

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 9(2)(b)(ii)

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".

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



professional required to pleasantly and helpfully deal with the public in all circumstances in a manner consistent with the requirements of the AC Act.

- 2.8.4. Non performing staff will be managed by the Supplier in accordance with its performance management policies or contracts respectively.

3. REVIEWER ADMINISTRATION SERVICES

3.1. Overview:

3.1.1 Application: This clause 3, clause 4, and clause 6 apply if Reviewer Administration Services are included in the list on the first substantive page of this Agreement under the heading "Services included in this Agreement".

3.1.2 ACC referral: When ACC receives an application for review under Part 5 of the AC Act, ACC may Refer the matter to the Supplier for the Supplier to allocate the review to a Reviewer. ACC will indicate whether the Referred Matter is Referred for the Supplier to provide Reviewer Administration Services only or a combination of Reviewer Administration Services and Dispute Resolution Services.

3.2. For each Referred Matter for Reviewer Administration Services, the Reviewer Administration Services will consist of, as applicable:

- 3.2.1. undertaking case conferences;
- 3.2.2. arranging formal review hearings where the relevant Reviewers will hear the review application;
- 3.2.3. facilitating on the papers reviews, which means that ACC will provide submissions to the Supplier to provide to the Reviewer and the Reviewer will conduct the review without holding a hearing;
- 3.2.4. the provision of a documented review decision prepared by the Reviewer to advise ACC and the Customer of the outcome of the review process;
- 3.2.5. where requested by ACC, the Supplier will provide a transcript in accordance with paragraph 3.16;
- 3.2.6. engagement with Accredited Employers or their third party administrators, as described in paragraph 4 of this Schedule 1; and
- 3.2.7. promptly paying each Reviewer for the Review Services provided in accordance with the Agreement.

3.3. **Skills:** The Supplier will ensure that before providing ACC with a list of individuals who have indicated to the Supplier their interest in acting as Reviewers, the Supplier considers the individuals have the following capabilities:

- 3.3.1. a specific understanding of, and experience applying, Laws relating to ACC and Laws relating to privacy;
- 3.3.2. an understanding of, and experience applying, medico-law or clinical comprehension; and
- 3.3.3. an understanding of dispute resolution.

3.4. **Capacity:** The Supplier will ensure it has the resources, personnel and capacity to:

- 3.4.1. administer a minimum of 500 reviews per year if required. The Supplier acknowledges that ACC is under no obligation to Refer 500 reviews per year to the Supplier to administer; and
- 3.4.2. undertake case conferences within a minimum of 10 Working Days' notification from ACC.

3.5. **Video conference presence:** The Supplier agrees that it will arrange for case review hearings and if requested case conferences mainly to be conducted using video conferencing. The Supplier will be responsible for ensuring it has secure video conferencing capabilities as necessary for the Supplier to provide the Services.

3.6. **Process:**



- 3.6.1. The Supplier will provide a monthly rolling, forward schedule of Reviewer availability for case conferences at least two months in advance.
- 3.6.2. ACC will Refer reviews to the Supplier as and when required. ACC will start the process by scheduling a case conference with the Supplier, either manually or through a scheduling tool.
- 3.6.3. When Referring a matter to the Supplier, ACC will provide the Supplier with a minimum of 10 Working Days' notification of the case conference.
- 3.6.4. Once ACC has Referred a matter to the Supplier:
- 3.6.4.1. the Supplier will be responsible for carrying out all administrative functions in relation to the review process;
 - 3.6.4.2. the Supplier will allocate the review to a Reviewer to provide Review Services;
 - 3.6.4.3. the Supplier will notify the Customer of the case conference date, using the Customer's preferred method of notification;
 - 3.6.4.4. ACC will provide the Customer with information on 'what to expect' from a case conference and review hearing; and
 - 3.6.4.5. ACC will provide the Supplier (including for provision to the relevant Reviewer) and the Customer with documents and information relevant to the Referred Matter no less than 8 Working Days prior to the case conference. In respect of the Accredited Employer Services, the Accredited Employer (as that term is defined in paragraph 4.1) must provide the full file and any other information relevant to the Referred Matter prior to the case conference.
- 3.6.5. ACC will provide the relevant documents to the Supplier by electronic file transfer unless otherwise agreed by the Parties. Both parties agree that files which are transmitted via electronic file transfer up to 23.59 on a Working Day are deemed received on that day. Where electronic file transfer is used, the electronic file transfer receipt is the agreed record of time of receipt.
- 3.7. **Case conference:**
- 3.7.1. The Reviewer will undertake case conferences by teleconference, unless a Customer specifically requests a video conference. The case conference is expected to be a maximum of 30 minutes duration, unless exceptional circumstances apply.
 - 3.7.2. The Supplier must ensure a case conference is completed prior to any review hearing.
 - 3.7.3. The case conference will consist of:
 - 3.7.3.1. discussion of the matter in dispute;
 - 3.7.3.2. consideration of other options for resolution;
 - 3.7.3.3. agreeing the timetable for gathering any additional information;
 - 3.7.3.4. preparation of the parties for review; and
 - 3.7.3.5. setting the review hearing date if required.
 - 3.7.4. The case conference may result in:
 - 3.7.4.1. a withdrawn review;
 - 3.7.4.2. an agreement to proceed with alternative resolution options; and/or
 - 3.7.4.3. an agreement on a practical review hearing date, such date to allow time for the parties to prepare and gather any additional information or supporting evidence that may be required. If this is the case, the Supplier will provide written notice of the review hearing date to all parties.
- 3.8. **Withdrawal:** If for any reason a review is to be withdrawn after the Supplier has been requested to arrange a review hearing, ACC will advise the Supplier in writing as soon as reasonable of the date of the withdrawal and confirm that all other parties to the review have been advised (names and addresses). If the Supplier receives a withdrawal notification other than from ACC, the Supplier will



