

- 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.

Annexes to Schedule 1 - ACC Policies

Annex 1 – Minimum Building Security Standards

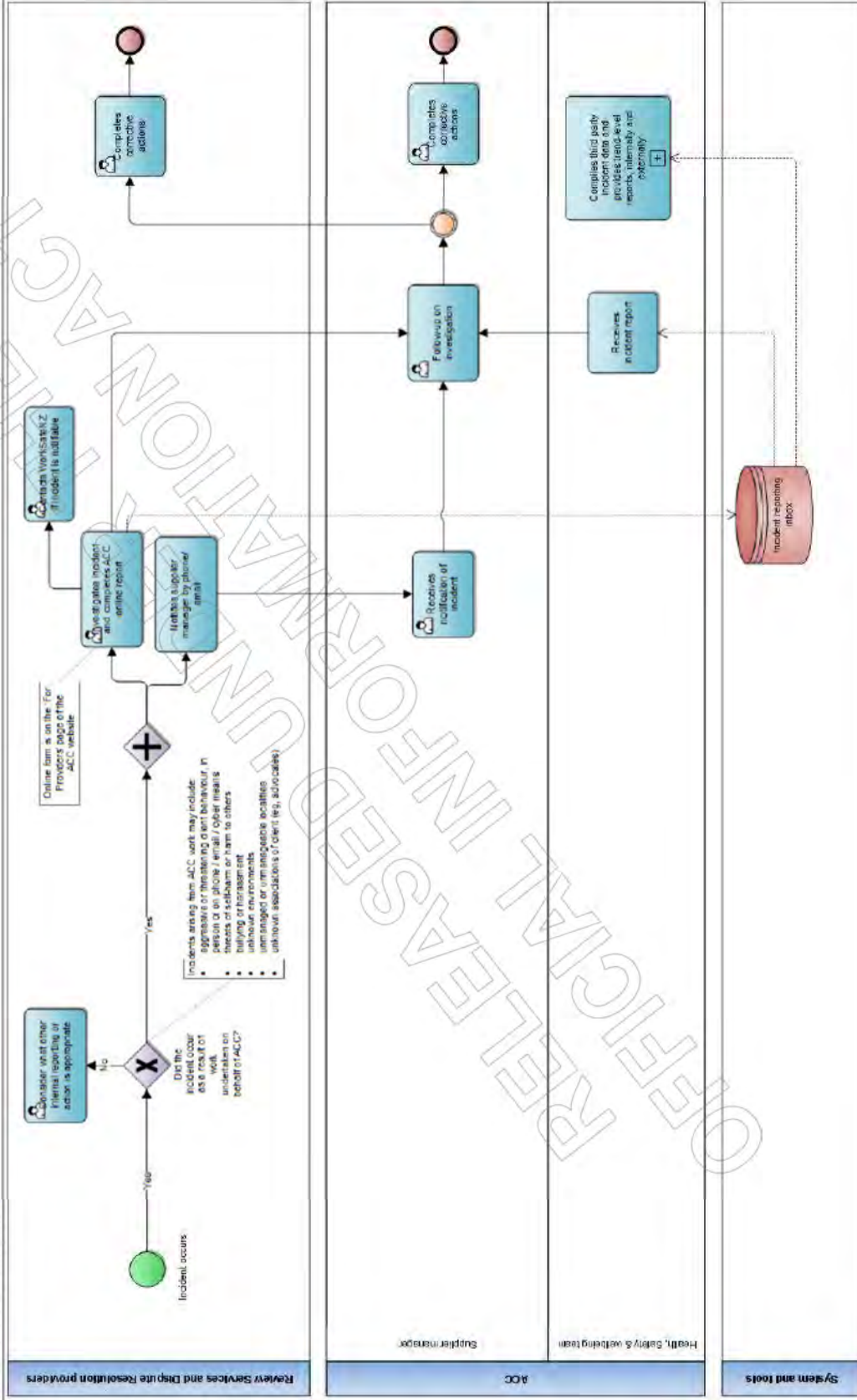


Annex 1A - Building
Security Procedure.doc

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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.	
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).	
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)

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.	

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.	

