACC.
- 12.4. Subject to the Supplier complying with this Agreement and ACC receiving the Supplier's invoice by the 5th Working Day of the month, ACC will, , pay that invoice by direct credit to a bank account



nominated by the Supplier no later than the 20th day of the month if the invoice is dated the preceding month.

- 12.5. In the event that an invoice is disputed any refunds or credits that the Supplier is liable to pay to ACC will be:
 - 12.5.1. transacted the month the credit is applied;
 - 12.5.2. made against the ACC Cost Centre that received the initial charge.
- 12.6. ACC will be billed monthly, or as otherwise stipulated in Schedule 1 - Scope of Services.
- 12.7. ACC will pay any GST that is payable.
- 12.8. Despite anything stated or implied in this Agreement, ACC is under no obligation to ensure any minimum number of Services are carried out over the Term of this Agreement or any part of it or to ensure any minimum amount becomes payable to the Supplier at any time or at all.

13. VARIATION TO CONTRACT PRICING

- 13.1. The Fees as detailed in Schedule 2 - Pricing Schedule will be fixed for the first year after the Commencement Date and thereafter subject to variation at no more than twelve-monthly intervals.
- 13.2. Each request by a party of a Fees variation for Schedule 2 - Pricing Schedule will be in writing and will be supported by documentary evidence to justify and permit verification of the variation claimed. Where the Supplier requests a Fees variation, the Supplier must make such request before 31 March of the relevant year.
- 13.3. ACC will consider a variation to Fees based on market indicators including and not limited to Statistics New Zealand Labour Cost Index (Salary and Wage Rates), and any increase in costs relating to the Services.
- 13.4. ACC will consider a variation for costs incurred by a Supplier in relation to the Services, such as, legal costs.
- 13.5. Approval of Fee variations, as outlined in 13.3, or variations for cost incurred, as outlined in 13.4, is at the sole discretion of ACC. ACC will not unreasonably refuse requests for Fee variation or recovery of cost incurred.
- 13.6. If the parties cannot agree on a Fee variation the issue shall be resolved according to the disputes procedure in clause 25. Until the dispute is resolved the previously applicable Fees shall continue to apply.
- 13.7. Both parties acknowledge that the Fees for Schedule 2 - Pricing Schedule may be reviewed annually from the Commencement Date and are fixed between annual reviews. This sub-clause in no way invalidates ACC's right to seek Fee decreases pursuant to other provisions contained in this Agreement.
- 13.8. Notwithstanding the provisions of any of the foregoing sub-clauses of this clause, either party may at any time apply for a change in the Fee applicable to a Service. Such applications need not be supported by documentation.
- 13.9. The prices described in this Agreement are the total prices payable in connection with the Services provided to ACC by the Supplier under this Agreement (including account management, supply of Services to ACC, attending meetings, quotations, staff costs, surveys, invoices and reporting to ACC). The Supplier acknowledges and agrees that the only expenses that may be charged to ACC are the expenses permitted to be claimed in Schedule 2 – Pricing Schedule. No management Fee or any other additional amount may be charged to ACC without written confirmation from a relevant Authorised Representative of ACC.
- 13.10. Any agreement to change the Fee under this clause 13 must be given effect by means of a Variation to this Agreement under clause 18, and the provisions of that Variation will apply accordingly.



14. COST REDUCTION PROGRAMME

- 14.1. During the Term of this Agreement, the Supplier will use reasonable endeavours to review the manner in which it provides the Services and identify cost saving measures which the parties may discuss in good faith and, if agreed will be documented by means of a variation.

15. BUSINESS CONTINUITY AND DISASTER RECOVERY

- 15.1. The Supplier will maintain at all times adequate disaster recovery arrangements that comply with Good Industry Practice and will use all reasonable endeavours to ensure that such disaster recovery arrangements are fully implemented to the extent reasonably practicable whenever necessary.
- 15.2. The Supplier will provide ACC with details of its after-hours contact points.
- 15.3. The Supplier will at all times maintain and abide by the requirements of its Disaster Recovery Plan and its Business Continuity Plan (each a "BCP"), both attached to Schedule 5 - Business Continuity and Disaster Recovery Plan.
- 15.4. ACC reserves the right to reject any changes that the Supplier may make to each BCP provided to ACC, but will not withhold approval without reasonable cause.
- 15.5. The Supplier will, to the extent that it is reasonable and prudent to do so:
- 15.5.1. review each BCP every 12 months from the Commencement Date;
 - 15.5.2. test each BCP every 12 months from the Commencement Date;
 - 15.5.3. implement any resulting changes, where approved by ACC, into the BCP every 12 months from the Commencement Date; and
 - 15.5.4. Report the results of performance of clauses 15.5.2 and 15.5.3 to ACC.

16. CHANGE OF CONTRACTOR

- 16.1. The Supplier acknowledges and agrees that prior to the Date of Expiry of this Agreement, or earlier termination in accordance with the Agreement, ACC must be able to maintain continuity of the Services, whilst inviting proposals from the marketplace including other panel providers, putting a new service supplier in place or taking over the Services itself (should it so desire).
- 16.2. The Supplier will co-operate to ensure that any hand-over of the Services to another supplier or to ACC itself is conducted smoothly and professionally. The Supplier is not required to provide access to or disclose or make available its know-how, techniques, Intellectual Property Rights or information that is confidential to it in complying with this requirement.
- 16.3. In the event of the need for a hand-over of the Services either to ACC or another service provider, the Supplier will continue to provide the Services until the Date of Expiry or Date of Termination. The Supplier will also co-operate with ACC and any incoming service provider to develop and implement a phase in/phase out plan with a mutually agreed schedule for hand-over of responsibilities to the incoming service provider. This schedule will provide for full and uninterrupted provision of the Services. The Supplier and ACC will agree the amounts the Supplier may charge ACC for these hand-over services before the services start.
- 16.4. The Supplier will provide all reports and additional information required for transition, at an agreed cost to ACC (such cost to be calculated in accordance with the Supplier's rate card), and without limitation on ACC's ability to access or retrieve such reports or additional information.
- 16.5. This clause 16 is subject to clause 1.5.

17. PARTIES REMAIN RESPONSIBLE

Assignment/Subcontracting

- 17.1. The Supplier shall not assign, transfer, subcontract or otherwise dispose of any benefits, rights, liabilities or obligations under this Agreement or any part of this Agreement without the prior written consent of ACC, such consent not to be unreasonably withheld.



Ensure subcontractors bound

- 17.2. The Supplier shall ensure there is included in every agreement entered into with a subcontractor, provisions which enable the Supplier to discharge and secure compliance with its obligations under this Agreement.

Supplier not relieved

- 17.3. The assignment, transfer, subcontracting or other disposal of any of the Supplier's liabilities or obligations shall not relieve the Supplier from any liability or obligation.