advise ACC in writing within one Working Day of the date of the withdrawal and confirm whether all other parties to the review (where applicable) have been advised (names and addresses). Following a withdrawal, the Supplier will be entitled to invoice ACC for the withdrawn review fee described in Schedule 2 – Pricing.

3.9. Review hearings:

- 3.9.1. The Supplier will ensure that review hearings are conducted by Reviewers in accordance with the requirements of Part 5 of the AC Act, and that the Reviewer uses an investigative approach.
- 3.9.2. Review hearings will typically be scheduled for one hour, with the Reviewer, the Customer (and any other relevant parties) and ACC using videoconference to attend (with teleconference as a back-up option).
- 3.9.3. In-person hearings will be held only as required by the Customer.
- 3.9.4. ACC will provide written submissions to the Supplier to pass on to the Reviewer, or to the Reviewer directly, at least 10 Working Days prior to the review hearing.
- 3.9.5. As part of the review process, the Reviewer will consider the review application, any new supporting documentation, the written submissions and the original decision to determine the appropriate course of action.
- 3.9.6. Within 28 Days of the date of the review hearing, the Reviewer will issue a binding written review decision to ACC and the Customer in accordance with Part 5 of the AC Act, which will detail:
 - 3.9.6.1. the outcomes of the review process; and
 - 3.9.6.2. whether review costs are awarded (in accordance with the Accident Compensation (Review Costs and Appeals) Regulations 2002).
- 3.9.7. **Exceptional case fees:** in exceptional cases (which may be simple or complex cases by category, but which have become very time consuming due the nature of the issues, evidence, parties or other factors) the Supplier may notify the ACC Relationship Manager and request approval for the agreed number of hours to be charged, at an hourly rate set out in Schedule 2. ACC will respond as soon as practicable.
- 3.10. **Appeal:** The Customer and ACC can appeal, to the District Court, the Reviewer's decision or a decision as to the award of costs. The timeframe in which to appeal is 28 Days from the date of the review decision.
- 3.11. **Adjournments:** Where the Customer or ACC request an adjournment, the Reviewer may in their discretion grant the adjournment request as it sees fit. The Supplier is subject to a service level relating to adjournments, as set out in Schedule 3.
- 3.12. **Internal peer review process:** The Supplier must establish an internal peer review process, and as part of this internal peer review process, the Supplier will ensure that the Reviewers' review decisions are reviewed for quality.
- 3.13. **External review:**
 - 3.13.1. ACC will engage an independent external peer reviewer to review a sample of each Reviewer's review decisions to check the decisions for consistency and quality.
 - 3.13.2. Where requested by ACC, the Supplier will submit to the external reviewer such number of Reviewer review decisions as requested by ACC to be provided. Prior to sending the review decisions to the external reviewer, the Supplier will carry out such redactions on the decisions as are necessary to remove any identifying information, including any personal information.
 - 3.13.3. The external reviewer will:
 - 3.13.3.1. review the decisions issued by Reviewers and provided by the Supplier; and
 - 3.13.3.2. provide the Supplier (and ACC on request) with a report evaluating the review decisions issued by Reviewers provided by the Supplier and the report will include a score between 1 and 5 for each review decision, with 5 the highest score. If ACC receives the report with the external reviewer's analysis and scores ACC will not have any involvement in the evaluation of the review decisions other than receipt of this report.

