



20 May 2024

Kia ora [REDACTED]

**Your Official Information Act request, reference: GOV-031871**

Thank you for your email of 19 April 2024, asking for the following information under the Official Information Act 1982 (the Act):

*I would like to be supplied with ACC policy documentation that allows a 3rd party provider to be given:*

- a) a claimants personal details, and*
  - b) management of a client's non-work injury claim,*
- without the claimants prior knowledge or permission for this information to be distributed.*

**Transferring claim management to a Third-Party Administrator**

Employers that participate in the Accredited Employer Programme have the option to have their employees' non-work injury claims managed by a Third-Party Administrator (TPA). Accredited employers can use their TPA to be the single point of contact for their employees' work and non-work-related injury claims. This service is referred to as the TPA Non-Work Service.

If an accredited employer takes this option, then ACC delegates its functions for non-work injury claims by those employees to the same TPA. Noting this, the TPA's authority to manage non-work injury claims comes directly from ACC.

ACC's TPA delegation is subject to various conditions, including the requirement for a formal contract and ACC retaining the right to resume management of any particular claim at any time and for any reason. This means that at any stage of this process clients are able to opt out if their claim is a non-work-related injury and ACC can continue to manage their claim.

**ACC's legal basis for delegating non-work claims to a TPA**

ACC's right to delegate the management of non-work injury claims to TPAs arises under s73(1)(d) of the Crown Entities Act 2004 in combination with clause 25 of Schedule 5 of the Accident Compensation Act 2001. These can be viewed at:

- [www.legislation.govt.nz/act/public/2004/0115/latest/DLM330307.html](http://www.legislation.govt.nz/act/public/2004/0115/latest/DLM330307.html)
- [www.legislation.govt.nz/act/public/2001/0049/latest/DLM106143.html](http://www.legislation.govt.nz/act/public/2001/0049/latest/DLM106143.html)

The relevant documentation is the legislation itself and the contracts between ACC and TPAs. Please find a copy of the contract (used for all TPAs) attached. The most relevant information is contained within the introduction in paragraphs 1-4.

**As this information may be of interest to other members of the public**

ACC may decide to proactively release a copy of this response on ACC's website. All requester data, including your name and contact details, will be removed prior to release. The released response will be made available [www.acc.co.nz/resources/#/category/12](http://www.acc.co.nz/resources/#/category/12).

**If you have any questions about this response, please get in touch**  
You can email me at [GovernmentServices@acc.co.nz](mailto:GovernmentServices@acc.co.nz).

Ngā mihi



Christopher Johnston  
**Manager Official Information Act Services**  
Government Engagement



He Kaupare. He Manaaki.  
He Whakaora.  
prevention. care. recovery.

CONTRACT #

# AGREEMENT

FOR THE PROVISION OF

THIRD PARTY ADMINISTRATOR SERVICES NON  
WORK CLAIMS

BETWEEN

ACCIDENT COMPENSATION CORPORATION

AND

[XXXXXXXXXX]

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RELEASED UNDER THE OFFICIAL INFORMATION ACT

# AGREEMENT FOR THIRD PARTY ADMINISTRATOR SERVICES NON WORK CLAIMS

This Agreement is made on the            day of                                            2023

**Between            ACCIDENT COMPENSATION CORPORATION**

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

**and                                XXXXXXXXXXXX**

a duly incorporated company having its registered office at XXXXXXXXXXX (“the TPA”)

## **INTRODUCTION**

1. The functions, duties and powers of ACC are set out in detail in the Accident Compensation Act 2001 (“the AC Act”).
2. Pursuant to sections 73 to 76 of the Crown Entities Act 2004 (“CE Act”), the ACC Board has delegated the following functions, powers and duties of ACC to the following TPAs:
  - WellNZ Limited
  - Aon New Zealand
  - Howden People Risk Limited trading as Howden Care Limited (formerly Gallagher Bassett)

being any or all of the class of persons approved by the Minister for ACC in accordance with section 73(1)(d) of the Crown Entities Act 2004 (CE Act):

  - a) Such functions and powers as are necessary to enable the TPA to assist ACC in the management of non-work injuries suffered by employees of Accredited Employers in accordance with ACC’s statutory obligations under the Accident Compensation Act 2001 (AC Act).
  - b) Without limiting paragraph 2(a), the power to carry out the following specific functions on behalf of ACC:
    - (i) managing claims referred by ACC including:
      - i. determining claims including ongoing cover and entitlement
      - ii. provision of the correct statutory entitlements
    - (ii) arranging for the provision of rehabilitation (including treatment) services through rehabilitation providers.
3. The delegation from the ACC Board is subject to the following conditions:

- a) the TPAs will exercise their delegated powers only as set out explicitly in a contract agreed between each of them and ACC or in accordance with instructions of ACC as issued to them from time to time
- b) ACC is able to resume management of any particular claim, for any reason, at any time
- c) the TPA shall comply with any directions relating to the policy of the Government that are given to ACC by the Minister for ACC
- d) the delegation does not include the powers and duties under Part 5 of the AC Act in respect of dispute resolution except as expressly provided for in the contract between each of them and ACC
- e) this sub-delegation is revocable at will in accordance with section 76 of the CE Act.

4. This Agreement records the terms upon which the TPA will perform the sub-delegated functions.

## **1. RELATIONSHIP OF PARTIES**

### **Nature of Relationship**

1.1. The TPA will provide case management services (until the expiry of the Term and any period by which the Agreement is extended by the operation of clause 4.2, the termination of this Agreement, or in the case of a particular claim, the assumption of management of that claim by ACC or the exit from the ACC scheme of that claim) in relation to Non Work Claims ("NWC") referred to the TPA by ACC, but nothing contained or implied in this Agreement is to be read as creating:

- 1.1.1. an employer/employee relationship between ACC and the TPA;
- 1.1.2. a contract of service;
- 1.1.3. any relationship of partnership or joint venture or any business combination;
- 1.1.4. an agency relationship, except where expressly stated otherwise in this Agreement.

### **Assignment**

- 1.2. The TPA will not assign, transfer, or otherwise dispose of any of its rights or obligations under this Agreement except as provided in this Agreement.
- 1.3. For the purposes of clause 1.2, any change in the effective control of the TPA is a proposed assignment of this Agreement that requires the written consent of ACC.

### **No Third Party Rights**

- 1.4. Nothing in this Agreement is intended to confer any enforceable rights or benefits on any NWC Client or on any other person (other than the Parties). The intention is that this Agreement is enforceable only by ACC and the TPA, but the TPA acknowledges that its failure to comply with this Agreement may result in NWC Clients having rights under the AC Act.
- 1.5. Notwithstanding clause 1.4, nothing in this Agreement restricts any right a NWC Client or other person may have under the AC Act or at Law.

**Good Faith**

- 1.6. ACC and the TPA agree to act in good faith and to discuss, whenever and as often as may be appropriate, matters affecting their respective rights and obligations.
- 1.7. The TPA agrees that it owes and continues to owe ACC a duty of absolute good faith to disclose all relevant information in the formation and performance of this Agreement.

**Compliance with Law**

- 1.8. Nothing in this Agreement binds either Party to perform any undertaking, or to refrain from performing any undertaking, which would put it in breach of the Law governing that Party.

**Conflict of Interest**

- 1.9. The TPA warrants that the TPA has no direct or indirect interest, whether financial or otherwise, that will affect the TPA's ability to perform the services impartially and in the interests of ACC.
- 1.10. The TPA must ensure that all personnel engaged in providing the Services declare any interest (whether financial or otherwise) that may affect the TPA's ability to comply with clause 1.9.
- 1.11. The TPA must inform ACC immediately if the TPA becomes aware of any actual or potential conflict of interest which could affect the TPA's ongoing compliance with clause 1.9.
- 1.12. On receipt of a notice under clause 1.11, ACC must assess the interest and decide if, in ACC's sole opinion, the interest conflicts with the TPA's obligation to perform the services impartially and in the interests of ACC.
- 1.13. 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. If ACC considers a conflict of interest is capable of being managed without needing to terminate this contract under clause 11, the TPA must co-operate fully in ACC's management of the conflict.

**Complete Agreement**

- 1.14. 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**

- 1.15. Neither ACC nor the TPA 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 public opinion of the other party or which brings the other party into disrepute. But if such a statement or comment is made, 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.

**2. SCOPE OF SERVICES**



- 2.1. This Agreement is for the supply of Services, as detailed further in Schedule 1 – Service Provision.
- 2.2. ACC retains the right to, at its absolute discretion:
  - 2.2.1. undertake any or all of the Services itself; and
  - 2.2.2. use other suppliers to fulfil the Services, at ACC’s discretion.
- 2.3. The TPA shall not have or make any claim against ACC for orders placed with an alternative supplier or undertaken by ACC, in accordance with clause 2.2.
- 2.4. Nothing shall prevent ACC from at any time inviting or not inviting the TPA to prepare a proposal, either individually or as part of a collaborative group or as part of a tender, for 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. ACCOUNT MANAGEMENT**

- 3.1. ACC’s Contract Manager and the TPA’s National Account Manager (together called the “Contract Managers”), as named in Schedule 5 - VARIABLES, are responsible for managing this Agreement, including:
  - 3.1.1. managing the relationship between Parties;
  - 3.1.2. overseeing the effective implementation of this Agreement; and
  - 3.1.3. being the first point of contact for any issues that arise.
- 3.2. The TPA’s National Account Manager will be responsible nationally for:
  - 3.2.1. day to day operational enquiries;
  - 3.2.2. overall performance of the TPA;
  - 3.2.3. maintaining performance expectations as outlined in Schedule 2 – Monitoring and Evaluation (KPIs);
  - 3.2.4. identification of potential savings;
  - 3.2.5. co-ordination of all reporting requirements; and
  - 3.2.6. co-ordination of the business review meetings.

### **4. TERM OF AGREEMENT**

#### **Term**

- 4.1. The Term of this Agreement is the period specified in [SCHEDULE 5: VARIABLES](#), unless terminated earlier in accordance with the provisions of this Agreement.
- 4.2. There are two rights of renewal of 12 months each. Prior to the Date of Expiry, ACC may exercise the first right of renewal and extend the Term of the Agreement by 12 months. Prior to the expiry of the extended Term of the Agreement, ACC may exercise the second right of renewal and extend the Term

of the Agreement by a further 12 months. Any decision to extend the Term of this Agreement will be based on:

- 4.2.1. the parties reaching an agreement on the extension in writing prior to the Date of Expiry;
- 4.2.2. ACC being satisfied with the performance of the Service Provision specified in SCHEDULE 1: SERVICE PROVISION by the TPA;
- 4.2.3. the Contract Rates being reviewed and satisfactorily benchmarked to ACC's satisfaction; and
- 4.2.4. all other provisions of this Agreement either continuing to apply during such extended Term or being renegotiated to the satisfaction of both Parties.

4.3. There is no obligation on the part of ACC to extend the term of the Agreement, even if the TPA has satisfactorily performed all of the Services.

## 5. OBLIGATIONS OF ACC

### Obligations of ACC

- 5.1. ACC will:
  - 5.1.1. refer NWC to the TPA in accordance with this Agreement, as more particularly described in paragraph 2.6 of SCHEDULE 1: SERVICE PROVISION;
  - 5.1.2. supply the TPA with information held by ACC relating to NWC Clients as may be necessary for the proper and effective processing of claims and rehabilitation, subject always to the AC Act, Privacy Act 2020 and the Health Information Privacy Code 2020;
  - 5.1.3. provide access to relevant sections of ACC's decision support system;
  - 5.1.4. keep the TPA informed of ACC policy and practice, including changes;
  - 5.1.5. promptly forward to the TPA any information received by it and appearing to relate to a NWC Client, and advise the NWC Client and any known treatment provider that further contact should be directly with the TPA (or, where otherwise permitted by this Agreement, promptly advise the TPA that ACC will manage the claim);
  - 5.1.6. provide access to, and reasonable assistance in the use of, those parts of ACC's Eos system that are required for viewing NWC Claims referred to the TPA and for allowing the TPA to make payment requests to ACC;
  - 5.1.7. pay the TPA for the Services as required by this Agreement and in accordance with and subject to the provisions of this Agreement at the rates specified in Schedule 3 – Pricing; and
  - 5.1.8. 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](http://www.ssc.govt.nz))

## 6. OBLIGATIONS OF TPA

### Provision of Services

6.1. The TPA will:

- 6.1.1. perform the functions and duties and exercise the powers of ACC described in this Agreement, and in particular in SCHEDULE 1: SERVICE PROVISION;
- 6.1.2. treat NWC Clients with dignity and respect, and act towards NWC Clients in a manner consistent with just process;
- 6.1.3. ensure that any NWC Clients return to work or return to independence is a Safe and Sustainable exit and as close as possible to their pre-injury employment and/or daily functioning;
- 6.1.4. promptly perform its obligations and arrange for all payments required to be made in respect of NWC Clients;
- 6.1.5. ensure that in its use of the Eos system, it protects, and ensures its employees and contractors protect, the intellectual property rights of ACC and FINEOS Corporation in the Eos system;
- 6.1.6. in its dealings with NWC Clients, ensure that its actions comply with any Code of ACC Claimants' Rights;
- 6.1.7. comply with the Privacy Act 2020, the AC Act, the Health Information Privacy Code 2020 and all other relevant legislation,

and in each case in accordance with the terms of this Agreement.