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Annex 4 – Hearing Room Set up (in-person meeting room layout)

9(2)(c)



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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Schedule 3 - Service KPIs and SLAs

1. The Supplier will provide the Services so as to meet the KPIs and service levels described in this Schedule 3.
2. Where the Supplier meets all of the KPIs applicable to the Services they are providing over a calendar quarter, the Supplier will receive an additional payment that is equivalent to 2.5% of the aggregate value of the invoices for the calendar quarter in question. The Supplier will invoice ACC for this additional payment with its invoice for the next month's Services after the next quarterly meeting is held with ACC, as described in clause 5.6.
3. The KPIs and SLAs for Reviewer Administration Services apply if 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".
4. The KPIs for Dispute Resolution Services apply 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. ACC and the Supplier will actively review the KPIs, every six months for the first two years of the Agreement and annually thereafter. If such reviews identify agreed flaws in the KPI descriptions or targets, new descriptions and/or targets which address the flaws may be part of a Notice to the Supplier issued by ACC under clause 18.2.
6. **Reviewer Administration Services**

KPIs

Deliverable	KPI Description	Target
Quality of Reviewer Administration Services	9(2)(b)(ii)	
Reviews are completed in a timely manner		
Customer satisfaction		
Review application is set down		

Service levels ("SLAs")

Adjournments	9(2)(b)(ii)
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7. Dispute Resolution Services

KPIs

Deliverable	KPI Description	Measure
Dispute Resolution Services are completed in a timely manner	9(2)(b)(ii)	
Customer satisfaction		

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Schedule 4 - Contact Details

ACC Contract Manager

Name:	9(2)(a)
Role / Title:	Manager Resolution Services
Postal address:	PO Box 242, Wellington 6140
Physical address:	Justice Centre, 19 Aitken Street, Thorndon, Wellington
Phone:	9(2)(a)
Email:	

ACC Relationship Manager

Name:	9(2)(a)
Role / Title:	Senior Resolution Specialist
Postal address:	PO Box 242, Wellington 6140
Physical address:	Justice Centre, 19 Aitken Street, Thorndon, Wellington
Phone:	9(2)(a)
Email:	

Supplier Senior Manager

Name:	John Green
Role / Title:	Director
Postal address:	PO Box 33297 Takapuna Auckland 0740
Physical address:	9 Anzac Street Takapuna Auckland 0622
Phone:	9(2)(a)
Email:	

Supplier Contract Manager (Key Account Manager)

Name:	9(2)(a)
Role / Title:	ACC Services Manager
Postal address:	PO Box 33297 Takapuna Auckland 0740
Physical address:	9 Anzac Street Takapuna Auckland 0622
Phone:	9(2)(a)
Email:	

Supplier Alternative Contact (In case of temporary unavailability)

Name:	9(2)(a)
Role / Title:	ACC Case Manager
Postal address:	PO Box 33297 Takapuna Auckland 0740
Physical address:	9 Anzac Street Takapuna Auckland 0622
Phone:	9(2)(a)
Email:	

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Schedule 5 - Business Continuity Plan and Disaster Recovery Plan

This is included as separate document.

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Schedule 6 – Health & Safety Plan

This is included as separate document.

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Agreement

FOR

Dispute Resolution Services

BETWEEN

Accident Compensation Corporation

AND

**Clayton & Associates Limited trading as
Talk-Meet-Resolve**

July 2019

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AGREEMENT FOR 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 **Clayton & Associates Limited**

a duly incorporated company having its registered office at **97A Hackthorne Road, Cashmere, Christchurch 8022** ("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: **Dispute Resolution Services**

KEY TERMS

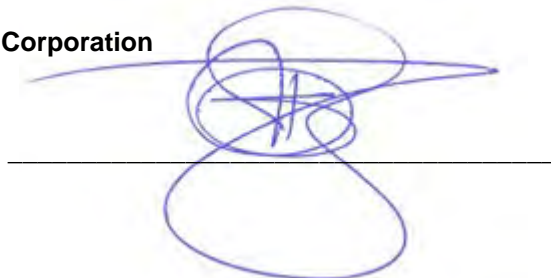
1. The AC Act allows for claimants, employers and levy payers to apply to ACC for a review of certain decisions of ACC.
2. ACC is accordingly establishing a panel of service providers:
 - 2.1. to provide reviewer administration services; and/or
 - 2.2. to provide dispute resolution services.
3. If Reviewer 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 Clayton & Associates Limited

Name: Matthew Clayton

Title: Director

Date: 11 July 2019

9(2)(a)

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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. 9(2)(c)

- 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.