Change in Control

- 17.4. If at any time there is a change in the shareholding or ownership of the Supplier that alters the effective control of the Supplier (other than where the Supplier, or its parent company is a company whose shares are listed on any recognised Stock Exchange) without the Supplier obtaining ACC's prior written approval to the change, then ACC may, within 15 Working Days of ACC becoming aware of the change, give to the Supplier not less than two calendar months' Notice of the termination of the Term of this Agreement. The Term of this Agreement shall end upon the later of two calendar months after the date upon which the Notice is received by the Supplier and any date specified in the Notice as the date upon which the Term shall come to an end (the relevant date being the "Termination Date").

18. VARIATION OF AGREEMENT

- 18.1. No Variation of this Agreement shall be effective, unless it is agreed in writing and signed by both parties or unless it is made pursuant to clause 18.2 or clause 18.3.

ACC may amend specifications

- 18.2. After consultation and agreement with the Supplier, ACC may at any time give Notice to the Supplier that the provisions of any one or more of the Schedules to this Agreement (excluding prices in Schedule 2 - Pricing Schedule) are amended or added to with effect from a date stated in the Notice, and this Agreement shall be deemed varied accordingly with effect from that date, provided that Notice may not be given if this would have the effect of reducing the prices payable under this Agreement. The Supplier may claim any additional costs from ACC that it can show that it will suffer as a result of the Variation, and upon obtaining ACC's agreement, ACC shall be liable to pay such additional costs to the Supplier. Once the parties have reached agreement on the Variation, the parties will formalise the Variation in writing and will sign such Variation. If agreement cannot be reached, either party may require the matter to be resolved under clause 25.

Variations to give effect to Government Policy Changes

- 18.3. Notwithstanding clause 18.2, where a change in legislation or regulations, or a ministerial direction under the Accident Compensation Act 2001 is stated by Notice given to the Supplier by ACC to have the effect of requiring this Agreement to be varied in any respect, this Agreement shall thereupon be deemed to be varied in that respect, and ACC shall not be liable for any loss or additional costs suffered or incurred by the Supplier as a result unless ACC agrees otherwise.

19. PERFORMANCE NOTICE

- 19.1. Without limiting any other rights or remedies of ACC, ACC may issue a Performance Notice to the Supplier in respect of any:
- 19.1.1. breach of this Agreement by the Supplier that is not a trivial breach (where "trivial breach" means a breach that is trivial in nature or, which has no discernible adverse impact on ACC); or
 - 19.1.2. failure to achieve a KPI or other performance measure, (such breach or failure being a "Performance Issue").
- 19.2. If ACC issues a Performance Notice to the Supplier, the Supplier must (at its own cost):
- 19.2.1. investigate the cause of the Performance Issue and issue a written report to ACC which responds to the alleged Performance Issue, and where appropriate describes the cause of the Performance Issue in detail and the actions proposed to be taken by the Supplier;



- 19.2.2. remedy or mitigate the effects of any proven Performance Issue, or the circumstances or issue giving rise to that Performance Issue, as soon as reasonably practicable and provide ACC with a written report of the action taken; and
- 19.2.3. take all reasonable action to prevent a recurrence of the relevant Performance Issue and notify ACC in writing of any such action taken.
- 19.3. If a Performance Issue that is reasonably capable of remedy has not been remedied to ACC's reasonable satisfaction within 20 Working Days after ACC has issued the Performance Notice (or such longer period (if any) specified in the Performance Notice by ACC in its sole and absolute discretion), ACC may issue to the Supplier a further notice which specifies that the relevant Performance Issue has not been remedied ("Unresolved Performance Notice").
- 19.4. The fact that ACC issues a Performance Notice or an Unresolved Performance Notice in relation to any breach of this Agreement does not prevent ACC from claiming, at any time, that the relevant breach is, or was, a Material breach for the purposes of clause 22.1.

20. TERMINATION OR SERVICE CANCELLATION BY NOTICE

By Notice as of right

- 20.1. Either party may, without incurring any liability to the other party for damages or other compensation, at any time give to the other party no less than:
- 20.1.1. six calendar months' Notice of termination of the Term of this Agreement; or
- 20.1.2. six calendar months' Notice of the cancellation from this Agreement of a particular Service, without limiting paragraph 4.4 of Schedule 1 – Scope of Services.

Termination Date

- 20.2. The later of six calendar months after the date upon which such Notice is received by the party receiving the Notice of termination and any date specified in the Notice as the date upon which the Term shall come to an end, shall be the date upon which the Term of this Agreement shall come to an end (the "Termination Date").

Date of Cancellation

- 20.3. The later of six calendar months after the date upon which such Notice is received by the party receiving the Notice of termination and any date specified in the Notice as the date at which the Service is to be cancelled, shall be the date when the Service is removed from this Agreement ("Date of Cancellation"). From the Date of Cancellation the Supplier is released from the obligation to provide that particular Service, and ACC is released from the obligation to pay for that Service provided after that date.

21. TERMINATION ON INSOLVENCY

Immediate Termination without Prior Notice

- 21.1. The Term of this Agreement shall end immediately (without any requirement for prior Notice) by reason of a deemed breach of this Agreement by the Supplier on the bankruptcy or liquidation of the Supplier. (This shall not apply, however, in the case of a liquidation of the Supplier for the purpose of reconstruction or amalgamation where the terms have been approved by ACC.)

Termination Date

- 21.2. The date the Supplier is adjudicated bankrupt or the date of appointment of a liquidator in respect of the Supplier is the date upon which the Term shall end (the relevant date being the "Termination Date").

Immediate Termination on Notice

- 21.3. If an Insolvency Event has occurred in respect of the Supplier and if, at any time thereafter, ACC gives Notice of termination of the Term of this Agreement to the Supplier, the Term of this Agreement shall end immediately by reason of a deemed breach of this Agreement by the Supplier.

Termination Date

21.4. The date a Notice given by ACC in accordance with clause 21.3 is received by the Supplier is the date upon which the Term shall end (the relevant date being the "Termination Date").

22. TERMINATION FOR BREACH OR PERFORMANCE ISSUE

Notice of breach

- 22.1. If either party considers that the other has committed a Material breach of any provision of this Agreement or either party has provided information to either party that is misleading or inaccurate in any Material respect, that party may give Notice to the other specifying the breach and giving the other party ten (10) Working Days for the breach to cease, and/or to remedy the breach if it is capable of remedy.
- 22.2. If the Material breach has not ceased or if the Material breach being capable of remedy has not been remedied within the period of ten (10) Working Days, then the party which gave the Notice may forward to the other party a Notice of termination of the Term of this Agreement.

