

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 statutory 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.

34. ENVIRONMENTAL SUSTAINABILITY

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

35. INFORMATION MANAGEMENT

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

36. INFORMATION/CONFIDENTIALITY

General

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

No breach

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

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

High Profile Issues

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

37. PROTECTION OF PERSONAL INFORMATION

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

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

38. LOCATION OF DATA

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

39. NEW ZEALAND LAW, CURRENCY AND TIMES

General

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

Submission to jurisdiction

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

40. PRECEDENCE

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

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

41. LIABILITY

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