- 3.13.4. The Supplier will consider the feedback in the report provided by the external reviewer and take such feedback on board in its provision of the Services going forward.
- 3.13.5. The Supplier is subject to a KPI relating to external reviews, as described in Schedule 3 – Service KPIs.
- 3.14. **Storage of the full record of a review hearing:**
 - 3.14.1. The Supplier will, on behalf of ACC, keep a record of the evidence given at review hearings managed by the Supplier for ten years from the date the decisions are issued, at which time the recording will be securely destroyed.
 - 3.14.2. The record of a review hearing will be available in the form of a written transcript or electronic sound file in accordance with section 154 of the AC Act.
 - 3.14.3. The Supplier will maintain a register of all the recordings of review hearings kept.
- 3.15. **Transcripts:** Where an appeal is lodged against a review decision, ACC will provide written notice to the Supplier requesting that the Supplier provide a transcript of the review hearing and any additional review hearing notes. Following such request, the Supplier will promptly:
 - 3.15.1. provide a complete transcript of the review hearing and any additional review hearing notes; and
 - 3.15.2. certify the transcript and notes are accurate.

4. ACCREDITED EMPLOYER SCHEME:

- 4.1. In this paragraph 4:
 - 4.1.1. "Accredited Employer" means an employer who enters into an Accredited Employer Agreement.
 - 4.1.2. "Accredited Employer Agreement" means an Accredited Employer Programme Accreditation Agreement entered into between ACC and an employer under the framework established under section 183 of the AC Act.
 - 4.1.3. "Claimant" has the same meaning as that expression has in any relevant Accredited Employer Agreement.
 - 4.1.4. "Injured Employee" has the same meaning as that expression has in any relevant Accredited Employer Agreement.
- 4.2. Under the "Accredited Employer Programme Accreditation Agreements", ACC has certain functions, duties and powers in respect of reviews and appeals relating to Injured Employees. ACC and the Supplier agree that the Supplier will allocate Reviewers to provide review services as set out in Schedule B of the Accredited Employer Agreement.
- 4.3. The Supplier will provide Reviewer Administration Services to Accredited Employers on the same basis as the Supplier provides Reviewer Administration Services to ACC, subject to this paragraph 4.
- 4.4. The Supplier will perform and discharge its obligations under this paragraph 4 and ACC authorises the Supplier to invoice Accredited Employers for the performance of such obligations from the Commencement Date until the later of one calendar month after ACC provides the Supplier with written notice cancelling the Services provided under this paragraph 4 of this Schedule 1 and any date specified in such a notice (such period being the "Term" of this paragraph 4).
- 4.5. The Supplier agrees that during the Term it will, provide Reviewer Administration Services to Accredited Employers:
 - 4.5.1. On the same terms and prices as specified in this Agreement (with any minor changes to administration to reflect the Accredited Employer arrangement); and
 - 4.5.2. As if "ACC" in Schedule 1 and Schedule 2 was a reference to a particular Accredited Employer except that an Accredited Employer cannot exercise or enforce rights which by their nature are intended to be exclusive to ACC. In particular, the Services provided by the Supplier to an Accredited Employer will include:
 - 4.5.2.1. Receiving the full file relating to the Referred Matter and copies of the application for review completed by the Claimant (including the initial decision and the administrative review decision notified under the Accredited Employer Agreement).