### Specific Obligations

6.2. The TPA must:

- 6.2.1. comply with the requirements of the AC Act, regulations made or continuing in force under the AC Act, and this Agreement;
- 6.2.2. comply with processes provided by ACC from time to time. If there is a conflict between a provision of this Agreement and a process, the clause and/or paragraph in the Agreement will take precedence;
- 6.2.3. comply with Directives as provided in clause 12;
- 6.2.4. have due regard to Guidelines as provided in clause 12;
- 6.2.5. inform the NWC Client of his or her rights of review and appeal if dissatisfied with decisions or delays (including deemed decisions) of the TPA and do so at a time appropriate to enable the NWC Client to exercise his or her rights;
- 6.2.6. ensure that:

- (a) it has in place documents, and implements, processes and procedures that ensure that there are full records of:
- all entitlements claimed by NWC Clients;
  - all decisions made as to the acceptance or otherwise of those claims and the rehabilitation of the NWC Client concerned;
  - all entitlements provided, and the manner of their provision;
  - all payments made on account of entitlements;
  - all rehabilitation provided and other non monetary steps taken;
  - all interactions with the injured employee;
  - all interactions with treatment providers;
  - all interactions with the Accredited Employer in relation to a NWC.
- (b) such records are capable of being transferred to ACC in electronic form; and
- (c) systems are in place that will allow the TPA, upon reasonable request from ACC, to provide monthly reports to ACC within five (5) Working Days after month end in a format agreed with ACC.

- 6.2.7. permit ACC to audit the TPA's performance as contemplated by this Agreement and provide full support for any such audit;
- 6.2.8. observe the procedures set out in SCHEDULE 1: SERVICE PROVISION when making decisions and where an affected party disputes a decision of the TPA on a claim;
- 6.2.9. comply with this Agreement on expiry or termination of this Agreement, or on the assumption of management of a particular claim by ACC;
- 6.2.10. immediately implement decisions made on review or appeal under Part 5 of the AC Act in relation to any NWC claim for which it is still responsible;
- 6.2.11. make any Code of ACC Claimants' Rights accessible to, and promote awareness of any Code of ACC Claimants' Rights to, NWC Clients in accordance with section 45 of the AC Act.

### **Continuing Compliance**

- 6.3. In its performance of this Agreement the TPA must comply, on a continuing basis, with the sub-delegation from the ACC Chief Executive, being the basis on which the TPA is providing the services.

### **Reporting**

- 6.4. The TPA must supply reports as required by ACC in a format agreed with ACC and as frequently as reasonably required by ACC on claims, entitlements and expenses arising during the Term for each NWC Claim including any information reasonably required for statistical purposes by ACC.
- 6.5. The TPA must promptly notify and fully report to ACC in writing on:
- 6.5.1. any breach by the TPA of its obligations under this Agreement;
  - 6.5.2. any actual or anticipated event that, if known to ACC, would, in the reasonable consideration of the TPA, be likely to cause ACC to review this Agreement with the TPA;
  - 6.5.3. any actual or anticipated difficulty in complying with the obligations of the TPA in the management of NWC Clients generally or any particular claim and any proposed action to address the situation;
  - 6.5.4. the occurrence of any Insolvency Event;
  - 6.5.5. any event or issue that is likely to result in public adverse comment about the TPA services;
  - 6.5.6. any matter required to be notified under any provision of this Agreement;
  - 6.5.7. any matter relating to this Agreement or any particular claim where a report is requested by ACC.
- 6.6. The TPA acknowledges that any non-compliance with a reporting requirement under clause 6.4 or clause 6.5 may, at ACC's discretion, if the non-compliance has not been remedied within a reasonable time specified by ACC for the circumstances, be treated as a material breach of this Agreement for the purposes of clause 16.3.7.

### **No Poaching**

- 6.7. During the Term of this Agreement, and for six (6) months following its termination, neither Party shall approach any person who is, at any time during the Term of this Agreement, employed or contracted by the other Party, with the intention of employing, contracting or entering into any arrangement with that person, for the purposes of providing services associated with NWC Claims, without the written consent of the other Party.
- 6.8. Nothing in clause 6.7 shall prevent either Party from advertising for employment or contracting positions and this clause shall not apply where an employee of either Party is actively seeking employment and initiates contact with the other Party.

### **Standard of Records and Reports**

- 6.9. The TPA must maintain all records and provide all reports and other data, including claims information to an extent and standard and in a format agreed by ACC. The TPA acknowledges that

any non-compliance with the format requirement may, at ACC's discretion, if the non-compliance has not been remedied within a reasonable time specified by ACC for the circumstances, be treated as a material breach of this Agreement for the purposes of clause 16.3.7.

### **ACC Access**

6.10. The TPA must allow ACC or its nominee access to its records (wherever they may be) and personnel relevant to this Agreement at any reasonable time.

## **7. PERFORMANCE OF SERVICES**

7.1. The TPA will:

7.1.1. ensure the stipulated time, cost and quality objectives of ACC are met;

7.1.2. provide all expertise and resources necessary to deliver the Services;

7.1.3. take all steps necessary to clarify ACC's requirements for the Services;

7.1.4. 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;

7.1.5. perform the Services so as to meet the requirements of ACC's brief, any Service Specifications and other instructions, information and documents provided by ACC;

7.1.6. advise ACC immediately if the TPA 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;

7.1.7. not make any Material alteration to, addition to, or omission from the work approved by ACC at any stage of the Service's without ACC's prior agreement; and

7.1.8. ensure that all reports and other written communications to ACC are clear, thorough, complete and acceptable to ACC in both form and substance.

7.2. The TPA agrees to meet the Service deliverables contained in the Key Performance Indicators at Schedule 2 – Monitoring and Evaluation.

7.3. The TPA's performance will be reviewed monthly through reporting of the KPIs to ACC, and the TPA will provide weekly reporting which will include information on performance.

7.4. Each party agrees to meet and conduct quarterly and annual reviews of the TPA's performance of the Services and other measures set out in the Agreement

7.5. Both parties will meet as required to resolve any performance issues as they arise.

**8. SUBCONTRACTING PERFORMANCE OF TPA'S OBLIGATIONS NOT PERMITTED**

8.1. The TPA may not subcontract the performance of any of the TPA's obligations under this Agreement.

**9. CHANGE PROCESS**

9.1. ACC may make a written request to the TPA to change, reject, cancel or suspend any Service and the TPA shall take all reasonable steps to comply, provided they can do so within their contractual obligations to third parties.

9.2. In the event of any such request, ACC will reimburse the TPA 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.

9.3. If additional Services are required, the parties will follow the procedures and disciplines in clause 2 (Scope of Services) and clause 7 (Performance of Services) above.

9.4. If any such request is made due to an error or omission by the TPA or due to any Services not meeting the requirements or specifications described or referred to in this Agreement, then the TPA will promptly meet the request at no cost to ACC.

9.5. Any agreement to change, reject, cancel or suspend any Service under this clause 9 must be given effect by means of a Variation to this Agreement under clause 23, and the provisions of that Variation will apply accordingly.

**10. STANDARD OF SERVICES**

10.1. The TPA will perform the Services with the degree of professional skill, care and diligence expected of an appropriately qualified provider experienced in providing the same or similar Services.

10.2. The TPA must ensure that the Services developed, delivered, proposed or specified by the TPA:

10.2.1. are suitable for their intended purposes;

10.2.2. comply with the requirements for the Services set out in this Agreement; and

10.2.3. comply with all relevant codes, legislation, ordinances, regulations and New Zealand standards including the Privacy Act 2020, Employment Relations Act 2000, and the Health and Safety at Work Act 2015,

10.3. The TPA will ensure that its systems and procedures used in the delivery of Services are regularly monitored and reviewed. Any weaknesses identified will be documented and remedial action will be undertaken immediately.

10.4. The TPA will continuously identify and implement quality improvements in the delivery of the Services to ACC and its customers.



## **11. AUDITS AND REVIEW**

- 11.1. ACC shall have the general right under this Agreement, in addition to any audit and evaluation rights expressed elsewhere in it, to undertake operational audits and/or reviews at ACC's expense of the services and compliance with this Agreement.
- 11.2. Notice will be given to the TPA of the proposed audit or review and its timing, at least ten (10) Working Days before the audit/review is due to commence.
- 11.3. Subject to observance of the requirements of the Law, the TPA will allow ACC access to those records and premises of the TPA and any relevant subcontractor retained by the TPA which are necessary for the purposes of audit of quality, service delivery, performance requirements, organisational quality standards or information standards and organisational reporting requirements as detailed in any part of this Agreement. The TPA will provide ACC with every reasonable facility for and assistance in obtaining access for the purpose of such audits.
- 11.4. ACC will give representatives of the TPA an opportunity to be heard in relation to any audit prior to its completion.
- 11.5. Where an audit reveals a deficiency on the part of the TPA, the TPA must, within a period specified by ACC, submit to ACC an action plan to remedy the deficiency.

## **12. DIRECTIVES AND GUIDELINES**

- 12.1. The Chief Executive of ACC (or any person so authorised by him or her) may from time to time issue to the TPA electronically or in writing Directives and Guidelines (clearly identified as such) relating to this Agreement.
- 12.2. The TPA must comply with the terms of a Directive.
- 12.3. The TPA must have regard to the terms of a Guideline, but it is otherwise at the discretion of the TPA as to how or the extent to which the Guideline is incorporated into the TPA's practices.
- 12.4. Wherever practicable, ACC must consult in good faith with the TPA regarding the terms of a proposed Directive or Guideline.
- 12.5. No Directive or Guideline may be inconsistent with the AC Act.

## **13. INFORMATION**

### **General**

- 13.1. All matters relating to this Agreement and all information acquired or received by either Party in the course of or under this Agreement (including, for the avoidance of doubt, from the other Party's subcontractors) shall be held confidential and shall not be divulged in any way to any other person without the prior written approval of the other Party.
- 13.2. The TPA will retain all NWC Client information within New Zealand unless agreed in writing by ACC. ACC will make its decision based on the TPA's ability to provide evidence that the proposed storage will meet all relevant security requirement including, if required by ACC, evidence of approval by the New Zealand Health Information Board.



- 13.3. The TPA will not retain any NWC Client information in a cloud environment unless agreed in writing by ACC. ACC will make its decision based on the TPA's ability to provide evidence that the proposed storage will meet all relevant security requirements including, if required by ACC, evidence to satisfy GCIO requirements of government agencies in this respect.
- 13.4. Disclosure of matters or information in the following circumstances is not a breach of clause 13.1:
- 13.4.1. to the extent that the matter or information has become generally available to the public other than as a result of unauthorised disclosure by that Party;
  - 13.4.2. as provided in this Agreement;
  - 13.4.3. to the extent that either Party is required or permitted to disclose as part of the dispute resolution processes under this Agreement or under Part 5 of the AC Act;
  - 13.4.4. by ACC or the TPA where the disclosure is for the purpose of advising rehabilitation providers as to who has the responsibility for managing the claim and paying rehabilitation expenses;
  - 13.4.5. mutually agreed information with other TPA's for the purpose of performance benchmarking. This information will not contain information at a client level;
  - 13.4.6. to the extent that a party is required to disclose the same pursuant to Law (including the Official Information Act 1982), Ministerial direction or parliamentary convention;
  - 13.4.7. to the extent that it is necessary and reasonable for ACC to disclose certain information (such as the name of the TPA) to ensure the efficient and uninterrupted operation of this Agreement;
  - 13.4.8. to the appropriate regulatory authority because of suspected collusive or anti-competitive tendering behaviour; or
  - 13.4.9. to the ACC Complaints Investigator;
- but, in each case, subject to the provisions of the Privacy Act 2020 and the Health Information Privacy Code 2020.

#### **Disclosure under legal obligation**

- 13.5. Disclosure of information pursuant to the Official Information Act 1982 or the requirements of any other Law or any Court is not a breach of clause 13.1 and in this regard the TPA acknowledges that ACC is subject to the Official Information Act 1982.
- 13.6. ACC must endeavour to keep confidential any commercially sensitive information relating to the TPA to the extent it is able to do so under the Official Information Act 1982.

#### **ACC's use of Information**

- 13.7. ACC must not use information provided by the TPA other than:
- 13.7.1. for the purpose for which it was received or other purposes directly related to that purpose;

- 13.7.2. for the purpose of complying with its obligations under the AC Act or any other Act or Law;
- 13.7.3. for safety, statistical, or research purposes provided there is no publication of the information in a form that would reasonably be expected to identify the TPA concerned; or
- 13.7.4. for the purpose of performance benchmarking against other TPAs.

## Privacy

- 13.8. The Parties will comply with the Privacy Act 2020 and the Health Information Privacy Code 2020 including:
  - 13.8.1. The TPA must not disclose to any third party, information which will identify a NWC Client or enable that person to be identified unless:
    - (a) the NWC Client's consent has been obtained; or
    - (b) the disclosure is required or permitted by Law.
  - 13.8.2. appointing a privacy officer; and
  - 13.8.3. having a privacy policy that:
    - (a) includes what to do if there is a privacy breach (including procedures to promptly advise ACC); and
    - (b) complies with any reasonable ACC policy provided by ACC to the TPA.
  - 13.8.4. The TPA must take all reasonable steps to ensure that personal information (within the meaning of "personal information" in the Privacy Act 2020) obtained or held by the TPA is protected at all times from:
    - (a) unauthorised access, use modification or disclosure; and
    - (b) any use that does not comply with this Agreement, the Privacy Act 2020 or the Health Information Privacy Code 2020.
  - 13.8.5. The TPA agrees that ACC may assess the TPA's privacy policy and practices. The TPA will cooperate with any privacy assessment, including completing self-assessments on request.
  - 13.8.6. Without limiting clause 13.12, the TPA shall escalate a privacy breach concerning information that relates to Services in this Agreement to ACC under the following procedure:
    - (a) Any breach will be notified to ACC's Key Personnel by phone and email as soon the TPA is aware of the breach situation.
    - (b) The TPA and ACC will then work together to manage consequences and implications of the breach, including in accordance with ACC's issues management procedures.