Performance Issue

- 22.3. ACC may terminate this Agreement with immediate effect by giving Notice to the Supplier:
- 22.3.1. if the Supplier receives three or more validly issued Performance Notices during any period of three (3) consecutive months; or
- 22.3.2. if the Supplier receives three (3) or more of either, or a combination of, the following:
- 22.3.2.1. validly issued Performance Notices in respect of any Performance Issue not reasonably capable of remedy within 20 Working Days of receipt of the relevant Performance Notice; or
- 22.3.2.2. validly issued Unresolved Performance Notices, during any period of 12 consecutive months; or
- 22.3.3. if the Supplier receives four (4) or more of either, or a combination of, the following:
- 22.3.3.1. validly issued Performance Notices in respect of any Performance Issue not reasonably capable of remedy within 20 Working Days of receipt of the relevant Performance Notice; or
- 22.3.3.2. validly issued Unresolved Performance Notices, during any period of 18 consecutive months.

Termination Date

- 22.4. The Term of this Agreement shall end upon the date of receipt by the other party of the Notice of termination given under clause 23.1 or clause 22.3 or any date specified in the Notice as the date upon which the Term shall come to an end (the relevant date being the "Termination Date").

Release from Termination Date

- 22.5. From the Termination Date, the Supplier is released from the obligation to provide any further Services, and ACC is released from the obligation to pay for Services provided after the Termination Date.

Termination for fraud

- 22.6. If ACC considers on reasonable grounds that the Supplier has defrauded ACC (whether or not ACC prosecutes the Supplier) ACC will consider this to be a Material breach and may terminate this Agreement immediately by providing Notice to the Supplier.

Termination of Agreement or Service

- 22.7. Any right of ACC to terminate this Agreement under this clause 22 may be exercised in relation to the entire Agreement or the provision of a particular Service.



23. TERMINATION OR EXPIRY OF TERM - RIGHTS PRESERVED

Release from Termination Date or Date of Expiry

- 23.1. Subject to clause 1.5, from the Termination Date or the Date of Expiry, the Supplier is freed from the obligation to provide any further Services, and ACC is freed from the obligation to pay for Services provided after that date.

Termination or Expiry without Prejudice to Rights

- 23.2. Termination in accordance with this Agreement or through the expiry of the Term shall be without prejudice to the rights, other remedies and obligations of either party under this Agreement or under the Law which may have arisen before or on the Termination Date or the Date of Expiry, and such rights, other remedies and obligations continue to have effect and may be enforced after the relevant date. Termination shall also be without prejudice to any other rights of the party who gave the Notice of termination. ACC may deduct any amount to which it is entitled as a result of the Supplier's breach of this Agreement from moneys otherwise payable to the Supplier.

Clauses that remain in force

- 23.3. The clauses that by their nature should remain in force on expiry or termination of this Agreement do so, including clauses 1.5, 12, 16, 23, 24, 25, 30, 35, 36, 37, 38, 39, 40, 41 and 43.

24. INDEMNITY

- 24.1. Each party will indemnify, and will keep indemnified the other party against all claims, costs (including solicitor and client costs), liabilities and losses suffered or incurred by that other party as a result of any act or omission by the first party in respect of this Agreement or to any alleged breach by the first party of any Law, except to the extent that the same arises as a result of any act or omission of the other party. ACC may deduct any amount to which it is entitled to be so indemnified from moneys otherwise payable to the Supplier. A Party wishing to rely on this clause must inform the other party as soon as the potential claim is identified. The Party relying on this clause must follow the other party's reasonable instructions to mitigate loss or damage in relation to the claim.

25. DISPUTES

Step to resolve disputes

- 25.1. The parties agree to use their best endeavours to resolve any dispute or difference that may arise under this Agreement. The following process will apply to disputes:
- 25.2. Each party must notify the other if it considers a matter is in dispute. The Contract Managers will attempt to resolve the dispute through direct negotiation. If the Contract Managers have not resolved the dispute within ten (10) Working Days of notification, they will refer it to the parties' Senior Managers for resolution.
- 25.3. If the Senior Managers have not resolved the dispute within ten (10) Working Days of it being referred to them, the parties shall refer the dispute to mediation or some other form of alternative dispute resolution agreed by the parties.

Mediation

- 25.4. If a dispute is referred to mediation, the mediation will be conducted:
- 25.4.1. by a single mediator agreed by the parties or if they cannot agree, appointed by the President of the New Zealand Law Society or their delegate;
 - 25.4.2. on the terms of the Resolution Institute standard mediation contract (New Zealand version) (or if no New Zealand version exists, a contract agreed by both parties); and
 - 25.4.3. at a fee to be agreed by the parties or if they cannot agree, at a fee determined by the President of the New Zealand Law Society or their delegate.
- 25.5. Each party will pay its own costs of mediation or alternative dispute resolution under this clause 25.

Parties to continue to comply with Agreement



- 25.6. Notwithstanding the existence of a dispute, the parties shall continue to fully comply with their obligations under this Agreement in accordance with and subject to its provisions.

Taking court action

- 25.7. Each party agrees not to start any court action in relation to a dispute until it has complied with the process described in clause 25, unless court action is necessary to preserve a party's rights.

26. NOTICES

Sending

- 26.1. All Notices and other communications provided for or permitted under this Agreement shall be sent by mail with postage prepaid, or by hand delivery or by email to the address or person specified in Schedule 4 - Contact Details.

Deemed time of giving

- 26.2. All such Notices or communications shall be deemed to have been duly received:
- 26.2.1. four (4) Working Days after being deposited in the mail by the sender with all postage prepaid;
 - 26.2.2. on delivery when delivered by hand by or on behalf of the sender;
 - 26.2.3. if sent by email, at the time the email enters the recipient's information system as evidenced by a delivery receipt requested by the sender and is not returned undelivered or as an error.

Deemed time of delivery

- 26.3. A Notice received on a day that is not a Working Day or after 5pm on a Working Day will be considered to be received on the next Working Day.

27. NO EXTENSION OR RENEWAL

- 27.1. Nothing in this Agreement shall be taken or read as expressly or impliedly warranting that the Supplier is entitled to an extension or renewal of this Agreement at any time, or to any further agreement with ACC. The Supplier shall not have any claim against ACC for any costs or expenses incurred in anticipation of a further agreement or that this Agreement will be extended or renewed, or for any anticipated income, profits or other sums whatsoever.

28. WAIVER

- 28.1. No failure or delay on the part of either party to exercise any right, power or privilege under this Agreement shall operate as a waiver nor shall any single or partial exercise or the exercise of any other right or power or privilege whether arising under the Law or this Agreement.