- 4.5.2.2. Where requested by ACC, requesting and receiving a certificate from the relevant Accredited Employer in writing confirming that the Claimant has been provided with a copy of the application for review completed by the Claimant and a full copy of the claim file that contains all the information relating to the claim that is, and has been, in the possession of the Accredited Employer, and that the claim file is the full file.
- 4.5.2.3. Sending the Customer a letter acknowledging receipt of the application for review and explaining the effect of sections 146 and 147 of the Act and sending the Accredited Employer a copy of the same letter.
- 4.5.2.4. Thereafter providing Reviewer Administration Services in accordance with the Act and in accordance with paragraph 3 of this Schedule 1.
- 4.6. The Supplier will notify ACC if it does not receive the full claim file and certificate where they are requested by ACC. The Supplier will also notify ACC if an Accredited Employer fails to disclose any relevant information that it has either to the Supplier or to the Claimant. ACC will require the Accredited Employer to comply with the relevant performance requirements set out in the Accredited Employer Agreement.
- 4.7. **Supplier instructed to allocate a Reviewer:** When the Supplier receives a Referral for a matter from an Accredited Employer, the Supplier will allocate a Reviewer to undertake review services under Schedule B of the Accredited Employer Agreement. The Supplier will provide Reviewer Administration Services, and invoice Accredited Employers directly in respect of the Services described in this paragraph 4 and appeals relating to Injured Employees, and generally to manage the customer relationship with the Accredited Employer in respect of reviews, appeals and other dispute resolution services listed in this paragraph 4. The Supplier will also allocate Reviewers to conduct Accredited Employer lump sum technical determinations as provided under Schedule AA of the Accredited Employer Agreement. The Accredited Employer must represent ACC on the review except where the application for review is against a decision that the Injured Employee did not suffer work-related personal injury. Where the exception applies, the Accredited Employer may represent its own interests as a party, and ACC may represent itself.
- 4.8. **Supplier to invoice Accredited Employers directly:**
- 4.8.1. The Supplier will, in its own name, invoice each Accredited Employer for the costs (plus GST) of administering each review in accordance with the applicable charges set out in Schedule 2 -Pricing, being the costs which the Accredited Employer must pay under clause B 6.9 of each Accredited Employer Agreement. The Supplier will collect payment from such Accredited Employer.
- 4.8.2. If all or part of an amount invoiced against an Accredited Employer by the Supplier has not been paid within three calendar months of the relevant invoice, the Supplier will report this to ACC, providing full particulars relating to the outstanding amount, and may take any enforcement action to recover the amount unless ACC instructs otherwise, in which case ACC will pay the outstanding amount to the Supplier.
- 4.8.3. By agreement between ACC and the Supplier, in the event an Accredited Employer has not paid a valid invoice for Accredited Employer Services after 60 Days, as a result of becoming insolvent, the Supplier will assign to ACC the amount of any debt owing to it, and upon doing so, the Supplier shall be released from any further liability in respect thereof to ACC.
- 4.9. **Supplier to manage relationship:** The Supplier will competently and carefully manage the relationship with each Accredited Employer concerning reviews and appeals in relation to Injured Employees and will maintain at all times a cordial and business-like relationship. However, the Supplier will act in these respects subject to any instruction it receives from ACC, provided none of the above compromises the need for independence.

5. DISPUTE RESOLUTION SERVICES

- 5.1. Application: This clause 5 applies if Dispute Resolution Services are included in the list on the first substantive page of this Agreement under the heading "Services included in this Agreement".
- 5.1.1. **ACC referral:** When ACC receives an application for review under Part 5 of the AC Act, or there is a dispute between ACC and a Customer (but an application for review has not been received), ACC may Refer the matter to the Supplier for the Supplier to provide Dispute



Resolution Services. ACC will indicate whether the Referred Matter is Referred for the Supplier to provide Reviewer Administration Services only or a combination of Reviewer Administration Services and Dispute Resolution Services.

- 5.1.2. Where a Referred Matter contains an application for review, and ACC considers it may also be appropriate for Dispute Resolution Services to be provided, and the Supplier is instructed to provide a combination of Dispute Resolution Services and Reviewer Administration Services, the Supplier will ensure that the application for review is dealt with in accordance with the timeframes in the AC Act (including in particular that a date for hearing is set within three (3) months of the date the application for review was received by ACC).
- 5.2. **Overview:** Dispute resolution services will include:
- 5.2.1. early neutral evaluation, mediation, conciliation or negotiation, as appropriate depending on the relevant case;
 - 5.2.2. the provision of an agreement to participate in dispute resolution, which the Customer and ACC will sign; and
 - 5.2.3. the provision of an outcome notice as described in paragraph 5.7.
- 5.3. **Skills:** The Supplier will ensure that its personnel undertaking the Dispute Resolution Services have the following capabilities:
- 5.3.1. a specific understanding of, and experience applying, Laws relating to ACC and Laws relating to privacy;
 - 5.3.2. an understanding of, and experience applying, medico-law or clinical comprehension; and
 - 5.3.3. a specific understanding of, and experience applying, all forms of dispute resolution, including early neutral evaluation, mediation, conciliation or negotiation.
- 5.4. **Allocation:**
- 5.4.1. A Customer may be referred to Dispute Resolution Services at any stage of the review process. For example, ACC may request the Supplier to provide Dispute Resolution Services in the following circumstances:
 - 5.4.1.1.1. where ACC considers that a claim is appropriate for dispute resolution; and/or
 - 5.4.1.1.2. following a request from a Customer that the claim be resolved using dispute resolution.
- 5.5. **Dispute Resolution:** Once the Supplier receives a Referral to provide Dispute Resolution Services, the Supplier will:
- 5.5.1. work with ACC and the Customer to determine an appropriate method of dispute resolution for the matter; and
 - 5.5.2. arrange for a time and place to have the dispute resolution meeting, suitable to ACC and the Customer, and using a room set up with the layout shown in Annex 4.
- 5.6. **Meeting:** The Supplier will hold a meeting with ACC and the Customer, and the Supplier will use the agreed dispute resolution method to try and facilitate a resolution for the dispute between ACC and the Customer.
- 5.7. **Outcome Notice:** Following the meeting described in paragraph 5.6, the Supplier will promptly issue a written notice to ACC and the Customer, which will detail:
- 5.7.1. the agreement that was reached between ACC and the Customer at the meeting.
- 5.8. **No agreement reached:** If the Customer and ACC do not reach agreement at the meeting described in paragraph 5.6, the Customer will decide whether:
- 5.8.1. they want to withdraw their review application; or
 - 5.8.2. they want the Referred Matter to proceed to a hearing, in which ACC may instruct the Supplier to provide the required Reviewer Administration Services (if this Agreement includes Reviewer Administration Services).