- (c) The TPA will not comment publicly, including to the media, about the breach without written permission of one of ACC's Key Personnel.

#### **Access to ACC Records**

- 13.9. Where the TPA is granted or provided with access to information held by ACC, the TPA must comply with any Directives or other requirements stipulated by ACC in respect of such access.

#### **Ownership**

- 13.10. All information obtained from ACC, including but not limited to claims files and matters pertaining to NWC Clients, remains the property of ACC.
- 13.11. All information in relation to a NWC Client which is at any time in the possession or under the control of the TPA is the property of ACC. ACC is entitled at any reasonable time to have access to, or uplift, those records.

#### **Public Comment**

- 13.12. The TPA will immediately advise ACC if it becomes aware of any issue relating to a NWC Client currently receiving services under this Agreement, a NWC Client's treatment, the operation of this Agreement or ACC which, in the TPA's opinion, has or may have media or public interest and the TPA will follow ACC's guidance on the management of any such issues.
- 13.13. Neither Party will make or issue to the media or any member of the public any oral or written statement or comment concerning a NWC Client, the NWC Client's treatment or ACC or the operation of this Agreement, without prior consultation with the other Party.
- 13.14. The TPA will promptly advise ACC if it receives a request or complaint in relation to a NWC Client, professional disciplinary body or other person under the Official Information Act 1982, the current Code of Health and Disability Services Consumers' Rights or other legislation or is the subject of a complaint, concerning a NWC Client, a NWC Client's treatment or the operation of this Agreement.
- 13.15. ACC will respond to any such request or complaint on behalf of the TPA and the TPA will provide ACC with any assistance and/or information to enable ACC to respond.

#### **14. INDEMNITIES**

- 14.1. Without restricting ACC's rights at Law, the TPA indemnifies and keeps indemnified, ACC against all liabilities (including strict liability), actions, proceedings, costs (including reasonable internal labour and services costs of ACC), claims, penalties, damages, charges, expenses, demands or loss suffered or incurred by ACC:

- 14.1.1. as a result of any omission or delay or negligent act by the TPA in respect of a NWC Client or the TPA's performance of its obligations under this Agreement (including obligations arising on or after expiry or termination of this Agreement as provided in SCHEDULE 1: SERVICE PROVISION; or

- 14.1.2. in respect of any complaint, action, or proceeding taken against ACC as a result of a breach of:

- (a) the Privacy Act 2020;

(b) the Health Information Privacy Code 2020;

(c) any other Law –

directly or indirectly relating to the performance of this Agreement by the TPA, except to the extent that it is contributed to by or arises from any act, omission, or delay of ACC.

But in any case the liability of the TPA under this clause 14.1 is limited to \$1,000,000 per event.

- 14.2. The TPA acknowledges and agrees that copyright and other intellectual property rights in and to the Eos system and associated materials and information is the exclusive property of either FINEOS Corporation or ACC, which materials and information the TPA agrees not to reproduce or authorise others to reproduce without the express written consent of FINEOS Corporation and/or ACC (whichever is relevant) and to protect FINEOS Corporation's and ACC's intellectual property rights in Eos at all times.
- 14.3. ACC acknowledges and agrees that the TPA will have the right when authorised to do so by ACC, and only during the Term, to access and use certain parts of the Eos system for the purposes of this Agreement.
- 14.4. Without restricting the TPA's rights at Law, ACC indemnifies and keeps indemnified, the TPA against all liabilities (including strict liability), actions, proceedings, costs, claims, penalties, damages, charges, expenses, demands or loss suffered or incurred by the TPA in respect of any complaint, action, or proceeding taken against the TPA as a result of a breach of the Privacy Act 2020 or the Health Information Privacy Code 2020, directly or indirectly relating to the performance of this Agreement by ACC, except to the extent that it is contributed to by or arises from any act, omission or delay of the TPA, and without releasing the TPA from its obligation to comply with the Privacy Act 2020 and the Health Information Privacy Code 2020.

## **15. LIABILITY**

### **15.1. Maximum Liability**

Subject to clause 13, clause 14, and clause 36 the maximum aggregate liability of each party to the other under or in connection with this Agreement or in respect of the Services and Deliverables, whether in contract, tort (including for negligence), breach of statutory duty or otherwise, must not for any event exceed the greater of

(a) \$ 2 million; or

(b) the amount three (3) times equal to the Price paid by ACC under this Agreement in the preceding calendar year.

### **15.2. Exclusion of Certain Loss**

Subject to clause 13 and clause 36, neither party is liable to the other under or in connection with this Agreement for any claim or indirect loss or damage.

### **15.3. No Liability**

The TPA 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 TPA uses its best endeavours to minimise the impact of the breach.

## **16. BREACH**

### **Breach**

16.1. ACC or the TPA will be in breach of this Agreement if it fails to perform any obligation specified in this Agreement.

### **Notice**

16.2. In the event of a breach of this Agreement, the non-defaulting Party may give written notice to the defaulting Party describing the breach and requesting that it be remedied within five (5) Working Days or that a negotiated strategy for its remedy be reached within five (5) Working Days. This does not limit the right of immediate termination given by clauses 16.3.7 and 16.5.5.

### **Powers of ACC**

16.3. If:

16.3.1. a breach of this Agreement by the TPA is not remedied within any time agreed or allowed; or

16.3.2. in the reasonable opinion of ACC a breach by the TPA is not capable of remedy by the TPA to the reasonable satisfaction of ACC

ACC is entitled, but is not obliged, to exercise all or any of the following rights and powers:

16.3.3. in the case of failure by the TPA to carry out its obligations in the manner and to the standard required by ACC, to require that the TPA comply with any reasonable direction by ACC as to the manner and standard of performance;

16.3.4. to vary this Agreement by deleting the service or obligation which is the subject of the breach but without relieving the TPA from financial liability for that service or obligation;

16.3.5. to do anything itself that may be reasonably required to remedy the breach;

16.3.6. to recover from, or withhold or set off from any future payment to, the TPA all reasonable costs and expenses incurred by ACC arising out of the breach or in exercising any of the rights and powers given by this clause 16.3, including costs and expenses arising within ACC where such amount has been agreed by ACC and the TPA;

16.3.7. in the case of a material breach or a continuing or repeated failure by the TPA to perform its obligations, to immediately terminate this Agreement in writing.

### **Anti-Collusion**

16.4. The TPA 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:

- 16.4.1. Pricing for the Services
- 16.4.2. Methods, factors or formulas used to calculate prices for the Services
- 16.4.3. The quality, quantity of specifications of the Services

#### **Powers of TPA**

16.5. If:

- 16.5.1. a breach of this Agreement by ACC is not remedied within any time agreed or allowed; or
- 16.5.2. in the reasonable opinion of the TPA a breach by ACC is not capable of remedy by ACC to the reasonable satisfaction of the TPA –

the TPA shall be entitled to exercise all or any of the following rights and powers:

- 16.5.3. to do anything itself that may be reasonably required to remedy the breach;
- 16.5.4. to recover from ACC all reasonable costs and expenses incurred by the TPA arising out of the breach, including costs and expenses arising within the TPA;
- 16.5.5. in the case of a material breach, or a continuing or repeated failure by ACC to perform its obligations, to immediately terminate this Agreement in writing.

#### **Waiver**

16.6. No failure or delay on the part of ACC or the TPA to exercise any right, power or privilege under this Agreement operates as a waiver nor does any single or partial exercise of any right, power or privilege under this Agreement preclude any further exercise or the exercise of any other right, power, or privilege whether arising under Law or this Agreement.

### **17. TERMINATION OF AGREEMENT**

#### **Termination by Expiry**

17.1. This Agreement may be terminated by agreement in writing. It shall otherwise terminate on the expiry of the Term.

17.2. Release from Termination Date or Date of Expiry

From the Termination Date or the Date of Expiry, the TPA 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.

17.3. Termination or Expiry Without Prejudice to Rights

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 TPA's breach of this Agreement from moneys otherwise payable to the TPA.

#### **Termination by ACC**

17.4. ACC has the right to terminate this Agreement immediately without penalty or compensation in any of the following circumstances:

17.4.1. pursuant to clause 16.3.7 (material breach);

17.4.2. where a change in legislation or regulations or a ministerial directive under the AC Act is stated by notice given to the TPA by ACC to have the effect of requiring this Agreement to be terminated, this Agreement shall be deemed terminated from the date stated in the notice and ACC shall not be liable for any loss or additional costs suffered or incurred by the TPA as a result.

#### **Termination by TPA**

17.5. The TPA has the right to terminate this Agreement immediately without penalty or compensation pursuant to clause 16.5.5 (material breach).

#### **Termination on Notice**

17.6. Either Party may, without incurring any liability to the other for damages or other compensation, at any time give to the other no less than three (3) months notice of termination of this Agreement.

17.7. Termination Date

The later of three (3) calendar months after the date upon which such Notice is received by the TPA or ACC 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").

17.8. Date of Cancellation

The later of three (3) calendar months after the date upon which such Notice is received by the TPA or ACC 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 TPA 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.

17.9. Termination for any reason does not relieve any Party of any financial or other obligation relating to any period prior to termination.

#### **Termination on Insolvency**

17.10. Immediate Termination without Prior Notice

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 TPA on the bankruptcy or liquidation of the



TPA. (This shall not apply, however, in the case of a liquidation of the TPA for the purpose of reconstruction or amalgamation where the terms have been approved by ACC.)

#### 17.11. Termination Date

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

#### 17.12. Immediate Termination on Notice

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

### Termination for Breach

17.13. If ACC considers on reasonable grounds that the TPA has defrauded ACC (whether or not ACC prosecutes the TPA) ACC will consider this to be a Material breach.

#### 17.14. Notice of Breach

If either Party considers that the other has breached any provision of this Agreement or has provided information to ACC 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 10 Working Days for the breach to cease, and/or to remedy the breach if it is capable of remedy.

If the breach has not ceased or if the breach being capable of remedy has not been remedied within the period of 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.

#### 17.15. Termination Date

The Term of this Agreement shall end upon the date of receipt by the other party of the Notice of termination given under clause 17.14 (Notice of breach) 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").

#### 17.16. Release from Termination Date

From the Termination Date, the TPA is released from the obligation to provide any further Services, and ACC is released from the obligation to pay for Services provided after that date.

### Claim Handover

17.17. The provisions of SCHEDULE 1: SERVICE PROVISION apply on the expiry or earlier termination of this Agreement and on assumption of individual claim management by ACC.

## 18. PROVISIONS THAT SURVIVE TERMINATION

18.1. The following provisions of this Agreement survive its termination (irrespective of the reason for termination) and may be enforced by either Party as if this Agreement was still in force.

Clause 1 – Relationship of Parties

Clause 6 – Obligations of TPA



Clause 13 – Information  
 Clause 14 – Indemnities  
 Clause 15 – Liability  
 Clause 16 – Breach  
 Clause 17 – Termination of Agreement  
 Clause 18 – Provisions that Survive Termination  
 Clause 28 – Information Management  
 Clause 29 – Dispute Resolution  
 Clause 34 – Waiver  
 Clause 36 – Intellectual Property Rights  
 Clause 41 – Governing Law  
 Schedule 1 – Service Provision  
 Schedule 3 – Pricing

## **19. CHANGE IN CIRCUMSTANCES**

### **Material Change**

19.1. If either Party reasonably considers that there has been, or there is the likelihood of, a change in the circumstances under which the Agreement was entered into, including, by way of example:

19.1.1. a takeover or merger or change in effective control of the TPA;

19.1.2. a change in the personnel responsible for meeting the TPA's obligations under this Agreement;

19.1.3. a change in the nature of the business of the TPA;

which may materially affect the obligations under or performance of this Agreement, then, on request by that Party, the Parties will negotiate in good faith for the purposes of ascertaining what action should be taken (if any).

19.2. The TPA must give written notice to ACC of any matter referred to in clause 19.1 that relates to the TPA as soon as practicable, and where possible, before it occurs. The TPA acknowledges that non-compliance with this clause 19.2 may, at ACC's discretion, if the non-compliance has not been remedied within a reasonable time specified by ACC for the circumstances, be treated as a material breach of this Agreement for the purposes of clause 16.3.7.

## **20. BUSINESS CONTINUITY**

20.1. The TPA 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.

20.2. The TPA will provide ACC with details of its after-hours contact points.

20.3. The TPA will at all times maintain and abide by the requirements of the Business Continuity Plan (BCP) as agreed between the parties.

20.4. ACC reserves the right to reject any changes that the TPA may make to the BCP provided to ACC, but will not withhold approval without reasonable cause.

- 20.5. The parties will, to the extent that it is reasonable and prudent to do so:
- 20.5.1. review each BCP every twelve months from the Commencement Date; and
  - 20.5.2. test each BCP every twelve months from the Commencement Date; and
  - 20.5.3. implement any resulting changes, where approved by ACC, into the BCP every twelve months from the Commencement Date

## **21. CHANGE OF CONTRACTOR**

- 21.1. The TPA acknowledges and agrees that prior to the Date of Expiry of the 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, putting a new service supplier in place or taking over the Services itself (should it so desire).
- 21.2. The TPA 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 TPA 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.
- 21.3. In the event of the need for a hand-over of the Services either to ACC or another service provider, the TPA will continue to provide the Services until the Date of Expiry or Date of Termination. The TPA 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.
- 21.4. The TPA will provide all reports and additional information required for transition at no cost to ACC and without limitation on ACC's ability to access or retrieve such reports or additional information.