29. INSURANCE

Insurance policies

- 29.1. The Supplier must effect and maintain with a reputable insurer for the term of this Agreement, and for 3 years following termination or expiry, the following types of insurance:
- 29.1.1. public liability insurance;
 - 29.1.2. professional indemnity insurance; and
 - 29.1.3. other insurance reasonably required and notified to you by ACC,
- in each case to be held with reputable insurers and the amount and terms of such insurance cover to be adequate to protect ACC from non-performance of the Supplier's obligations under this Agreement, having regard to clause 41.

Evidence of Insurance

- 29.2. The Supplier is required to provide ACC with evidence of its current insurances and evidence that all premiums have been paid as a condition precedent to the commencement of this Agreement.



Prompt information

29.3. The Supplier must promptly inform ACC of:

29.3.1. any claims relating to this Agreement against the insurance policies referred to in clause 29.1; and

29.3.2. any material change to, cancellation or non-renewal of, such policies.

Currency of insurance

29.4. The Supplier must, upon request by ACC, provide ACC with evidence that all insurance cover required by clause 29.1 is current and meets the other requirements of this Agreement, and evidence showing that all premiums have been paid.

30. INTELLECTUAL PROPERTY

30.1. Ownership of Intellectual Property Rights

30.1.1. Pre-existing Intellectual Property Rights remain the property of their current owner.

30.1.2. All Intellectual Property Rights in any modifications, adaptations and additions to Pre-existing Intellectual Property Rights that are developed, commissioned or created under or in connection with this Agreement will be owned by the owner of the relevant Pre-existing Intellectual Property Rights.

30.1.3. Subject to clause 30.1.2 and clause 30.1.5, New Intellectual Property Rights in all original work included in the materials created by the Supplier and its employees in or in connection with the Services or this Agreement will be owned by the Supplier on its creation.

30.1.4. The Supplier grants to ACC a non-transferable, perpetual, non-exclusive, irrevocable, unlimited, worldwide and royalty-free license to use, but not sub-license, for any purpose related to ACC's usual stator functions, all Intellectual Property Rights which are created as a result of, or in connection with the Services or otherwise in connection with this Agreement that are not owned by ACC (the "Licensed Intellectual Property"). This license includes the right to use, copy, and modify the Licensed Intellectual Property, as necessary to allow ACC to carry out its usual or statutory functions.

30.1.5. For the avoidance of doubt, all Intellectual Property Rights in the decisions provided by a Reviewer as part of the Reviewer Services shall become the property of ACC when they are created.

30.1.6. The Supplier must not use ACC's branding or logo, or other Intellectual Property Rights of ACC, without first obtaining written agreement from ACC's Contract Manager. ACC hereby provides its permission for the Supplier to use ACC's reporting templates and decision templates in order for the Supplier to perform the Services.

30.2. Supplier indemnity

30.2.1. The Supplier warrants that it is legally entitled to do the things stated in clause 30.1 with the relevant Intellectual Property Rights in the Services.

30.2.2. The Supplier warrants that:

30.2.2.1. the Pre-existing Intellectual Property Rights and New Intellectual Property Rights provided by the Supplier and incorporated in the Services do not infringe the Intellectual Property Rights of any third party; and

30.2.2.2. the Services and any other materials provided by the Supplier, and ACC's use of them, will not infringe any Intellectual Property Rights of any third party.

30.2.3. The Supplier indemnifies ACC in respect of any expenses, damage, loss or liability incurred by ACC in connection with any third party that the delivery of the Services and any other materials provided by the Supplier to ACC or ACC's use of them, infringes a third party's rights. This indemnity is not subject to any limitation or cap of liability that may be stated elsewhere in this Agreement.



31. FORCE MAJEURE

- 31.1. The Supplier's obligations to perform the Services (or any part thereof) will be suspended so long as and only to the extent that fulfilment of the obligations and performance of the relevant part of the Services is prevented by reason of Force Majeure. Subject to the remainder of this clause 31, neither party will be liable for any act, omission or failure by it under this Agreement to the extent that act, omission or failure results directly from a Force Majeure event.
- 31.2. A suspension of the Services under clause 31.1 by reason of Force Majeure, shall not be effective until such time as the Supplier has given Notice to ACC of the occurrence of the Force Majeure event and claiming the suspension of Services pursuant to clause 31.1.
- 31.3. When the Supplier is claiming suspension of Services pursuant to clause 31.1, the Supplier must, by the exercise of Good Industry Practice, use all reasonable endeavours to:
- 31.3.1. overcome, and mitigate the effects of, the Force Majeure;
 - 31.3.2. agree arrangements with ACC to overcome, and mitigate the effects of, the Force Majeure; and
 - 31.3.3. resume and complete its obligations under this Agreement as soon as reasonably practicable.
- 31.4. If by reason of Force Majeure the Supplier is unable to perform any obligation under this Agreement for a period of ten (10) Working Days ACC may on giving five (5) Working Days' Notice to the Supplier cancel this Agreement.
- 31.5. Cancellation of this Agreement under this clause 31 shall not prejudice the rights of ACC against the Supplier in respect of any matter or thing occurring under this Agreement before cancellation.

32. HEALTH AND SAFETY

- 32.1. In performing its obligations under this Agreement, the Supplier must:
- 32.1.1. comply with all relevant health and safety legislation including the Health and Safety at Work Act 2015 ("HSW Act 2015");
 - 32.1.2. so far as reasonably practicable, ensure the health and safety of:
 - (a) ACC's and the Supplier's personnel;
 - (b) Reviewers; and
 - (c) the Customers;
 - 32.1.3. take all practical steps to ensure that no act or omission gives rise to, or is likely to give rise to, the issue of an improvement or prohibition notice, enforcement action or a prosecution under any health and safety legislation (including the HSW Act 2015) against ACC or the Supplier;
 - 32.1.4. advise ACC in writing as soon as possible of:
 - a) any hazards or risks that the Supplier or its subcontractors or Reviewers identifies or creates, and all accidents, incidents and close calls, relating to the Services on ACC's premises or otherwise within ACC's control (using the online form provided by ACC);
 - b) all notifiable events (as defined in the HSW Act 2015) relating to the Services (using the online form provided by ACC) and events required to be notified to ACC pursuant to ACC's online health and safety reporting tool (available at <https://www.acc.co.nz/for-providers/report-health-safety-incidents/#incidents-you-should-report>) (as updated from time to time);
 - c) any contact by any regulatory agency in relation to any health, safety or environmental matter relating to the Services (unless the Supplier is prohibited by law from so advising ACC);
 - d) comply with ACC's reasonable instructions in relation to any matter referred to in sub clause (32.1.4), including the "Third Party Health and Safety Incident Reporting" at Annex 2 of Schedule 1 and the "Provider Health & Safety Risks" at Annex 3 of Schedule 1; and



- e) use any incident escalation process that is agreed between the parties.
- 32.2. **Right of removal:** The Supplier must promptly remove from any site any employee or agent of the Supplier (or employee or agent of any subcontractor of the Supplier), performing the Services or any Reviewer providing Review Services, as ACC may reasonably require.
- 32.3. **Work planning:** Prior to commencing the Services both parties shall:
- 32.3.1. meet and consult (with any other suppliers or third parties as may be required) on the security, health and safety policies, safety and works requirements and any other local instructions for the premises the Supplier will be using to deliver Services; and
- 32.3.2. develop a health and safety plan detailing the agreed safety processes and procedures both parties are required to follow when performing any Services on those premises, and comply with that plan and detailing a representative of the Supplier to be responsible for attending to health and safety incidents. This health and safety plan must be approved by ACC before the Supplier commences the provision of the Services.
- 32.4. **Training:** The Supplier will ensure that its staff providing the Services receive regular training in health and safety procedures, including with respect to identifying potential warning signs, triggers for customer risk behaviour and de-escalation techniques.