6. APPEALS

6.1 Background

This clause sets out the basis on which the Reviewer Administration Supplier will provide services relating to storing of records of review hearings, preparation of documentation for the appeals process where a review decision is appealed to the District Court.

6.2 Services

Storage of the full record of a review hearing

- 6.2.1 The Supplier will, on behalf of ACC, keep a record of the evidence given at review hearings managed by the Supplier for ten years from the date the decisions are issued, at which time the recording will be destroyed.
- 6.2.2 The record of a review hearing will be available in the form of a written transcript or electronic sound file in accordance with section 154 of the AC Act.
- 6.2.3 The Supplier will maintain a register of all the recordings of review hearings kept.

6.3 Administration and Preparation of Documentation

- 6.3.1. ACC will provide, within five (5) Working Days of receiving notice from the Registrar pursuant to Section 153 of the AC Act, written notice to the Supplier advising that an appeal has been lodged.
- 6.3.2. The notice will identify the name of the Appellant, the name of the Customer (if different from that of the Appellant), the name of the Accredited Employer (if ACC is not managing the claim) responsible for management of the matter, the Claim Number, the name of the relevant ACC staff member, the date the decision was issued and the name of the Reviewer who issued the decision.
- 6.3.3. Within three (3) Working Days of receipt of notice from ACC, the Supplier will request in writing that two photocopies be taken of the Customer's file, that one copy be retained at ACC's managing branch and that one copy and the original be forwarded to the Supplier.
- 6.3.4. The branch of ACC will forward the original file and a photocopy of the file requested under clause 6.2.3 above to be sent to the Supplier within 10 Working Days of the date on which the request was faxed.
- 6.3.5. The Supplier will:
- arrange for the recording of the evidence of the hearing to be transcribed;
 - arrange, verify and certify that the transcript of the hearing is an accurate record; and
 - forward a copy of the completed transcript to ACC's managing branch to enable the branch to disclose the transcript on request pursuant to section 154 (2) of the AC Act.
- 6.3.4 Forward the original certified transcript, the photocopied file and a copy of the certified transcript to ACC within 15 Working Days of receipt of notice from ACC under clause 6.2.1 above. These documents shall be forwarded by courier with a trace facility.



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Annexes to Schedule 1 - ACC Policies