## **22. PARTIES REMAIN RESPONSIBLE**

- 22.1. If at any time there is a change in the shareholding or ownership of the TPA that alters the effective control of the TPA (other than where the TPA, or its parent company is a company whose shares are listed on any recognised Stock Exchange) without the TPA obtaining ACC's prior written approval to the change, then ACC may, within 15 Working Days of the change, give to the TPA 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 TPA 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").

## **23. VARIATION OF AGREEMENT**

- 23.1. No Variation of this Agreement shall be effective, unless it is agreed upon in writing by both parties or unless it is made pursuant to clause 23.2 or 23.3.
- 23.2. ACC may amend specifications

After consultation with the TPA, ACC may at any time give Notice to the TPA that the provisions of any one or more of the Schedules to this Agreement (excluding prices in Schedule 3 - Pricing) 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 TPA 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 TPA. If agreement cannot be reached, either party may require the matter to be resolved under clause 29 (DISPUTE RESOLUTION).

### 23.3. Variations to give effect to Government Policy Changes

Notwithstanding clause 23.2, where a change in legislation or regulations, or a ministerial direction under the Accident Compensation Act 2001 is stated by Notice given to the TPA 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 TPA as a result unless ACC agrees otherwise.

## 24. VARIATION TO CONTRACT PRICING

- 24.1. The Contract Rates as detailed in Schedule 3 - Pricing will be fixed for the initial term of the Agreement.
- 24.2. Each request by a party of a Contract Rate variation for Schedule 3 - Pricing will be in writing and will be supported by documentary evidence to justify and permit verification of the variation claimed.
- 24.3. Proposed Contract Rate increases will not exceed the percentage change in the Statistics New Zealand Labour Market Statistics: Wage inflation (salary and wage rates, including overtime) when its value in the quarter immediately preceding the time for the proposed fee increase is referenced against its value in the quarter immediately preceding the previously agreed Schedule 3 - Pricing.
- 24.4. If the parties cannot agree on a Contract Rate variation the issue shall be resolved according to the disputes procedure in clause 29 (Disputes Resolution). Until the dispute is resolved the previously applicable Contract Rates shall continue to apply.

## 25. FORCE MAJEURE

- 25.1. Non-performance by either of the Parties of any of its obligations under this Agreement is excused, without liability for non-performance, during the time and to the extent that such performance is prevented, wholly or substantially, by Force Majeure.
- 25.2. The Party claiming the benefit of this clause must promptly give written notice to the other Party specifying the cause and extent of its inability to perform any of its obligations under this Agreement and the likely duration of such non-performance. In the meantime such Party shall take all reasonable steps to remedy or abate the Force Majeure.
- 25.3. No Party is, by virtue of this clause, required against its will to settle any strike, lockout or other industrial disturbances.
- 25.4. Performance of any obligation affected by Force Majeure must be resumed as soon as reasonably possible after the termination or abatement of the Force Majeure.
- 25.5. An obligation arising during any period of suspension of rights and obligations under this clause must be performed as soon as reasonably possible after the suspension ends. If by reason of Force Majeure a Party is unable to perform any obligation under this Agreement for a period of 14 days the other Party may on giving 7 days Notice to that Party cancel this Agreement.

25.6. Cancellation of this Agreement under this clause 25 shall not prejudice the rights of either Party against the other in respect of any matter or thing occurring under this Agreement before cancellation.

25.7. "Force Majeure" means any:

25.7.1. act of God, fire, earthquake, volcanic eruption, storm, flood, or landslide;

25.7.2. strike, lockout, work stoppage or other labour hindrance;

25.7.3. explosion, spillage, public mains electrical supply failure, or nuclear accident;

25.7.4. sabotage, riot, civil disturbance, insurrection, national emergency (whether in fact or law) or act of war (whether declared or not);

25.7.5. other similar cause beyond the reasonable control of the Party claiming the benefit of the Force Majeure clause in this Agreement and which that Party is unable to overcome by the exercise of reasonable diligence and at a reasonable cost -

but does not include:

25.7.6. any event which the Party affected could have prevented or overcome by exercising a standard of reasonable care;

25.7.7. a lack of funds for any reason; or

25.7.8. a change of policy by ACC or the Government, or any change in any Law.

## 26. HEALTH AND SAFETY

26.1. In performing its obligations under this Agreement, the TPA must:

26.1.1. Comply, and ensure its personnel and subcontractors comply, with all relevant health and safety legislation including the Health and Safety at Work Act 2015 ("HSAWA");

26.1.2. so far as reasonably practicable, ensure the health and safety of:

26.1.2.1. ACC's and the TPA's personnel; and

26.1.2.2. ACC Clients;

26.1.3. 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 HSAWA) against ACC or the TPA;

26.1.4. advise ACC in writing as soon as possible of:

26.1.4.1. any hazards or risks that the TPA or its subcontractors identifies or creates, and all accidents, incidents and near misses, relating to the Services on ACC's premises or otherwise within ACC's control (using the online tool provided by ACC at <https://www.acc.co.nz/for-providers/report-health-safety-incidents/>));

26.1.4.2. all notifiable events (as defined in the HSAWA) relating to the Services (using the online form provided by ACC);

26.1.4.3. any contact by any regulatory agency in relation to any health, safety or environmental matter relating to the Services (unless the TPA is prohibited by law from so advising ACC);

26.1.4.4. comply with ACC's reasonable instructions in relation to any matter referred to in sub clause (26.1.4).

26.2. **Right of removal:** The TPA must promptly remove from any site any employee or agent of the TPA (or employee or agent of any subcontractor of the TPA), performing the Services, as ACC may reasonably require.

26.3. **Onsite work plan:** If the TPA is performing any Services on ACC's premises or a third party's premises, or ACC is on the TPA's or a third party's premises, for reasons related to this Agreement, prior to commencing work on those premises both parties shall:

26.3.1. 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 those premises; and

26.3.2. develop an onsite work 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.

## **27. BROADER OUTCOMES**

### **27.1. The TPA will:**

- 27.1.1. perform the Services in a manner that gives appropriate regard to the protection of the natural environment;
- 27.1.2. comply with all environmentally related legislation and codes of practices relating to the Services;
- 27.1.3. ensure any opportunities for improvement in ACC's environmental performance identified by the TPA's employees or subcontractors are reported to the relevant ACC key contact; and
- 27.1.4. perform the Services in a manner that gives appropriate regard to the protection of the natural environment, including by looking for opportunities to reduce emissions and waste impacts, such as by procuring and using low-waste and low emissions goods and services where practicable.

### **27.2. The TPA will:**

- 27.2.1. deliver the Services in a manner that is culturally appropriate for Māori and other ethnic or indigenous groups and will take Treaty of Waitangi principles into account when performing the Services. The TPA acknowledges that ACC is a crown entity and is therefore required to act consistently with the Treaty, and that ACC will have due regard to the Treaty when designing and monitoring services that impact on economic opportunities and social outcomes for Māori; and
- 27.2.2. comply, and ensure that its subcontractors and personnel comply, with all relevant employment standards and Laws (including obligations under the Employment Relations Act 2000, Minimum Wage Act 1983, Wages Protection Act 1983, and the Holidays Act 2003). The TPA will report any instances where it, its subcontractors, or its personnel are being investigated by the Labour Inspectorate, or where it identifies that it has breached any of the legislation referred to in this sub-clause.

## **28. INFORMATION MANAGEMENT**

### **28.1. The TPA must:**

- 28.1.1. keep and maintain records using prudent business practice and according to all applicable Law;
- 28.1.2. make sure the records are easy to access;
- 28.1.3. keep the records safe; and
- 28.1.4. comply with the requirements in paragraph 2.17 of Schedule 1.

### **28.2. Whenever, either during or after the Term of the Agreement, the TPA is called upon to do so by ACC's Key Personnel, the TPA 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 provided that this power will not be exercised by ACC if it will hinder the performance of this Agreement by the TPA.

- 28.3. Clause 28.1 extends equally to any copy of all or part of the correspondence, documents, paper, digital library or other property referred to in that clause.
- 28.4. The TPA will provide all information in a format that can be used by ACC and within a reasonable time.
- 28.5. If the information is required in order to comply with an inquiry or ACC's statutory, parliamentary, or other reporting obligations, the TPA must cooperate with ACC to provide the information immediately.
- 28.6. In addition to the requirements set out in paragraph 2.17 of Schedule 1, the TPA must make the records available to ACC during the Term of the Agreement and for 10 years after the end date (unless the TPA has already provided them to ACC).
- 28.7. The TPA must ensure that records provided by ACC or created for ACC are securely managed. When records are disposed of, the TPA must ensure they are securely destroyed.

## **29. DISPUTE RESOLUTION**

### **Review of Claims Decisions**

- 29.1. Where a NWC Client disputes a decision of the TPA on a claim, the procedures specified in [SCHEDULE 1: SERVICE PROVISION](#) apply.

### **Procedure for Other Disputes**

- 29.2. Any dispute between the TPA and ACC as to:
- 29.2.1. the interpretation of this Agreement; or
  - 29.2.2. the performance or exercise by either Party of any obligations or rights under this Agreement

must be referred by the Parties to a meeting to be convened of the authorised representatives of ACC and the TPA.

- 29.3. If those persons are unable to reach agreement within twenty (20) Working Days of the referral or any agreed longer period, a written summary setting out the basis of the dispute, the issues involved, the reasons for not reaching agreement and the implications for this Agreement must be submitted by the Parties to a meeting to be convened of the Chief Executive or equivalent position of the TPA and the Chief Executive of ACC or their nominees.

### **Mediation**

- 29.4. If the persons described in clause 29.3 are unable to reach agreement within twenty (20) Working Days of the referral or any agreed longer period, then the matter in dispute may be referred to a mediator to be agreed between the Parties or, failing agreement within five (5) Working Days, to a mediator to be nominated by the President for the time being of the New Zealand Law Society at the request of either Party and;



- 29.4.1. the mediator must discuss the matter with the Parties and endeavour to resolve it by their agreement. The mediator does not have power to make a binding ruling;
- 29.4.2. all discussions, information or documents including the written summary and the written conclusions of the persons referred to in clause 29.3 made available in mediation are without prejudice and may not be referred to in any later proceedings;
- 29.4.3. each Party must bear their own costs of the mediation and must pay half the cost of the mediator.

### **Arbitration**

- 29.5. If the matter in dispute is not resolved in mediation within fifteen (15) Working Days or any agreed longer period after the appointment of a mediator pursuant to clause 29.4, or the Parties agree that mediation is unlikely to resolve the matter, then either Party may refer the dispute to an independent arbitrator for determination. The independent arbitrator is to be appointed in accordance with the Arbitration Act 1996, by the President of the New Zealand Law Society, and the arbitration is to be conducted under that Act.
- 29.6. The decision of the arbitrator appointed pursuant to clause 29.5 will be final and binding.

### **Service to Continue**

- 29.7. Pending the outcome of the dispute resolution, the Parties agree to perform the Agreement in all respects, including performance of the matter which is the subject of the dispute.

### **Limitation on Dispute Resolution**

- 29.8. An agreement or decision made under clause 29.3, 29.4, or 29.5 must not be contrary to the AC Act.

## **30. SEVERABILITY**

- 30.1. Where any provision of this Agreement is held to be invalid, the Parties will negotiate in good faith to achieve a similar economic and practical effect for both Parties having regard to the objectives of the AC Act and the delegation.
- 30.2. Where any provision of this Agreement is held to be invalid the other provisions are not affected but may be subject to negotiation under clause 30.1.

## **31. INVOICING, PAYMENT AND CREDITS**

- 31.1. The TPA is entitled to raise a GST invoice to be forwarded to ACC for the Services detailed in this Agreement or any other Service requested by ACC, on completion of that Service, or at such other time agreed between the Parties, as long as ACC has agreed in writing to the charge for that Service.
- 31.2. The TPA will raise and forward to the appropriate ACC cost centre, preferably in an electronic format, any relevant GST invoices. The TPA will raise no more than one consolidated GST invoice per month.
- 31.3. Each invoice must clearly provide the following information:
  - 31.3.1. Service details;



- 31.3.2. ACC Cost Centre;
  - 31.3.3. unit cost;
  - 31.3.4. total cost;
  - 31.3.5. quantity;
  - 31.3.6. description;
  - 31.3.7. order reference;
  - 31.3.8. 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
  - 31.3.9. any other information reasonably requested by ACC.
- 31.4. Subject to the TPA complying with this Agreement and ACC receiving the TPA's invoice by the 3rd Working Day of the month, ACC will, in the event an invoice is not disputed, pay that invoice by direct credit to a bank account nominated by the TPA no later than the 20th day of the month following the period being billed.
- 31.5. Any refunds or credits that the TPA is liable to pay to ACC will be:
- 31.5.1. transacted the month the credit is applied;
  - 31.5.2. made against the ACC Cost Centre that received the initial charge.
- 31.6. ACC will be billed monthly with payment due by the 20th of the following month.
- 31.7. ACC will pay any GST that is payable.
- 31.8. 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 TPA at any time or at all.