33. STAFF SAFETY

- 33.1. At all times, the Supplier will provide a safe work environment for all persons present when conducting any review hearings, dispute resolution meetings.
- 33.2. Where the Supplier provides any in-person services, the Supplier will use venues that can be set up in line with the layout shown in Annex 4 to Schedule 1. Where this is not possible, the Supplier will advise ACC at least one Working Day prior to the review hearing that the venue does not comply with the layout shown in Annex 4 to Schedule 1 and the reasons why a compliant venue is not available. Where a venue does not comply with the layout shown in Annex 4 to Schedule 1, the Supplier is responsible for ensuring it uses the room in a way that minimises risk to the Supplier and those attending the in-person meeting.
- 33.3. The following behaviour is unacceptable and the Supplier will advise any persons present behaving in this manner that if the behaviour continues then the case conference, review hearing, or dispute resolution meeting will be stopped:
- 33.3.1. unwelcome or offensive gestures;
- 33.3.2. abusive or obscene language;
- 33.3.3. racist or sexist comments;
- 33.3.4. verbal or physical intimidation;
- 33.3.5. any verbal or written threat;
- 33.3.6. sexual harassment;
- 33.3.7. physical violence; or
- 33.3.8. defacing or destroying property.
- 33.4. The Supplier will not hold a case conference, review hearing, or dispute resolution meeting if it has reasonable cause to believe that any person present is under the influence of and impaired by alcohol, drugs or solvents.
- 33.5. The Supplier will notify ACC as soon as practicable if any incident under clauses 33.3 or 33.4 occurs.
- 33.6. The Supplier must inform ACC's Contract Manager about any follow-up action that has been taken in relation to any incident under clauses 33.3 or 33.4 (e.g. debrief/report to police/warning the customer/trespass notice) as soon as practicable after that follow-up action has been taken but no later than one Working Day after the incident has occurred.

34. ENVIRONMENTAL SUSTAINABILITY

- 34.1. The Supplier will perform the Services in a manner that gives appropriate regard to the protection of the natural environment. The Supplier will comply with all environmentally related Laws relating to the Services being offered.
- 34.2. The Supplier will ensure any opportunities for improvement in ACC's environmental performance identified by the Supplier's employees or subcontractors are reported to ACC's Contract Manager.

35. INFORMATION MANAGEMENT

- 35.1. The Supplier must:
 - 35.1.1. keep and maintain records using prudent business practice and according to all applicable Law;
 - 35.1.2. make sure the records are reasonably easy to access; and
 - 35.1.3. keep the records safe in accordance with Good Industry Practice.
- 35.2. Subject to Clause 30 (Intellectual Property) and Clause 36 (Information/Confidentiality) in this agreement, whenever, either during or after the Term of the Agreement, the Supplier is called upon to do so by ACC's Contract Manager (or their representative), the Supplier shall deliver to ACC all correspondence, documents, papers, digital library and other property of any nature which may be in its possession or power and which belongs to ACC, or relates to the affairs or business of ACC (but is not Confidential Information), provided that this power will not be exercised by ACC if it will hinder the performance of this Agreement by the Supplier.
- 35.3. Clause 35.1 extends equally to any copy of all or part of the correspondence, documents, paper, digital library or other property referred to in that clause.
- 35.4. The Supplier will provide all information in a format that can be used by ACC and within a reasonable time.
- 35.5. If the information is required in order to comply with an inquiry or ACC's statutory, parliamentary, or other reporting obligations, the Supplier must cooperate with ACC to provide the information immediately.
- 35.6. The Supplier must make the Supplier's records available to ACC during the Term of the Agreement and for 10 years after the end date (unless the Supplier has already provided them to ACC).
- 35.7. The Supplier must ensure that records provided by ACC or created for ACC are securely managed. When records are disposed of, the Supplier must ensure they are securely destroyed.
- 35.8. The Supplier will hold the ACC customer's file provided by ACC to the Supplier for a period of at least 90 Working Days after the conclusion of a review decision being issued.
- 35.9. In this clause 35, "records" means all information and data necessary to manage this Agreement and deliver the Services, including records generated by the Supplier or a Reviewer in the process of providing Services including Reviewer notes, review decision, transcript and sound recording, but does not include an ACC customer's file provided by ACC to the Supplier.

36. INFORMATION/CONFIDENTIALITY

General

- 36.1. Each party confirms that it has adequate security measures to safeguard the other party's Confidential Information from unauthorised access or use by third parties, and that it will not disclose the other party's Confidential Information, subject to clause 36.2.

No breach

- 36.2. Disclosure of information in the following circumstances shall not be a breach of clause 36.1:
 - 36.2.1. by a party on a confidential basis to its representatives, employees, contractors and agents with a need to know for the purposes of that party:
 - 36.2.1.1. providing or receiving the Services; or

- 36.2.1.2. seeking or obtaining professional advice, including from solicitors, auditors and accountants,
provided that party informs such persons of the confidential nature of the Confidential Information;
- 36.2.2. to the extent that the information has become generally available to the public other than as a result of unauthorised disclosure by a party;
- 36.2.3. to the extent that the information was or is developed independently by the party receiving the information without reference to any confidential information of the party disclosing that information;
- 36.2.4. was or is disclosed to the receiving party by a third party other than in breach of confidence by the third party and in circumstances not importing an on-going obligation of confidence in respect of the information;
- 36.2.5. to the extent that a party is required to disclose the same pursuant to Law (including the Official Information Act 1982), Ministerial direction, parliamentary convention or select committee question;
- 36.2.6. to the extent that it is necessary and reasonable for ACC to disclose certain information (such as the name of the Supplier) to ensure the efficient and uninterrupted operation of this Agreement;
- 36.2.7. if the other party gives prior written approval to the use or disclosure;
- 36.2.8. as provided in this Agreement;
- 36.2.9. to the appropriate regulatory authority because of suspected collusive or anti-competitive tendering behaviour; or
- 36.2.10. to the ACC Complaints Investigator
- 36.2.11. in accordance with a separate research agreement that has been approved by ACC including by the relevant ethics committee;
- but, in each case, any such disclosure shall be subject to the provisions of the Privacy Act 1993.