Annex 1 – Minimum Building Security Standards

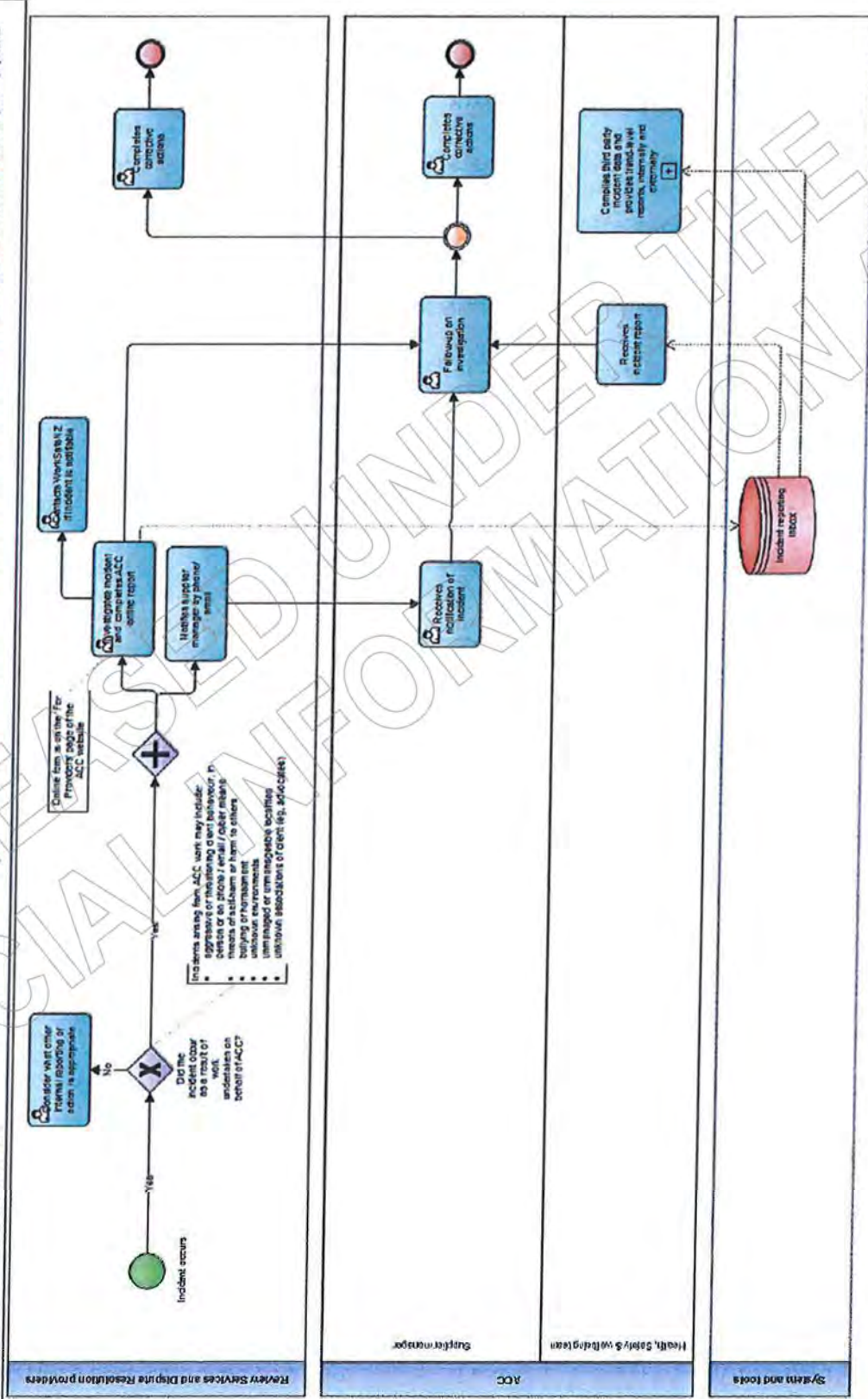


Annex 1A - Building
Security Procedure.doc

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Annex 2 - Third Party Health & Safety Incident Reporting

This is the process for Review and Resolution service providers to report health and safety incidents to ACC, under the requirement that we work together where we have overlapping responsibilities for managing health and safety (H&S) matters. The process starts when a health and safety incident occurs, and includes the requirement to notify ACC (via the supplier manager) and report using the online H&S reporting form. The process ends after the incident has been investigated, all relevant parties/systems updated and actions taken to prevent a recurrence.



Annex 3 - Provider Health & Safety Risks

This table shows the top ten health and safety risks identified by ACC as relevant to where ACC has overlapping duties for health and safety matters with third party providers. Note: not all may be directly relevant.