## **32. BENCHMARKING**

- 32.1. ACC may, from time to time, conduct benchmarking exercises, with the aim of either measuring ACC's performance relative to other organisations, or measuring the TPA's performance relative to other suppliers.
- 32.2. The TPA will assist ACC in conducting these benchmarking exercises, by assembling data, by facilitating introductions of ACC personnel to appropriate personnel in other customers of the TPA, and by any other reasonable means requested.
- 32.3. In meeting the obligations of 25.2, the TPA will not divulge confidential information without appropriate consent.

### **33. COST REDUCTION PROGRAMME**

- 33.1. During the Term of this Agreement, the TPA will review the manner in which it provides the Services and identify cost saving measures which would enable the TPA to reduce ACC's total costs for the Services. The TPA will focus on cost savings measures where the TPA has total control over the end to end delivery of the Service. Where the TPA has limited control over the pricing for Services purchased from ACC's preferred suppliers the TPA will provide recommendations on cost saving measures
- 33.2. During the Term of this Agreement, the TPA will use its best endeavours to identify cost saving measures additional to those identified under clause 33.1 that ACC could take to reduce the TPA's costs in providing the Services. If such proposals are implemented during the Term of this Agreement, the parties will share the savings equally by way of agreed reductions in the Contract Rates over the remaining Term of this Agreement. ACC is not under any obligation to implement cost saving measures identified by the TPA.

### **34. WAIVER**

- 34.1. A waiver by either Party of any of its rights or any obligation of the other Party is effective only if in writing and expressly stated to be a waiver for the purposes of this Agreement.
- 34.2. Clause 34.1 does not prevent ACC including any general waiver in a Directive or Guideline issued under clause 12.
- 34.3. 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.

### **35. INSURANCE**

#### **Insurance Policies**

- 35.1. The TPA 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:
- 35.1.1. public liability insurance;
  - 35.1.2. data protection insurance; and
  - 35.1.3. other insurance reasonably required by ACC,
- the amount and terms of such insurance cover to be no less than \$1million and to be adequate to protect ACC from non-performance of the TPA's obligations under this Agreement, having regard to clause 15.

#### **Evidence of Insurance**

- 35.2. The TPA is required to provide ACC with evidence of its current insurances as a condition precedent to the commencement of this Agreement.

#### **Prompt Information**

- 35.3. The TPA must promptly inform ACC of:

- 35.3.1. any claims relating to this Agreement against the insurance policies referred to in clause 35.1; and
- 35.3.2. any material change to, cancellation or non-renewal of, such policies.

### **Currency of Insurance**

- 35.4. The TPA must, upon request by ACC, provide ACC with evidence that all insurance cover required by clause 35.1 is current and meets the other requirements of this Agreement.

## **36. INTELLECTUAL PROPERTY**

### **36.1. Ownership of Intellectual Property Rights**

- 36.1.1. Pre-existing Intellectual Property Rights remain the property of their current owner.
- 36.1.2. New Intellectual Property Rights in all original work included in the materials created by the TPA and its employees in or in connection with the Services or this Agreement including, without limitation, any published or unpublished report, computer program, computer database or record, design or artwork (the "Original Work"), shall become the property of ACC when the Original Work is created. Where the Original Work is created by a contractor of the TPA or any other person, the TPA will obtain from that person in advance, a written assignment of copyright in that Original Work in favour of ACC, from the time the Original Work is created.
- 36.1.3. The TPA grants to ACC a perpetual, non-exclusive, worldwide and royalty-free license to use, for any purpose, all Intellectual Property Rights in the Services that are not owned by ACC. This license includes the right to use, copy, modify, and distribute the Services.

### **36.2. Supplier Indemnity**

- 36.2.1. The TPA warrants that it is legally entitled to do the things stated in clause 36.1 with the relevant Intellectual Property Rights in the Services.
- 36.2.2. The TPA warrants that Pre-existing Intellectual Property Rights and New Intellectual Property Rights provided by the TPA and incorporated in the Services do not infringe the Intellectual property Rights of any third party.
- 36.2.3. The TPA indemnifies ACC in respect of any expenses, damage or liability incurred by ACC in connection with any third party that the delivery of the Services 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.

## **37. TPA ACKNOWLEDGEMENTS**

### **37.1. The TPA acknowledges that:**

- 37.1.1. it has entered into this Agreement on the basis of its own judgment and evaluation and not on the basis of any representation or warranty by or on behalf of ACC unless that representation or warranty is stated in this Agreement;

- 37.1.2. it may not bring any claim or action alleging misrepresentation or breach of warranty unless the representation or warranty on which the claim or action is based is stated in this Agreement;
- 37.1.3. it has taken such advice as it considers relevant from advisors independent of ACC and is not relying on any statement outside this Agreement from or on behalf of ACC (whether written or otherwise) in entering into this Agreement.

### **38. COSTS**

- 38.1. All the costs of the TPA in entering into and performing its obligations under this Agreement must be met by the TPA.

### **39. NOTICES**

- 39.1. Any notice required pursuant to this Agreement must be in writing and is regarded as having been given and received if:
  - 39.1.1. personally delivered to the Party for whom it is intended or to that Party's address described in SCHEDULE 5: VARIABLES or otherwise notified to the other Party for the purpose of notices under this Agreement;
  - 39.1.2. mailed by prepaid registered mail, to the last known business address in New Zealand of the Party for whom it is intended. In this case receipt is to be regarded as occurring on the second (2nd) Working Day after the day of posting; or
  - 39.1.3. sent by facsimile, to the facsimile number of the Party for whom it is intended, and a confirmation of proper receipt is held by the sending Party. In this case receipt is to be regarded as occurring at the date and time of receipt, or if that is after 5pm or on a day other than a Working Day, then receipt is to be regarded as occurring on the next Working Day;
  - 39.1.4. sent by email, to the address of the party specified in this Agreement or such other address as either Party may specify in writing. In this case receipt is to be regarded as occurring upon actual receipt of the notice provided by electronic means.
- 39.2. ACC may give notice from time to time in accordance with clause 23 of addresses to which communications relating to various matters must be sent by the TPA for the purposes of this Agreement. Those notices may identify the appropriate addressee by description of position or class of position. Any such notice is a Directive to which clause 12 applies.

### **40. NO EXTENSION OR RENEWAL**

- 40.1. Nothing in this Agreement shall be taken or read as expressly or impliedly warranting that the TPA is entitled to an extension or renewal of this Agreement at any time, or to any further agreement with ACC. The TPA 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

### **41. GOVERNING LAW**

- 41.1. This Agreement will be governed by and construed in accordance with the laws of New Zealand.

41.2. 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.

## 42. NEW ZEALAND CURRENCY AND TIME

42.1. All money is in New Zealand dollars, unless Schedule 3 – Pricing specifies a different currency. Dates and times are New Zealand time.

## 43. PRECEDENCE

43.1. 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 23)
- Clauses 1 to 44 of this Agreement
- Schedule 1 – Service Provision
- Schedule 2 – Monitoring and Evaluation
- Schedule 3 – Pricing
- Schedule 4 – Service Governance and Escalation Process
- Schedule 5 – Variables

## 44. DEFINITIONS AND INTERPRETATION

### 44.1. DEFINITIONS

In this Agreement, unless the context otherwise requires:

“AC Act” means the Accident Compensation Act 2001;

“ACC” means the Accident Compensation Corporation continued under the AC Act and includes any contractor engaged by ACC and any agent of ACC, other than the TPA;

“Agreement” and “this Agreement” includes all schedules, and amendments made at any time;

“Code of ACC Claimants’ Rights” means the code approved under section 44 of the AC Act and includes any amendments to the Code approved under section 47 of the AC Act;

“Commencement Date” means the date specified as such in SCHEDULE 5: VARIABLES;

“GST” means Goods and Services Tax under the Goods and Services Tax Act 1985;

“Insolvency Event” means in relation to a TPA:

- (a) becoming insolvent;
- (b) the appointment of a receiver or receiver and manager or statutory manager;

- (c) bankruptcy, liquidation or dissolution, or a resolution for the liquidation or dissolution except for the purpose of reconstruction or amalgamation where the terms have been approved by ACC;
- (d) entering into, or resolving to enter into, a scheme of arrangement or composition for the benefit of creditors or any class of creditors;
- (e) suspending or stopping payment to creditors generally or ceasing to carry on business or any material part of it, or threatening or stating an intention to do any of those things;
- (f) the existence of grounds for liquidation by a Court.

“Law” means any present or future statute, regulation, Order in Council, and/or Ministerial direction given under the Crown Entities Act 2004;

“NWC Client” means a NWC client or person who is referred to the TPA by ACC in accordance with this Agreement and is identified by ACC as a NWC Client in the referral;

“NWC” means claims for personal injury caused by accident which are not work-related personal injury;

“Processes” means the processes to be used by the TPA in providing services as provided by ACC from time to time, and “Process” has a corresponding meaning;

“Safe and Sustainable exit” in relation to a NWC Client means the NWC Client has safely returned to work or return to independence as a result of the case management activities of the TPA and has not received weekly compensation for 4 months;

“Term” means the period from the Commencement Date to the close of the Date of Expiry specified in Schedule 5, Variables.

“TPA” means the Party named as Third Party Administrator in this Agreement.

“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.

#### 44.2. **INTERPRETATION:**

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

Defined Terms: In this Agreement, unless the context otherwise requires, expressions defined in or for the purposes of the AC Act have the same meaning here.

Gender: Words importing one gender shall include all genders.

Instruments: In this Agreement, unless the context otherwise requires, references to statutes, regulations, Orders in Council, or Ministerial directions include any amendment, substitution or re-enactment.

Negative Obligations: Any obligation not to do anything includes an obligation not to allow, permit or cause that thing to be done.

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

Schedules etc: Unless otherwise stated, references to schedules, clauses and paragraphs are references to schedules, clauses and paragraphs of this Agreement.

Precedence: The Schedules are to be read as part of this Agreement. However, if anything in the Schedules is inconsistent with another term of this Agreement, the other term will prevail.

RELEASED UNDER THE  
OFFICIAL INFORMATION ACT

## SCHEDULE 1: SERVICE PROVISION

### 1. SERVICE PRINCIPLES

- 1.1. The TPA is acting on behalf of ACC with the TPA fulfilling the functions and duties and exercising the powers of ACC.
- 1.2. The TPA must be able to separate services in relation to the Accredited Employer Programme and services in relation to this Agreement by differentiating between:
  - 1.2.1. providing services to the Accredited Employer in the management of work injuries; and
  - 1.2.2. providing services to ACC in relation to the management of non-work injuries.
- 1.3. The TPA will ensure that the Accredited Employer employee's privacy is maintained at all times through strict compliance with:
  - 1.3.1. the Privacy Act 2020;
  - 1.3.2. the Health Information Privacy Code 2020;
  - 1.3.3. the Code of ACC Claimants' Rights; and
  - 1.3.4. the Official Information Act 1982.
- 1.4. The TPA must have a contractual relationship with an Accredited Employer. This relationship must be sound and able to be leveraged in the management of the Accredited Employer's employee's non-work injuries. It is preferable that this contractual arrangement is confirmed for the period of the Agreement.
- 1.5. At the commencement date (or the date on which the TPA commences providing services to an Accredited Employer if that date is later than the commencement date) the TPA must have, and must maintain, sound injury management arrangements with the Accredited Employer and injury management capability to reduce incapacity from work.
- 1.6. The TPA will continue to work with the Accredited Employer selected by ACC to ensure they are willing to take action in respect of non-work injuries, and has Union/employee support for the TPA to manage the Accredited Employer's non-work injuries.

### 2. RESPONSIBILITIES OF TPA

#### 2.1. Services

The services to be provided by the TPA during the Term in relation to non-work accident claims referred to the TPA by ACC are:

- 2.1.1. Claim and case management of non-work accident claims referred to the TPA by ACC to the standard required by the AC Act and this Agreement and in particular in accordance with the relevant Policy and Processes provided by ACC from time to time;



2.1.2. To advise providers that any payment requests (excluding medical fees payments which will be paid directly to providers by ACC) be sent to ACC for payment in accordance with this Agreement and in particular in accordance with the relevant Processes;

2.1.3. To perform all the obligations arising under sections 48 to 66 of the AC Act that would otherwise be obligations of ACC unless the Act or the context requires otherwise;

2.1.4. To perform all its obligations arising under sections 40 to 45 of the AC Act in relation to the Code of ACC Claimants' Rights.

## **2.2. Claim and Case Management**

2.2.1. Except as provided in this Agreement or any relevant Process, the functions and duties to be performed by the TPA are those set out in Parts 3 and 4 of the AC Act, with the TPA fulfilling the functions and duties and exercising the powers of ACC.

2.2.2. TPA Case Managers must ensure that the NWC Client is provided with the support and entitlements that are available in accordance with the AC Act and related legislation.

## **2.3. Compliance**

2.3.1. Client consent must be obtained before gathering or sharing client information with any third party required to manage the non-work accident claim.

2.3.2. The TPA will be responsible for responding to requests for personal information and must comply with the:

- (a) Privacy Act 2020;
- (b) Health Information Privacy Code 2020;
- (c) Code of ACC Claimants' Rights; and the
- (d) Official Information Act 1982.

2.3.3. The TPA will be responsible for managing requests for official information however these must be referred to the ACC Relationship Manager for confirmation of what can be released prior to release.

2.3.4. ACC will approve the release of official information unless there are 'good reasons' not to disclose as defined in the Official Information Act 1982.

## **2.4. Claim Registration**

2.4.1. All non-work claims will be registered by ACC.

## **2.5. Cover Decision**

2.5.1. ACC will determine whether the initial injury claim is accepted (cover decision).

2.5.2. Except as specified in 2.5.3, the TPA will make cover decisions for subsequent physical injuries that are attributed to the accident claim, or if the initial physical injury diagnosis has changed.