High Profile Issues

- 36.3. If, in relation to the Services or the operation of this Agreement, either party:
- 36.3.1. becomes aware of a complaint, or any issue which, in that party's opinion, is or may have media or public interest, that party will immediately advise the other party; or
- 36.3.2. is required to provide information to any person under the Official Information Act 1982 or other legislation, that party will promptly advise the other party.

37. PROTECTION OF PERSONAL INFORMATION

- 37.1. The Supplier will comply with the Health Information Privacy Code 1994 (where applicable), the Privacy Act 1993 and any other Laws relating to privacy and protection of personal information and the Supplier will:
- 37.1.1. ensure that any personal or health information a Supplier holds about an ACC customer is protected by reasonable security safeguards against loss or unauthorised access, use, modification or disclosure;
- 37.1.2. only access, collect, use, disclose, store, process, transfer or otherwise handle any information about ACC customers as instructed by ACC and as necessary to perform the Services, and for no other purpose;
- 37.1.3. appoint a privacy officer;
- 37.1.4. have a privacy policy that:
- 37.1.4.1. includes what to do if there is a privacy breach (including procedures to promptly advise ACC); and
- 37.1.4.2. complies with any reasonable ACC policy provided by ACC to the Supplier; and



- 37.1.5. comply with all reasonable directions of ACC relating to collecting, using, disclosing, deleting and otherwise managing personal information in the course of the Services, including:
- 37.1.5.1. using appropriate procedures to privacy check information before sending it;
 - 37.1.5.2. using couriers for delivery of physical documentation; and
 - 37.1.5.3. transferring data electronically using a "secure file transfer" protocol approved by ACC.
- 37.2. The Supplier will ensure that all of its personnel and subcontractors who are required to deal with personal information as part of providing the Services are made aware of, and comply with, the Supplier's obligations under this clause 37.
- 37.3. The Supplier will maintain a privacy register. The register will contain details of every breach and close call that relates to the Services in this Agreement (including meeting the requirements as defined in ACC's privacy policy provided to the Supplier from time to time). The Supplier will also document the actions taken to resolve each breach or prevent future close calls. The Supplier will provide the privacy register to ACC whenever requested.
- 37.4. The Supplier agrees that ACC may assess the Supplier's privacy policy and practices. The Supplier will cooperate with any privacy assessment, including completing self-assessments on request.
- 37.5. Without limiting clause 37.1, the Supplier shall escalate a privacy breach concerning information that relates to Services in this Agreement to ACC under the following procedure:
- 37.5.1. Any breach will be notified to ACC's Contract Manager by phone and email as soon the Supplier is aware of the breach situation.
 - 37.5.2. The Supplier and ACC will then work together to manage the consequences and implications of the breach, including in accordance with ACC's issues management procedures.
 - 37.5.3. The Supplier will not comment publicly, including to the media, about the breach without written permission of one of ACC's Contract Manager.
- 37.6. The Supplier shall, where required by ACC from time to time, provide to ACC all information required by ACC about any privacy breach, including by making available such employees or contractors of the Supplier to assist ACC manage the implications for it and its Customers arising from the breach.

38. LOCATION OF DATA

- 38.1. The Supplier must ensure that the systems it uses to store records and information relevant to the Services and this Agreement, including any cloud-based systems, are located in New Zealand or Australia. The Supplier must not transmit, transfer, process or store any records and information relevant to the Services and this Agreement outside New Zealand or Australia without ACC's express prior written consent.

39. NEW ZEALAND LAW, CURRENCY AND TIMES

General

- 39.1. This Agreement will be governed by and construed by the laws of New Zealand. All money is in New Zealand dollars, unless Schedule 2 - Pricing Schedule specifies a different currency. Dates and times are New Zealand time.

Submission to jurisdiction

- 39.2. Each of the parties irrevocably and unconditionally agree that the New Zealand courts have jurisdiction to hear and determine each suit, action or proceedings, and to settle disputes, which may arise out of or in connection with this Agreement and for those purposes irrevocably submits to the jurisdiction of the New Zealand courts.



40. PRECEDENCE

40.1. If there is any conflict or difference between the documents forming this Agreement, then the order of precedence is:

- A Variation agreed between the parties in accordance with clause 18
- Clauses 1 to 43 of this Agreement
- Schedule 1 - Scope of Services
- Schedule 2 - Pricing Schedule
- Schedule 3 - Service KPIs and SLAs
- Schedule 4 - Contact Details
- Schedule 5 - Business Continuity Plan and Disaster Recovery Plan

41. LIABILITY

41.1. **Maximum liability:** Subject to clauses 41.3 and 41.4, the maximum aggregate liability of each party to the other under or in connection with this Agreement or in respect of the Services, whether in contract, tort (including for negligence), breach of statutory duty or otherwise, must not for any event exceed \$5 million dollars.

41.2. **Exclusion of certain loss:** Subject to clause 41.3, neither party is liable to the other under or in connection with this Agreement for any claim for indirect, consequential or special loss or damage.

41.3. **No liability:** The Supplier shall not be held to be in breach of this Agreement to the extent that the breach is a direct result of an act or omission of ACC or of another ACC supplier, provided that the Supplier uses its best endeavours to minimise the impact of that breach.

41.4. **No limitation:** The limitation in clause 41.1 will not apply to:

41.4.1. any losses arising as a result of a breach by the Supplier of clause 30, clause 36 and clause 37; or

41.4.2. any fraudulent, intentionally tortious or unlawful acts or omissions of, or wilful misconduct by, the Supplier.