Ref #	Risk	Source of harm	Controls ACC has in place
TP1-1	Aggressive or threatening situations directed toward third party service providers	Actual or potential for physical and/or mental harm/distress because of customer behaviour – includes physical/sexual assault, death threat, threat with a weapon, verbal aggression/abuse, stalking, abusive behaviour, unpredictable or erratic behaviour, inappropriate sexual conduct, coercion to assist with drug-taking, customers influenced by alcohol or other drugs, disclosure of intention to harm others or self, actual self-harm by customer.	9(2)(c)
TP1-2	Reliability and efficiency of security guard services	Actual or potential for physical and/or mental harm/distress because of customer behaviour where security guard services are provided in response to higher risk situations. The most common locations where security guard services are engaged to support third party providers are at the provider premises, other offsite locations such as a Review location, or shared community facility, or an ACC office. There are occasions where they are engaged to support a provider at a customer's home, a gated community or a residential rehabilitation facility. Hazards include reliability of the service once engaged and the impact a no-show or inappropriate service provision has on the provider's work-day management.	9(2)(c)
TP1-3	Driving motor vehicles on urban and rural roads	Motor vehicle accidents due to driver behaviour (including fatigue), vehicle condition/suitability or other factors such as adverse weather conditions, difficult driving terrain and remote/isolated locations.	Risk identified as part of H&S risk assessment phase of procurement process; Provider's risk mitigation strategies examined as part of the RFP evaluation; Incident reporting procedures; National coverage considered as part of RFI/RFP process; Contract pricing takes account of coverage required of the service.

Ref #	Risk	Source of harm	Controls ACC has in place
TP1-4	Bullying and harassment, including cyber bullying	Actual or potential for mental harm/distress, including via internet, email, social media and social networking sites. This can include where a customer sends abusive / threatening / harassing emails to the provider, tracks or otherwise obtains information about a provider online (e.g., Facebook; twitter) or via other publicly accessible records (e.g., electoral rolls, telephone records, vehicle ownership, property ownership, company, trust or charity records), or mentions a provider by name on forums or chatrooms.	9(2)(c)
TP1-5	Unknown environments and unmanaged localities	Locations include the customer's home and community/public settings. Hazards that are specific to the location are unknown or unidentified prior to the provider visit and therefore can't be managed/planned for in advance. These risks can include uncontrolled dogs, smoking in the home, open drug use, sale of drugs, poor home safety (unclean, cold, uneven floors, slippery surfaces, communicable disease risk).	9(2)(c)
TP1-6	Unknown carers	Customers can choose who provides their paid care and support under some arrangements. This may be from a provider who holds a contract with ACC, an agency that doesn't hold a contract with ACC, or from someone they know (whanāu/family or friends). Risks arise from the potential exposure to aggressive or threatening situations during customer interactions and also from the work and work tasks (including equipment) taking place.	9(2)(h)

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Ref #	Risk	Source of harm	Controls ACC has in place
TP1-7	Carer training / equipment use and maintenance	Actual or potential for physical harm from carers (or to carers) operating equipment provided in the home (e.g., hoists / other moving equipment), or failure to ensure regular equipment maintenance, or because of the physical aspects of the work (e.g., lifting; patient handling). Other hazards that may be encountered are the use of household electrical or mechanical equipment that may be unsafe (e.g., vacuum cleaners, lawn mowers, overloaded powerboards).	9(2)(c)
TP1-8	Unknown associations	Actual or potential for physical and/or mental harm/distress because of the behaviour of unknown associations of the customer receiving the service. This can include gang affiliations or a customer residing in a situation where there is also another ACC customer (e.g., flatting). Family/whanāu/non-family members may be present and aggressive/abusive. Customer's support person or advocate may be care indicated.	9(2)(c)

Ref #	Risk	Source of harm	Controls ACC has in place
TP1-9	Working solo or in isolated locations	Hazards that lone workers may encounter include accidents or emergencies arising out of the work, including inadequate provision of first aid or communication devices; sudden illnesses; inadequate provision of rest, hygiene and welfare facilities; vulnerability to physical violence from customers or members of the public. Working in isolated locations incorporates aspects of the risks expressed in TP1-3, TP1-4 and TP1-8, as well as psychological challenges of working alone or isolated.	9(2)(c)
TP1-10	Institution facility risk	Actual or potential for physical harm when a provider attends to a customer in an institution such as a school, hospital, prison, residential rehabilitation facility, or nursing home. Providers may encounter illness or communicable disease, physical violence from customers or other members of the facility or system breakdowns within the facility that put the provider at increased risk.	9(2)(c)

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9(2)(c)

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Schedule 2 - Pricing Schedule

Fees

In this Schedule 2:

1. A Standard Review means a review that is not a Complex Review.
2. A Complex Review means a review that ACC identifies as a complex review in its "ACC6239 Instruction" form.
3. A multi-issue Dispute means a review that ACC identifies as a multi-issue in its ACC8026 Alternative Dispute Resolution cover sheet.
4. The fees in this Schedule 2 apply to Accredited Employer Services, except that the Supplier will be invoicing Accredited Employers (as that term is defined in Schedule 1 – Scope of Services) directly in accordance with paragraph 4.8 of Schedule 1 – Scope of Services.