2.5.3. The TPA must refer the decision for acceptance of cover for a subsequent injury to ACC if the injury type is:

- (a) Mental injury arising from the physical injury
- (b) Treatment Injury
- (c) Cover for any injury resulting from the excluded claim criteria, i.e. serious injury, sensitive claims, accidental death, hearing loss or dental injuries.

The TPA will be responsible for issuing the decision advised by ACC for mental injuries arising from the physical injury and for managing the review of any decision issued for the mental injury arising from the physical injury. For all other subsequent cover decisions under this paragraph ACC will issue the decision and manage any review arising.

2.5.4. The TPA must gather the medical information required to support the cover decision for all claims for mental injury arising from the physical injury. For all other subsequent cover decisions, as per paragraph 2.5.3 of this Schedule, ACC will gather the medical information required to support the cover decision.

## **2.6. Identification and Allocation of TPA Non-Work Accident Claims**

2.6.1. Wherever possible, ACC will identify and transfer claims that meet the criteria for TPA management of non-work accident claims.

2.6.2. ACC will retain management of the following claim types:

- (a) Sensitive claims,
- (b) Serious Injury claims (as defined by ACC policy),
- (c) Accidental Death claims,
- (d) Dental only injury claims,
- (e) Hearing loss only injury claims,
- (f) Clients being managed by the Remote Claims Unit, and
- (g) Non-Earner claims.

2.6.3. Every referral of a non-work accident claim will contain the information described in any relevant Process and be in a format agreed by ACC and the TPA.

2.6.4. The TPA must accept every referral made in accordance with this Agreement and provide services to the injured NWC Client in accordance with this Agreement.

2.6.5. The TPA will have processes in place with the Accredited Employer to identify absences as a result of a non-work accident.

2.6.6. A TPA may request a claim to be transferred for their management. ACC will confirm that the claim has been registered; cover accepted and meets the criteria for transfer under this Agreement prior to transferring the claim to the TPA.

2.6.7. ACC will transfer claims in Eos to the TPA department queue for management.

2.6.8. Upon receipt of a claim, the TPA must acknowledge receipt of the claim and confirm that the NWC Client is an employee of an Accredited Employer whose non-work accident claims are managed by the TPA.

2.6.9. The TPA must review their Eos TPA department queue regularly for new claims and assign the claim to a TPA Case Manager within one Working Day from the date transferred by ACC.

2.6.10. The TPA Case Manager must contact the NWC Client within 2 Working Days to advise that they are managing their ACC non-work accident claim and will be their contact point for all enquiries and provide the necessary contact details to the NWC Client.

## **2.7. Rehabilitation**

2.7.1. The TPA must develop rehabilitation practices to achieve the best outcome for the NWC Client.

2.7.2. The TPA must work with the Accredited Employer and treatment providers to develop and implement a return to work plan.

2.7.3. The TPA must work with the NWC Client and service providers to provide the rehabilitation services required to return the NWC Client to independence whenever practicable.

2.7.4. The TPA must contact the NWC Client's GP within 2 Working Days of receiving an eACC18 (electronic ACC18) where, the GP has requested either "Support needed to stay at work / return to work" or "Clinical review of patient's fitness for work needed".

2.7.5. The TPA will, where practicable, arrange rehabilitation using ACC's contracts with rehabilitation providers, including the prices payable under those contracts, in accordance with relevant processes. Where the TPA considers on reasonable grounds that it is not practicable to use ACC's contracts, the TPA may arrange rehabilitation itself but any such rehabilitation must be commensurate with rehabilitation using ACC's contracts in all material respects including price and quality.

2.7.6. Any elective surgery approved by the TPA will be paid at the same rates as agreed between ACC and the service providers for elective surgery.

## **2.8. Weekly Compensation**

2.8.1. The TPA must determine whether the NWC Client may be eligible to weekly compensation.

2.8.2. The TPA must gather the necessary information and, use Eos to notify the ACC Weekly Compensation team of this information to enable the set up of weekly compensation payments by ACC.

2.8.3. The TPA must approve incapacity changes and notify ACC of these changes.

2.8.4. The TPA must use Eos to send a task to the ACC Weekly Compensation team to abate, cancel, cease or suspend, or reinstate weekly compensation.

## 2.9. Requests for entitlements

2.9.1. Payment for any entitlements approved by the TPA prior to:

- (a) ACC receiving and registering a non-work injury claim; or
- (b) an ACC cover decision being made; or
- (c) the claim being allocated to the TPA for management;

will be at the TPA's risk and expense until such time as a claim is registered, cover is accepted and the claim is allocated to the TPA.

2.9.2. If the TPA receives a request from a NWC Client for any of the following entitlements:

- (a) Lump sum, or independence allowance,
- (b) Housing modifications,
- (c) Vehicle purchase or modifications,
- (d) Hearing loss expense, or
- (e) Dental expense,

the TPA must send the request to ACC, together with such information requested by ACC from time to time and ACC will make a decision about the request for entitlement and implement the decision.

2.9.3. The TPA must not transfer entitlements from one claim to another without consultation with and agreement from ACC.

2.9.4. Subject to ACC's privacy obligations, any reports received by ACC for an assessment for any of the entitlements described in paragraph 2.9.2 of this Schedule will be provided by ACC to the TPA.

2.9.5. For all other entitlements, the TPA must establish whether the NWC Client is eligible for the requested entitlement. Advice may be sought from TPA Support as required.

## 2.10. Payments

2.10.1. ACC will be responsible for processing all payments. The TPA must ensure that the relevant entitlement or purchase order details have been recorded in Eos to enable payment of invoices.

2.10.2. All invoices must be addressed to ACC or the appropriate pro-forma used.

- 2.10.3. The TPA must manage any issues or anomalies with invoices sent to ACC for payment and escalated to the TPA staff.
- 2.10.4. Emergency payments may be requested in exceptional circumstances. The TPA must obtain written (email) approval from ACC TPA Support before agreeing to pay an emergency payment. Note emergency payments incur additional charges and administrative costs to ACC.

## **2.11. ACC Assumes Management**

- 2.11.1. In most cases, where the employee of the Accredited Employer ceases to be in the employment of the Accredited Employer, ACC will assume the management of the employee's claim(s). In some circumstances, ACC may agree that the TPA can continue to manage the claim to an agreed date or until a specific outcome is reached.
- 2.11.2. In the case of seasonal employment i.e. meat works, the TPA will retain management of the file in the "off" season. ACC will determine if the claim should be returned to ACC for on going management if the employee is not rehired at the start of the new season
- 2.11.3. ACC and the TPA may agree from time to time that ACC will assume the management of a claim on such reasonable terms and conditions as are agreed.
- 2.11.4. In all cases, where the TPA ceases to be contracted by the Accredited Employer, all claims being managed by the TPA will be transferred to ACC for on-going management.
- 2.11.5. The TPA agrees that ACC may assume sole management of any claim, without the need for agreement from the TPA, where ACC, in its sole discretion, considers that to be appropriate.
- 2.11.6. Where ACC has assumed management of a claim under paragraph 2.11.5 of this Schedule the TPA is not liable to provide case and claims management services and must provide ACC with all information and any assistance and co-operation reasonably required by ACC.
- 2.11.7. If a claim that is being managed by a TPA is identified as a claim type listed in 2.6.2 then that claim must be transferred to ACC for ongoing management.
- 2.11.8. If the only outstanding activity remaining on a claim is an Appeal then that claim must be transferred to ACC for ongoing management.
- 2.11.9. Once a claim transfers to ACC, ACC has the right to amend or revoke any decision made by the TPA in respect of the claim.
- 2.11.10. Upon transfer of a claim to ACC, the TPA no longer has any authority to act as ACC's agent in relation to any outstanding review or appeal, and ACC has full control over the conduct of any review or appeal which the TPA has been conducting on ACC's behalf but which has not been completed.
- 2.11.11. All claims reaching 365 weekly compensation days paid during TPA management will be reviewed by ACC. ACC will determine if the claim is to continue to be managed by the TPA or returned to ACC for on going management.

## **2.12. Claim File**

- 2.12.1. A separate claim file (whether in hard or electronic form) is required for each non-work accident claim, identified by the ACC claim number and the NWC Client's name. All decisions on the claim must be communicated in writing to the NWC Client and a record kept on the claim file. A record of all payment requests must be kept.
- 2.12.2. The claim file must contain all documents submitted by or in respect of the NWC Client, correspondence relating to the claim, medical reports, and any documentation received on the claim and any decisions issued. Electronic files must be updated regularly and back-up files retained. Files must be treated confidentially and kept secure.
- 2.12.3. The claim file must contain a record of all communications in respect of the NWC Client or their claim including phone calls made, face to face meetings, direct contacts, internal advice requested and/or received and correspondence.
- 2.12.4. All correspondence regarding non-work accident claims must include a reference to the ACC claim number.
- 2.12.5. The TPA must complete a privacy check of electronic and physical files prior to release of information to the NWC Client or authorised parties and document that this has been completed on the file. The TPA must comply with any privacy policies and processes that are defined by ACC and published to the TPAs from time to time.

### **2.13. Processing of Claims**

- 2.13.1. The TPA must not make any decision, or settle any review or appeal, or enter into any arrangement or understanding with a non-work accident NWC Client that has the effect of contracting out of cover or entitlements the TPA is obliged to provide under this Agreement or the AC Act. The TPA acknowledges that any breach of this paragraph 2.13.1 may at ACC's discretion be treated as a material breach of this Agreement for the purposes of clause 16.3.7.

### **2.14. Notification of Decisions**

- 2.14.1. The TPA must make a decision and give notice of that decision to the non-work accident NWC Client in accordance with paragraph 2.14.2 of this Schedule. All decisions must be made on reasonable grounds.
- 2.14.2. Every notice of decision must:
  - (a) be given to the non-work accident client (and third parties, if applicable) in accordance with section 64 of the AC Act; and
  - (b) advise the non-work accident client that if he or she wishes to apply for a review, the application for review should be lodged with the TPA within the timeframe specified in the AC Act. Details of the time available to do so and an explanation of when applications can be made out of time must also be included.

### **2.15. Restrictions on TPA**

- 2.15.1. The TPA must not allocate or conduct reviews of decisions under sections 137, 140 or 141 of the AC Act but has rights and responsibilities in relation to reviews and appeals as set out in DISPUTES, REVIEWS & APPEALS below and Part 5 of the AC Act.

## **2.16. Branding**

- 2.16.1. The TPA will brand all correspondence regarding non-work accident claims with the TPA's details. Automatic payment advices sent from ACC to NWC Clients and providers will continue to have ACC branded information. Any other branding will be in accordance with any applicable Process.

## **2.17. File Retention**

- 2.17.1. The TPA must retain every claim file for at least 20 years after the last action taken in respect of that claim except where –
- (a) required by or a request from ACC to provide the file to ACC sooner;
  - (b) the TPA ceases to be a TPA (including on expiry of this Agreement);
  - (c) the TPA relationship with the Accredited Employer for which the NWC Client is employed has ceased;
  - (d) the NWC Client is no longer employed by the Accredited Employer;
  - (e) the NWC Client's claim has been fully actioned, the NWC Client is no longer receiving entitlements, there has been no activity for three months and all decisions and payments have been finalised.
- 2.17.2. Files returned to ACC must be in the format prescribed by ACC.
- 2.17.3. Files must be returned to ACC if any of the events in paragraph 2.17.1 (b) to (e) of this Schedule occur.

## **2.18. Delegations**

- 2.18.1. The TPA must ensure internal control on claims expenditure is managed by applying the delegation levels agreed by ACC.

## **2.19. Fraud Referral**

- 2.19.1. The TPA will immediately advise ACC if it becomes aware of any potential fraud relating to or by a non-work accident client. ACC will investigate and manage any such fraud referral on behalf of the TPA and the TPA will provide ACC with any assistance and/or information to enable ACC to do so.
- 2.19.2. ACC will meet the costs of fraud investigations referred by the TPA. ACC will monitor the TPA's fraud referral rates. If the TPA's fraud referral rates differ materially from ACC's fraud referral rates for similar NWC Clients, ACC will work with the TPA to develop an action plan to address this issue. If the TPA continues to have materially higher fraud referral rates then this may at ACC's discretion be treated as a material breach of this Agreement for the purposes of clause 16.3.7 of the Agreement.



## 2.20. Other Matters

- 2.20.1. If any matter related to claim and case management is not specifically dealt with in this Agreement or a Schedule to the Agreement, the TPA will:
- (a) if there is a relevant Process in respect of the matter, deal with the matter in accordance with the Process;
  - (b) if there is no relevant Process in respect of the matter, immediately notify ACC and follow the reasonable instructions of ACC in respect of the matter.

## 3. DISPUTES, REVIEWS & APPEALS

### 3.1. Outline

3.1.1. This paragraph outlines the scope of the TPA's authority to represent ACC on reviews and appeals under Part 5 of the AC Act and outlines the procedures to be followed by a TPA when:

- (a) a non-work accident client or a third party wishes to apply for a review of a TPA's decision or delay;
- (b) the TPA wishes to appeal a review decision;
- (c) an appeal is filed against a review decision by any party to that review;
- (d) a decision is amended, revoked, or substituted;
- (e) a decision is overturned on review or appeal.

3.1.2. The TPA will manage decisions, reviews and appeals in accordance with the AC Act and this Agreement and in particular in accordance with the relevant processes provided by ACC from time to time ("Processes").