42. ANTI-COLLUSION CLAUSE

42.1. The Supplier must not consult or communicate with any other supplier, or potential supplier, of the Services to ACC, or enter into any arrangement or understanding with any other supplier, or potential supplier, of the Services to ACC in relation to any matter which is likely to or may have the effect of reducing competition for the Services including:

42.1.1. Prices for the Services;

42.1.2. Methods, factors or formulas used to calculate fees for the Services;

42.1.3. The quality, quantity of specifications of the Services.

43. DEFINITIONS AND INTERPRETATION

DEFINITIONS:

In this Agreement, unless the context otherwise requires:

“ACC” means Accident Compensation Corporation. ACC also refers to employees, agents, nominated representatives and its successors, and permitted contractors and/or joint ventures;

“AC Act” means the Accident Compensation Act 2001

“Accredited Employer Services” means the services described in paragraph 4.3 of Schedule 1 – Scope of Services which involve the provision of Reviewer Administration Services;

“Approved Customer Satisfaction Survey” has the meaning given to it in paragraph 2.4.1 of Schedule 1 – Scope of Services;

“Commencement Date” has the meaning given to it in clause 1.1;

“Confidential Information” means information that:

- (a) is by its nature confidential;
- (b) is marked by either party as ‘confidential’, ‘in confidence’, ‘restricted’ or ‘commercial in confidence’
- (c) is provided by either party or a third party ‘in confidence’
- (d) either party knows or ought to know is confidential, or
- (e) is of a sensitive nature or commercially sensitive to either party;

“Conflict of Interest” arises if a party or its personnel’s or contractors’ personal or business interests or obligations do or could conflict or be perceived to conflict with its obligations under this Agreement. It means that its independence, objectivity or impartiality can be called into question. A Conflict of Interest may be:

- (a) actual: where the conflict currently exists
- (b) potential: where the conflict is about to happen or could happen, or
- (c) perceived: where other people may reasonably think that a person is compromised;

“Customer” means the ACC claimant, applicant, employer or levy payer (as applicable) in relation to a Referred Matter;

“Date of Expiry” means the Initial Term Expiry Date and/or the Extension Term Expiry Date, as applicable;

“Dispute Resolution Services” means the services described in paragraph 5 of Schedule 1 – Scope of Services;

“Extension Term Expiry Date” has the meaning given to that term in clause 1.2;

“Fees” means the amount payable to the Supplier for the time spent in delivery of the Services calculated on the basis stated in Schedule 2;

“Force Majeure” means an event beyond the reasonable control of the party immediately affected by the event. If the party claiming could have prevented or overcome any risk or event by taking reasonable care, it is not a force majeure event. Examples of force majeure events include:

- (a) ‘acts of God’ such as lightning strikes, earthquakes, tsunamis, volcanic eruptions, floods, storms, explosions, fires, pandemics and any natural disaster;
- (b) acts of war (whether declared or not) such as invasion, actions of foreign enemies, military mobilisation, requisition or embargo;
- (c) acts of public enemies such as terrorism, riots, civil commotion, malicious damage, sabotage, rebellion, insurrection, revolution or military usurped power or civil war; and/or
- (d) contamination by radioactivity from nuclear substances or germ warfare or any other such hazardous properties;

“Good Industry Practice” means using standards, practices, methods and procedures conforming to all applicable Law and exercising that degree of skill, care, diligence, prudence and foresight that would reasonably be expected from a reputable, efficient, professionally qualified, competent and skilled organisation experienced in carrying out activities of a similar nature, scope and complexity to the Services;

“Initial Term Expiry Date” has the meaning given to that term in clause 1.1;

“Insolvency Event” means:

- (a) the appointment of a receiver or receiver and manager or statutory manager in respect of the whole or part of the activity or property of the Supplier;
- (b) the Supplier entering into, or resolving to enter into, a scheme of arrangement or composition for the benefit of creditors or any class of creditors;

- (c) the Supplier suspending or stopping payment to its creditors generally or ceasing to carry on business as normal, or threatening or stating that it will do any of those things;
- (d) an event analogous in nature to those listed in parts (a) to (c) of this definition, under the laws of any relevant jurisdiction;

“Intellectual Property Rights” means all industrial and intellectual property rights and interests of any kind including but not limited to copyright, trade mark, design, artwork, patent, company names or other proprietary rights;

“KPIs” or “Key Performance Indicators” means the key performance indicators identified as such in Schedule 3;

“Law” means any New Zealand statutes, rules of common law, regulations, ordinances or bylaws or subordinate legislation in force from time to time and, in the case of the Supplier, includes any applicable industry codes of conduct or codes of practice, and any contract or other enforceable obligation of the Supplier;

“Letter of Engagement” means a letter from ACC engaging a Reviewer to undertake Review Services;

“Material” and “Materially” means, in relation to any state of affairs, event or effect, anything which in a major way affects or will affect the ability of a party to perform or comply with the terms of this Agreement;

“New Intellectual Property Rights” means Intellectual Property Rights developed under or in connection with this Agreement after the Commencement Date of this Agreement;

“Notice” means a formal or legal communication from one party to the other that meets the requirements of clause 26;

“Performance Notice” means a written notice given by ACC to the Supplier under clause 19 which specifies a Performance Issue;

“Pre-existing Intellectual Property Rights” means Intellectual Property Rights developed before the Commencement Date of this Agreement, or developed independently of this Agreement;

“Referred Matter” means a matter in relation to which the Supplier is providing Reviewer Administration Services, Dispute Resolution Services or Accredited Employer Services and for which Reviewers are providing Review Services; and **“Refer”** has a corresponding meaning;

“Senior Manager” means the persons listed in Schedule 4 - Contact Details as ACC's Senior Manager and the Supplier's Senior Manager respectively, as updated by the parties from time to time by Notice in writing to the other party;

“Reviewer” means a person engaged by ACC and facilitated by the Supplier to provide Review Services as described in Part 5 of the AC Act, and who has been provided with, and agreed to, a Letter of Engagement from ACC;

“Review Services” means the review services provided by Reviewers as described in Part 5 of the AC Act;

“Reviewer Administration Services” means the services described in paragraph 3.2 of Schedule 1 - Scope of Services, and includes Accredited Employer Services;

“Services” and “Service” means the Services to be provided by the Supplier under this Agreement as more particularly set out in the Specifications in Schedule 1 - Scope of Services, and includes the Reviewer Administration Services and the Dispute Resolution Services, as applicable;

“Supplier” has the meaning given to that term in the signing page of this Agreement and includes that party's employees, agents, contractors, successors and permitted assignees;

“Term” means the period between the Commencement Date, and the Date of Expiry or Date of Termination (whichever occurs first);

“Unresolved Performance Notice” has the meaning given to that term in clause 19.3;

“Variation” means a variation to this Agreement in accordance with clause 18;

“Working Day” means any day when most businesses are open for business in New Zealand. It excludes Saturdays, Sunday and public holidays. A Working Day starts at 8.30am and ends at 5.00pm.

A handwritten signature in black ink, appearing to be 'R. G. W.', is located in the bottom right corner of the page.

INTERPRETATION:

Defined Expressions: Expressions defined in the main body of this Agreement bear that meaning in the whole of this Agreement including the schedules and the recitals unless the context otherwise requires.

Gender: Words importing one gender shall include all genders.

Schedules etc.: References to schedules, clauses and sub-clauses are references to schedules, clauses and sub-clauses of this Agreement.

Plural and Singular: Words importing the singular shall include the plural and vice versa unless the context otherwise requires.

Headings: Clause and other headings are for ease of reference only and shall not be deemed to form any part of the context or to affect the interpretation of this Agreement.