Note: include pricing only for the services included for this Supplier

Reviewer Administration Services*	Fee (exclusive of GST)
Standard Reviews	9(2)(b)(ii)
Complex Reviews	
Withdrawn Reviews (meaning where the review is withdrawn prior to the case conference occurring or the review is not set down for hearing)	
In-person Hearings (additional fee on top of review/mediation set-fee)	
Customer non-attendance at scheduled In-Person Hearing (to a maximum of two non-attendances per review)	
Transcript Fee	
Exceptional Case Fee (where pre-approved by ACC)	

* To avoid doubt, the fees set out in the table above include fees for the Review Services, which the Supplier shall pay directly to the relevant Reviewers for Review Services provided by them.

Dispute Resolution Services	Fee (exclusive of GST)
Dispute Resolution Fee	9(2)(b)(ii)
Multi issue Dispute	
In-person Dispute Resolution (additional fee on top of Dispute Resolution/mediation set-fee)	
Customer non-attendance at schedule In-person Dispute Resolution meeting (to a maximum of two non-attendances per matter)	

Withdrawn dispute resolution

9(2)(b)(ii)

Exceptional Case Fee (where pre-approved by ACC)

The Supplier will be entitled to invoice ACC, no more than once per calendar month, in accordance with clause 12 on completion of the relevant Service, which means:

- o In the case of Reviewer Administration Services: the relevant case has been successfully concluded:
 - a) where the review is withdrawn by the Customer. Where the review is withdrawn:
 - i. prior to the case conference or in the event of the hearing not being set down, the Supplier will be entitled to invoice ACC for the withdrawn review fee; or
 - ii. at or following the case conference, or after the review has been set down, the Supplier will be entitled to invoice ACC for the standard review or complex review fee, depending on which category the review falls into; or
 - b) where the Reviewer issues a review decision to the Customer and ACC in accordance with paragraph 3.9.6 of Schedule 1 – Scope of Services, the Supplier will be entitled to invoice ACC for the standard review or complex review fee, depending on which category the review falls into.
 - o In the case of Dispute Resolution Services (including where Dispute Resolution Services are provided in parallel with Reviewer Administration Services):
 - a) where the Supplier issues an outcome notice to the Customer and ACC in accordance with paragraph 5.7 of Schedule 1 – Scope of Services, in which case the Supplier can invoice the dispute resolution fee of 9(2)(b)(ii)
 - b) where the dispute resolution does not proceed because the Customer decides they do not want to participate in dispute resolution, in which case the Supplier can invoice the withdrawn dispute resolution fee of 9(2)(b)(ii)
 - c) where at or following the direct professional intervention of the supplier or a dispute resolution meeting:
 - i. the review is withdrawn by the Customer; or
 - ii. no agreement is reached between the Customer and ACC, and the Referred Matter will proceed to a review hearing as described in paragraph 3.9 of Schedule 1 – Scope of Services;
in which case the Supplier can invoice the dispute resolution fee of 9(2)(b)(ii)
 - d) in addition to any fees invoiced under paragraph (c)(ii) above, if:
 - i. the Customer withdraws the review prior to a case conference or hearing, the Supplier may invoice for the withdrawn dispute resolution fee of 9(2)(b)(ii) or
 - ii. the Referred Matter proceeds to a review hearing, on completion of the review hearing the Supplier may invoice ACC for the standard review or complex review fee, depending on which category the review falls into.
5. Where the Supplier is providing Services in relation to a claim which is currently under appeal in the District Court (or higher court), ACC and the Supplier may negotiate and agree on a fee to be payable for the Services provided while the Customer is waiting for a decision from the District Court. This fee must be approved by ACC before these services are provided. The fee will be based on an hourly rate of 9(2)(b)(ii) (excluding GST).

Permitted Expenses

6. The Supplier may invoice ACC for the actual (with no mark-up) reasonable costs of hiring:

-
- a security guard if required for a in-person meeting, to ensure safe review hearings can be conducted. This will apply either on the Supplier's premises or in hired venues;
 - kaumātua and/or kuia and other costs associated with a tikanga Māori process; or
 - a translation/interpreter, where required.
7. Invoices for the above cost will be provided to ACC on request.
8. It is anticipated that the fees described in this Schedule 2 for in-person meetings will cover almost all travel costs. ACC will consider negotiating additional travel costs with the Supplier in very rare circumstances where a in-person meeting occurs over 50 kilometres outside of the specified locations, and where extenuating circumstances apply. Any such additional travel costs must be approved in writing by ACC.

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