### 3.2. Applications for Reviews

3.2.1. If a non-work accident client wishes to apply for a review, the TPA must, upon request, provide the non-work accident client with the "Application for Review" form prescribed by ACC. However, the TPA must not reject as invalid an application for review for the sole reason that it is not made on any such "Application for Review" form.

3.2.2. If ACC receives an application for review relating to a non-work accident client that is being managed by the TPA, ACC must forward it to the TPA within seven (7) Working Days after ACC received it (unless ACC advises the TPA that ACC is assuming management of the claim).

3.2.3. In all cases the TPA will notify ACC TPA Support of the receipt of the application for review as described in the Processes.

### 3.3. Administration Reviews



3.3.1. The TPA must, within seven (7) Working Days following receipt of an application for review, reconsider its decision by undertaking an administrative review of that decision and notify the non-work accident client and any third party of the outcome of that administrative review.

3.3.2. If the TPA, after undertaking the administrative review required under paragraph 3.3.1, decides to amend, revoke, or substitute its initial decision, the notification of that decision required under paragraph 3.3.1 is a new decision which must be notified in accordance with paragraph 2.14.2 of this Schedule.

3.3.3. The TPA will provide TPA Support with the outcome of the administrative review as described in the Processes.

#### **3.4. Review Hearing**

3.4.1. If the TPA does not within the time specified in paragraph 3.3.1 amend, revoke, or substitute its initial decision, the TPA must refer the matter to formal review and comply with the procedures described in the Processes.

3.4.2. ACC regards full and timely compliance with the obligations in this DISPUTES, REVIEWS & APPEALS as essential and any failure to comply with them may at ACC's discretion be treated as a material breach of this Agreement for the purposes of clause 16.3.7 of the Agreement.

3.4.3. Unless ACC advises the TPA that it will represent itself on the review, the TPA will represent ACC on the review.

3.4.4. The TPA acknowledges that failure of the TPA to disclose any relevant information that the TPA has had in its possession to ACC or to the Reviewer or to the non-work accident client may at ACC's discretion be treated as a material breach of this Agreement for the purposes of clause 16.3.7 of the Agreement.

3.4.5. ACC will meet the costs of the independent reviewer conducting reviews. ACC will monitor the TPA's review rates (including number of reviews and number of successful reviews). If the TPA's review rates (i.e. "upheld" reviews) differ materially from ACC's review rates for similar clients, ACC will work with the TPA to develop an action plan to address this issue. If the TPA continues to have materially higher review rates (i.e. of overturned decisions) then this may at ACC's discretion be treated as a material breach of this Agreement for the purposes of clause 16.3.7 of the Agreement.

3.4.6. The TPA will notify the TPA Support team of the outcome of the review hearing, as described in the Processes.

3.4.7. The TPA is responsible for implementing the decision of the reviewer, including any costs awarded, as described in the Processes.

#### **3.5. Appeals to the District Court**

3.5.1. All Appeals: In any appeal in the District Court, ACC will represent itself. ACC will be responsible for the conduct of the appeal and the TPA must take all steps necessary to enable this to occur.

3.5.2. Action required upon receipt of Notice of Appeal: The TPA must refer to ACC every notice of appeal received by the TPA against a review decision involving a decision made by the TPA. The referral must be made within five (5) Working Days of the TPA's receipt of that notice of appeal so as to enable ACC to make a decision about its representation on the appeal.

3.5.3. Filing Appeals against Entitlement Decisions: The TPA does not have authority to file appeals against review decisions and is not a party to any appeal against such a review decision. ACC has discretion to decide whether or not to appeal such a review decision. Where the TPA disagrees with a review decision the TPA must refer the matter to ACC within five (5) Working Days of receipt of the review decision to enable ACC to decide whether to file a notice of appeal.

3.5.4. The conduct of any appeal filed by the TPA that purports to have been filed on behalf of ACC in the District Court and which has not been approved in writing by ACC may be taken over by ACC and the TPA must take all steps necessary to enable this to occur.

3.5.5. Any breach of paragraphs 3.5.1 to 3.5.4 by the TPA may at ACC's discretion be treated as a material breach of this Agreement for the purposes of clause 16.3.7 of the Agreement.

### **3.6. Appeals to the High Court or Court of Appeal**

3.6.1. The decision as to whether a District Court decision should be appealed to the High Court or the Court of Appeal on behalf of ACC is for ACC to make in its discretion.

3.6.2. The TPA does not have authority to file an application for leave to appeal to the High Court or the Court of Appeal or to file a notice of appeal in either of those courts on behalf of ACC. Nor does the TPA have authority to appear on behalf of ACC in such matters.

3.6.3. The conduct of any appeal commenced by the TPA in breach of paragraph 3.6.2 may be taken over by ACC and the TPA must take all steps necessary to enable this to occur.

3.6.4. Any breach of paragraph 3.6.2 or 3.6.3 by the TPA may at ACC's discretion be treated as a material breach of this Agreement for the purposes of clause 16.3.7 of the Agreement.

### **3.7. Disputes, Reviews and Appeals leading up to and following transfer of claim to ACC , date of expiry and Effect of Appeal Decisions**

3.7.1. The TPA must make and notify decisions on any outstanding claims prior to the date of expiry, unless the prior written agreement of ACC not to do so is obtained.

3.7.2. If the TPA receives an application for review or appeal by a health professional or organisation or any third party (including an employer) in relation to a non-work accident client the TPA will immediately refer the review or appeal to ACC and ACC will represent itself in any such review or appeal unless it appoints the TPA as its agent to do so.

3.7.3. For the avoidance of doubt, if this Agreement is terminated for any reason any authority given by ACC to the TPA to act on its behalf under this DISPUTES, REVIEWS & APPEALS is revoked.

### **3.8. Ministerial Enquiries**

3.8.1. All ministerial enquiries received by the TPA must be referred to ACC within one (1) Working Day.

3.8.2. The TPA must provide ACC with any information requested and required within three (3) Working Days from the date that the request was received by the TPA.

3.8.3. ACC will issue a written response to the ministerial enquiry.

### **3.9. Complaints**

3.9.1. All TPA dealings with non-work accident clients must ensure that the TPA's actions comply with the Code of ACC Claimants' Rights.

3.9.2. The TPA must communicate clearly to NWC Clients what their complaints process is.

3.9.3. Any complaints received directly by the TPA must be actioned according to the TPA complaint policy and processes.

3.9.4. If a NWC Client is still dissatisfied then the TPA must inform them of the ACC complaint contact details.

3.9.5. If a complaint is received by ACC in relation to a TPA managed claim, the TPA must provide ACC with any information requested and required within three (3) Working Days from the date that the request was received by the TPA.

3.9.6. If a complaint is received by the TPA under the Code of Claimants' Rights, the TPA must refer the complaint to ACC and provide ACC with the assistance required to enable ACC to respond to the complaint. The process and timeframes are as described for Ministerial Enquiries in paragraph 3.8.

## **4. TERMINATION AND TRANSFERS**

### **Claim Transfers, Obligations and Consequences**

#### **4.1. Claim Transfers**

This section deals with claims transfer to ACC and related matters in the following situations:

- (a) Expiry of the Term ("Situation A").
- (b) Termination of this Agreement before the end date for any reason ("Situation B").
- (c) ACC assumes claim management of a particular claim(s) under paragraph 2.11 of this Schedule ("Situation C").

- (d) Expiry or termination of Accredited Employer contract with TPA for management of work accident claims under paragraph 2.11.4 of this Schedule (“Situation D”).

4.1.1. Except as provided in this Agreement, the transfer of claim management to ACC means that in respect of the non-work accident claim(s), the services to be provided by the TPA, are services that are from the end of the Term, earlier termination of this Agreement, assumption by ACC of management of the claim, or TPA relationship with Accredited Employer for management of work accident claims has or is about to cease, to be provided by ACC itself.

#### **4.2. Operational Obligations of TPA Termination and Transfers**

4.2.1. Upon any of Situations A, B, C or D occurring, the TPA must provide all information and any assistance and co-operation reasonably required by ACC to enable ACC:

- (a) to promptly and efficiently take over the ongoing claims and case management of relevant non-work accident clients; and
- (b) to act in the interests of each non-work accident client and ACC in relation to such claim and case management.

4.2.2. The TPA must provide ACC with full information about the known unclosed claims in a claims transfer report format prescribed by ACC.

4.2.3. In the case of Situation A, non-work accident claims will be transferred to ACC not less than one (1) month before the end of the agreement unless otherwise agreed with ACC.

4.2.4. In the case of Situation B, non-work accident claims will be transferred to ACC as soon as practicable before or after actual termination or assumption of the claim managed by ACC.

4.2.5. In the case of Situation C, non-work accident claims will be transferred to ACC within five (5) Working Days unless otherwise agreed with ACC.

4.2.6. In the case of Situation D;

- (a) the TPA must notify ACC immediately upon notification of non renewal or termination of the Accredited Employer contract with the TPA for management of work accident claims;
- (b) from the date of notification, ACC will cease referring new non-work accident claims for employees of the Accredited Employer to the TPA;
- (c) non-work accident claims will be transferred to ACC, prior to the expiry or termination of the Accredited Employer contract with the TPA, unless otherwise agreed with ACC.

4.2.7. The TPA must give ACC the originals of all relevant files relating to non-work accident clients within the timeframes referred to in paragraph 4.2.3, paragraph 4.2.4 paragraph 4.2.5 and paragraph 4.2.6.

4.2.8. The TPA must perform a full privacy check on each claim returned to ACC to ensure that no third party information is attached to or referenced in any documentation attached to the claim.

4.2.9. All claims returned to ACC must be transferred to TPA Support using the Process described by ACC.

4.2.10. The TPA must give ACC reasonable and timely access to the TPA's records, staff, contractors, agents, consultants and others engaged by it, (including health professionals) for the purposes of assessing liabilities in respect of claims, meeting entitlements, and the orderly transfer of claims management.

4.2.11. The TPA acknowledges that any non-compliance with paragraphs 4.2.1 to 4.2.10 by it may, at ACC's discretion, be treated as a material breach of this Agreement for the purposes of clause 16.3.7 of the Agreement.

#### **4.3. TPA's obligations where delays occur**

4.3.1. Where in Situations A, B, C or D claims transfer is delayed or complicated by reason of a failure of the TPA to comply with any of its obligations under this Agreement in relation to claims management, entitlements, record keeping, claims transfer or the failure to provide any relevant information, the TPA agrees to meet on demand by ACC the costs and expenses of ACC, (including internal labour and services costs of ACC) in correcting the matter.

### **5. AUDIT PROVISIONS**

#### **5.1. General Right of ACC to Audit**

5.1.1. ACC shall have the general right under this Agreement, in addition to any audit and evaluation rights expressed elsewhere in it, to undertake operational audits and/or reviews at ACC's expense of the services and compliance with this Agreement.

#### **5.2. Notice**

5.2.1. Notice will be given to the TPA of the proposed audit or review and its timing, at least ten (10) Working Days before the audit/review is due to commence.

#### **5.3. Access to Records and Premises**

5.3.1. Subject to observance of the requirements of the Law, the vendor will allow ACC access to those records and premises of the TPA and any relevant subcontractor retained by the TPA which are necessary for the purposes of audit of quality, service delivery, performance requirements, organisational quality standards or information standards and organisational reporting requirements as detailed in any part of this Agreement. The TPA will provide ACC with every reasonable facility for and assistance in obtaining access for the purpose of such audits.

### **6. REPORTING**

## 6.1. Planned Reporting

- 6.1.1. The TPA must supply reports as required by ACC in a format agreed with ACC and as frequently as reasonably required by ACC on claims, entitlements and expenses arising during the Term for each non-work accident claim including any information reasonably required for statistical purposes by ACC.
- 6.1.2. The TPA must report any breach or near miss relating to the privacy of a NWC Client's personal information to ACC as soon as any such breach or near miss is identified. Additionally a monthly return, including nil return, will be provided to ACC in a format agreed with ACC.
- 6.1.3. The TPA must report any application for review or appeal, their status and outcomes to ACC as soon as any such application is received or status is updated. Additionally a monthly return, including nil return, will be provided to ACC in a format agreed with ACC.
- 6.1.4. The TPA and ACC should regularly review whether claims being managed by the TPA, in excess of 182 days, remain consistent with the service provisions. Where it is no longer appropriate for a claim to be managed by the TPA, the claim should be transferred back to ACC.

## 6.2. Unplanned Reporting

- 6.2.1. The TPA will promptly (within three (3) Working Days) notify and fully report to ACC in writing on:
- (a) any actual or anticipated event that, if known to ACC, would be reasonably likely to cause ACC to review this Agreement with the TPA;
  - (b) any actual or anticipated difficulty in complying with the obligations of the TPA in the management of non-work accident clients generally or any particular claim; and any proposed action to address the situation;
  - (c) any matter required to be notified under any provision of this Agreement;
  - (d) any matter relating to this Agreement or any particular claim where a report is requested by ACC.
- 6.2.2. The TPA will immediately (within one (1) Working Day) notify and fully report to ACC in writing on:
- (a) any breach by the TPA of its obligations under this Agreement;
  - (b) the occurrence of any Insolvency Event;
  - (c) any event or issue that is likely to result in public adverse comment about the TPA services.
- 6.2.3. The TPA acknowledges that any non-compliance with a reporting requirement under paragraph 6.1 or paragraph 6.2 may, at ACC's discretion, if the non-compliance has not been remedied within a reasonable time specified by ACC for the circumstances, be treated as a material breach of this Agreement for the purposes of clause 16.3.7 of the Agreement.