Statutory provisions: References to statutes, regulations, ordinances, bylaws or other instruments include any amendment, substitution or re-enactment.

Documents: references to any document (however described) are references to that document as modified, novated, supplemented, varied or replaced from time to time, and in any form, whether paper based or in electronic form.

Inclusive Expressions: wherever the words **includes** or **including** (or any similar words) are used, they are deemed to be followed by the words "without limitation".

RELEASED UNDER THE ACT
OFFICIAL INFORMATION ACT

Schedule 1 - Scope of Services

1. OBJECTIVES

- 1.1. ACC and the Supplier acknowledge and agree that the key objectives they wish to achieve as part of the Services are:
 - 1.1.1. early customer engagement giving Customers the opportunity to be heard; and
 - 1.1.2. timely resolution of disputed decisions through Review and/or dispute resolution (as applicable).

2. GENERAL REQUIREMENTS

- 2.1. **Regular Reporting:** The Supplier will provide: the monthly reports, by no later than the 5th day of each month. The monthly reports will consist of:
 - 2.1.1. performance: against each of the KPI's and the adjournment service level (monthly and year to date);
 - 2.1.2. work on hand, including as part of the Accredited Employer Services:
 - 2.1.2.1. total reviews/ADR on hand (month and year to date);
 - 2.1.2.2. total reviews received (month and year to date); and
 - 2.1.2.3. total adjournments (month and year to date) and rationales;
 - 2.1.3. work disposed of, including as part of the Accredited Employer Services:
 - 2.1.3.1. total reviews completed (month and year to date); and
 - 2.1.3.2. total ADR completed (month and year to date);
 - 2.1.4. health and safety incidents;
 - 2.1.5. continuous improvement; and
 - 2.1.6. such additional reports as ACC requests from time to time, and such reports to be in the form of the reporting template(s) provided by ACC.
- 2.2. **ACC referral:** When ACC receives an application for review under Part 5 of the AC Act, ACC may Refer the matter to Review Services, after which the Supplier will provide Reviewer Administration Services in respect of each such review and/or Dispute Resolution Services. A matter may be resolved by a combination of Review Services and Dispute Resolution Services.
- 2.3. **General:** In providing the Services, the Supplier will:
 - 2.3.1. comply with the AC Act, and/ or Part 6 of the Accident Insurance Act 1998, Part 6 of the Accident Rehabilitation and Compensation Insurance Act 1992, Part 9 of the Accident Compensation Act 1982 and in Part 7 Accident Compensation Act 1972 and any subsequent amendments, whichever is/are applicable;
 - 2.3.2. work effectively across ACC's diverse range of Customers, appreciating and respecting the important cultural dimensions and taking account of individual customer needs;
 - 2.3.3. ensure it has sufficient capacity and resources:
 - 2.3.3.1. to provide Services as and when required by ACC; and
 - 2.3.3.2. to deal with large claim files (which may be longer than 6000 pages), which may include a significant amount of technical / medical detail.
 - 2.3.4. as soon as the Supplier is aware, advise ACC of any proceeding that has commenced relating to the Services in which the Supplier has been named as a respondent.;
- 2.4. **Customer Satisfaction Survey:**
 - 2.4.1. The Supplier will prepare a customer satisfaction survey and will provide such customer satisfaction survey to ACC for approval. Once approved by ACC, the customer satisfaction survey will be the "Approved Customer Satisfaction Survey".



- 2.4.2. The Supplier will be required to send the Approved Customer Satisfaction Survey to each relevant Customer:
- 2.4.2.1. in the case of Reviewer Administration Services, prior to the Reviewer issuing its review decision; and
 - 2.4.2.2. in the case of Dispute Resolution Services, at an appropriate time following the meeting described in paragraph 5.6.
- 2.5. **Complaints management process:** The Supplier must establish a complaints management process and appoint an internal complaints investigator. The internal complaints investigator must be a separate individual to the person who provides the Services in respect of a particular Referred Matter.
- 2.6. **In-person meetings:**
- 2.6.1. Where required, the Supplier will hold or arrange for, as applicable, in-person meetings in Hawkes Bay (Hastings/Napier), Whangarei, Auckland, Hamilton, New Plymouth, Wellington, Blenheim/Nelson, Christchurch or Dunedin.
 - 2.6.2. Venues where in-person meetings will occur:
 - 2.6.2.1. will either comply with ACC's minimum Building Security standards, as attached to Annex 1 of Schedule 1, or where a venue does not comply with the minimum Building Security standards, the Supplier will take reasonable steps to minimise any risk to the Supplier and those attending the in-person meeting caused by such non-compliance; and
 - 2.6.2.2. subject to clause 33.2, will be able to be set up in accordance with the layout shown in Annex 4 to this Schedule 1.
 - 2.6.3. The Supplier is responsible for carrying out annual audits of the venues, and rooms, in which in-person meetings occur to check that the venues and rooms meet the standards described in paragraph 2.6.2. Where the Supplier identifies any non-compliance with the standards during an audit, the Supplier will notify ACC of such non-compliance and, where possible, will take reasonable action to address such non-compliance.
- 2.7. **Deemed Review Decision:**
- 2.7.1. The Supplier will provide the Services in a manner so as to avoid a "deemed review decision" occurring under section 146 of the AC Act. This may involve the Supplier organising a hearing date so as to avoid a "deemed review decision" occurring.
 - 2.7.2. Under section 146 of the AC Act, a deemed review decision means that the Reviewer is deemed to have made a decision on a review in favour of the applicant for review on the date which is three months after the review application is received by ACC if:
 - 2.7.2.1. a date for a review hearing has not been set within three months after the date that a review application is received by ACC; and
 - 2.7.2.2. the applicant for review did not cause or contribute to the delay.
 - 2.7.3. Where ACC has provided instructions in a timely manner and the actions or inaction of the Supplier in providing the Services result in a deemed decision under section 146 of the AC Act, ACC may, by notice, claim from the Supplier costs (including amounts ACC is required to pay to a Customer), liabilities and losses suffered or incurred by ACC as a direct result of the deemed decision. Determination of whether ACC will make a claim against the Supplier under this paragraph will lie with ACC's Head of Operations following a recommendation from ACC's Manager Resolution Services and following consultation with the Supplier's Contract Manager.
- 2.8. **Staffing:**
- 2.8.1. Any contract of service or contract for services entered into with staff providing Reviewer Administration Services or Dispute Resolution Services will include a provision which requires the individual to comply with all the duties and obligations imposed under the AC Act including the obligation to act independently of ACC.
 - 2.8.2. The provision of all staff will be at the Supplier's expense.
 - 2.8.3. At all times those employees interfacing with the public will be employees who are appropriate for that work and have the degree of skill care and diligence of a competent

