

- 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.