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## **7. STAFF RESOURCES AND TRAINING**

### **7.1. TPA Case Managers**

7.1.1. The TPA must provide skilled Case Managers for the duration of the Agreement and ensure that there is sufficient coverage by skilled staff at all times.

7.1.2. The TPA must have systems and processes in place to measure the competency of TPA Case Management staff.

7.1.3. The TPA's Case Managers must be able to demonstrate the following skills:

- (a) Previous experience with ACC policy and legislation.
- (b) Results driven.
- (c) Able to apply initiative to realise positive outcomes.
- (d) Motivated to assist others.
- (e) Culturally sensitive.
- (f) An effective communicator (written and oral).
- (g) A strong negotiator.
- (h) Organised, focussed and have a good eye for detail.
- (i) Keyboard and computer savvy.
- (j) Able to make decisions quickly.
- (k) Able to deliver high standards of quality customer service.
- (l) Competent in managing situations, on a case-by-case basis.
- (m) Tertiary qualified in a related field (work experience to an equivalent level will be considered).
- (n) Drivers licence essential.

### **7.2. Training**

7.2.1. The TPA must have systems and processes for the induction and training of new staff.

7.2.2. ACC will provide any agreed training when required. The TPA will be responsible for providing continued training to their staff including new staff.

7.2.3. The TPA's Case Managers must ensure that they are familiar with and understand how to apply the following in their day to day handling of claims.



- (a) The Privacy Act 2020,
- (b) The Health Information Privacy Code 2020,
- (c) The Code of Claimants' Rights, and the
- (d) The Official Information Act 1982.

## **8. SYSTEMS**

### **8.1. Eos**

- 8.1.1. ACC will supply a cut down version of Eos (ACC's Claim and Case Management system) for the duration of the Agreement.
- 8.1.2. The TPA must comply with the Eos configuration requirements to ensure the integrity of information held in Eos.
- 8.1.3. Each TPA is set up as an individual department in the system which will facilitate reporting and access to non-work accident claims that have been referred to the TPA. The TPA will only see the information for claims that have been transferred and access to any other claims for the injured NWC Client will be limited.
- 8.1.4. The TPA must utilise the appropriate Eos functionality as defined within the Processes published by ACC.
- 8.1.5. The TPA must ensure that in its use of the Eos system it protects, and ensures its employees and contractors protect, the intellectual property rights of ACC and FINEOS Corporation in the Eos system.

### **8.2. CHIPS**

- 8.2.1. ACC will provide the TPA with access to policy and process information via external CHIPS.

### **8.3. Email**

- 8.3.1. The TPA must use secure email to communicate with ACC in relation to non-work accident claims. Secure email communications are encrypted over the internet and provide another level of security for NWC Client information.

### **8.4. 0800 number**

- 8.4.1. The TPA must have a dedicated free dial number for all parties to a non-work accident claims to use so that they can easily contact the TPA's service nationwide.

### **8.5. System Security**

- 8.5.1. All systems containing ACC NWC Client information must be kept secure with access only granted to authenticated users.
- 8.5.2. The TPA must be able to prevent access to the systems data by non-authorised users.



8.5.3. Physical files and premises must be kept secured.

8.5.4. No data about ACC NWC Clients is to be stored off shore unless ACC has approved such storage in accordance with clause 13.2 of the Agreement.

8.5.5. No data about ACC NWC Client is to be stored in a cloud environment unless ACC has approved such storage in accordance with clause 13.3 of the Agreement.

## **9. ONBOARDING ACCREDITED EMPLOYER PROCESS AND PRINCIPLES**

### **9.1. Principles**

9.1.1. Only Accredited Employers, who meet the criteria as set out by ACC, will be eligible to participate. Confirmation that the Accredited Employer will participate is at ACC's discretion.

9.1.2. ACC will sign an agreement with each employer obtaining agreement from Accredited Employers to participate. Accredited Employer employees' non-work injuries are managed by the TPA who holds a contracted relationship with the Accredited Employer.

### **9.2. Approach**

9.2.1. Where the Accredited Employer registers an interest to participate, ACC will engage the TPA to assist with planning and securing agreement from the Accredited Employer to provide their co-operation in the TPA management of the Accredited Employer's employees' non-work injuries.

9.2.2. On signing the agreement with the Accredited Employer to participate, ACC will allocate all non-work injury claims, where the employee of the Accredited Employer is expected to have at least 7 days incapacity, to their TPA for management.

### **9.3. TPA Responsibilities**

9.3.1. A representative from the TPA, with knowledge on the Accredited Employer being accepted by ACC will:

- (a) attend a joint ACC, Accredited Employer meeting either in person or by phone to secure agreement from the Accredited Employer to participate where, Accredited Employer employees' non-work injuries are managed by the TPA who is contracted by the Accredited Employer; and
- (b) provide at least quarterly input to ACC on how the Accredited Employer is co-operating with the TPA in the management of the Accredited Employers employees' non-work injuries.

## SCHEDULE 2: MONITORING AND EVALUATION

### 1. MONITORING

#### 1.1. Principles

1.1.1.ACC will utilise the data within its systems to provide monitoring reporting wherever possible rather than requesting this data from the TPA.

1.1.2.Monthly reporting will be provided to the TPA by ACC during the Agreement.

1.1.3.A comparison with the combined TPA outcomes will be provided to each TPA.

1.1.4.Monitoring reporting will include current performance against any targets agreed with ACC.

#### 1.2. Approach

1.2.1.ACC will monitor the provision of services delivered against the agreed Service Specification, including compliance with Policies and Processes that support this Agreement. This monitoring may include, but not be restricted to, quality reviews, audit, and analysis of reports.

1.2.2.ACC will complete these monitoring reviews on at least a quarterly basis during the Agreement and at other times notified to and agreed by the TPA.

1.2.3.ACC may increase the level of Accredited Employer participation during the Agreement. Any extension of the services to further employers, other than those initially agreed, during the Agreement period will be dependent on the performance of the TPA.

1.2.4.Progress meetings will be held with the Accredited Employer, TPA and ACC when determined by ACC

### 2. EVALUATION OF AGREEMENT PERFORMANCE AND MONITORING

KPI	Measure	Description	Measurement data source	Weighted incentive
KPI 1	Customer outcomes	Return to work within: <ul style="list-style-type: none"> <li>• 70 days – 66%</li> <li>• 182 days – 87%</li> <li>• 273 days – 94%</li> </ul>	ACC report	25%
KPI 2	Customer experience	Customer satisfaction 80%	NZ Research Survey	25%
KPI 3	Average Weekly Compensation Days Paid	Average number of days weekly compensation paid is at 92 days or less.	ACC report	25%
KPI 4	New Claim Referral	98% of new claims assigned to a Claims Manager within one working day from the date transferred by ACC.	ACC report	5%

KPI	Measure	Description	Measurement data source	Weighted incentive
KPI 5	Communication with Client & Employer	98% of all claims have attempted contact with client and employer within 2 working days of claim transfer to conduct an initial needs assessment and discuss return to work expectations	ACC report	5%
KPI 6	Individual Rehabilitation Plan	80% of all claims with more than 13 weeks from the date of cover decision have an agreed individual rehabilitation plan.	ACC report	5%
KPI 6	Reviews	Formal reviews as a % of transferred claims – 2%	ACC report	5%
KPI 8	Weekly Compensation Set-up	Average number of days to commence payments to the client of eligibility to weekly compensation at 9 days	ACC report	5%
<p>Notes:</p> <ol style="list-style-type: none"> <li>Any claims that are re-opened within 35 days will be considered as outcomes not achieved.</li> <li>Any claims that proceed to Review and the Review is upheld will be considered as outcomes not achieved.</li> <li>The return to work days in KPI1 are based on the date the claim is received by ACC.</li> <li>Claims that are transferred to the TPA more than 15 days after the claims is notified to ACC are excluded from the performance calculation.</li> <li>The KPIs and weightings will be reviewed quarterly in accordance with Clause 7.4 of this Agreement</li> <li>The maximum incentive payment will be 7.5% of the fee for fully managed claims.</li> </ol>				

## 2.1. Principles

2.1.1. ACC will undertake an evaluation of the Agreement after twelve (12) months of service delivery.

2.1.2. The TPA must provide information to ACC to assist the evaluation of the Agreement in the format and timeframes agreed between ACC and the TPA.

## 2.2. Scope of Evaluation

2.2.1. The scope of the evaluation to be completed by ACC may include (but shall not be restricted to):

- quality of case management as evidenced by quality reviews,
- outcomes of case management,
- client (injured employee) satisfaction,
- Accredited Employer satisfaction,

- (e) cost effectiveness of service – the price of the service relative to the faster rehabilitation and improved health outcomes,
- (f) performance of TPA, including against KPIs and compliance with legislation and Service Specification, including applicable Policies and Processes,
- (g) how the Agreement has been implemented, supported and areas for improvement if proceeding to full rollout, and
- (h) any other matters reasonably considered to be relevant by ACC and/or TPA.

### **2.3. Appointed Person**

2.3.1. ACC or a person appointed and retained by ACC may conduct an evaluation of the service. In conducting such evaluations the appointee may (subject to the rights of non-work accident Clients) attend the provision of services, talk with non-work accident Clients and/or any of the TPA's employees and/or Accredited Employers.

### **2.4. Notice**

2.4.1. ACC shall give the TPA at least ten (10) Working Days notice of intention to conduct an evaluation.

### **2.5. Cost**

2.5.1. The provision and initial cost of this evaluation is the responsibility of ACC. However, if the evaluation demonstrates that the TPA is not complying with the service requirements contained in this Agreement or that any reports provided to ACC pursuant to this Agreement are not valid, and the TPA does not improve their service standards to the level required by ACC within a reasonable length of time, then any further evaluations which are required in relation to the same performance issues may, at ACC's discretion, become the cost of the TPA.

**SCHEDULE 3: PRICING****1. PAYMENT**

- 1.1. ACC will pay the TPA for services provided in accordance with this Agreement as set out in Table 1 below.
- 1.2. All amounts are GST exclusive.

Table 1

Description	Amount
Full payment per claim	<ul style="list-style-type: none"> <li>\$1,146.60 per managed claim</li> </ul>
Part claim payment	<ul style="list-style-type: none"> <li>Client opts out during first TPA contact \$0</li> <li>Client opts out within 10 working days of first contact \$313.43</li> <li>Client opts out after 10 working day from first TPA contact \$1,128.75</li> </ul>

Table 2: Incentive payments

KPI	Measure	Weighted incentive	Incentive payment per fully managed claim on achievement of KPI
KPI 1	Customer outcomes	25%	\$21.50
KPI 2	Customer experience	25%	\$21.50
KPI 3	Average Weekly Compensation Days Paid	25%	\$21.50
KPI 4	New Claim Referral	5%	\$4.30
KPI 5	Communication with Client & Employer	5%	\$4.30
KPI 6	Individual Rehabilitation Plan	5%	\$4.30
KPI 6	Reviews	5%	\$4.30
KPI 8	Weekly Compensation Set-up	5%	\$4.30
<b>Maximum incentive payment per fully managed claim on achievement of all KPIs</b>			<b>\$86.00</b>

- 1.3. In any quarter, where the TPA achieves one or more of the performance targets detailed in the table KPI and Performance Incentives in Schedule 2 they will receive an additional payment, up to a maximum of 7.5% of the fee, for all fully managed claims received in the quarter based on the weighting of each individual KPI achieved.

- 1.4. The incentive payments for each individual KPI are detailed in **Clause 1.2, Table 2.**
- 1.5. The maximum additional payment per fully managed claim will be 7.5% of the Full payment per claim detailed in **Clause 1.2, Table 1.**

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**SCHEDULE 4: SERVICE GOVERNANCE AND ESCALATION PROCESS****1. OPERATIONAL CONTACTS**

- 1.1. A TPA relationship manager will be appointed to manage the service and be the primary contact for the TPA with regards to the delivery of services.
- 1.2. During the Term of this service, the TPA will nominate a person to be the main contact for ACC who will:
- (a) Have the primary responsibility for relationships with ACC and the operation of this service on a day to day basis;
  - (b) Be pro-active in informing ACC of issues with provision of the services as outlined;
  - (c) Raise issues and suggest solutions regarding this service;
  - (d) Ensure that the service is operated in accordance with this Agreement;
  - (e) Represent the TPA in discussions on performance;
  - (f) Ensure that ACC is advised promptly when the main contact person's contact details change; and
  - (g) Ensure that ACC is advised promptly where high-risk incidents or sentinel events occur.
- 1.3. ACC has established a support team (TPA Support). This team acts as the liaison point between TPA Case Managers and the wider ACC for all enquires relating to the management of a claim.

**SCHEDULE 5: VARIABLES**

**NAME OF TPA:** XXXXXXXXXXXXXXXX

**COMMENCEMENT DATE:**

**DATE OF EXPIRY:** 31 March 2025

**SIGNATURES**

**SIGNED for and on behalf of ACCIDENT COMPENSATION CORPORATION:**

_____	_____
Name of Authorised Representative	Signature of Authorised Representative
_____	_____
Title of Authorised Representative	Date Signed

**SIGNED for and on behalf of XXXXXXXXXXXXXXXX**

_____	_____
Name of Authorised Representative	Signature of Authorised Representative
_____	_____
Title of Authorised Representative	Date Signed

**ACC Key Contact Details**

**Notices & Contract Manager**

**Operational contact**

TPA Support  
[TPASupport@acc.co.nz](mailto:TPASupport@acc.co.nz)  
Phone: 04 560 5394



**TPA Key Contact Details**

**Notices**

**Contract Manager**

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