



8 June 2023



Kia ora



**Your Official Information Act request, reference: GOV-025462**

Thank you for your email of 1 June 2023, asking for the following information under the Official Information Act 1982 (the Act):

*Could I please have the latest version for the fairway contract attached.*

You can find a copy of original contract between ACC and Fairway on ACC's website, here:

<https://www.acc.co.nz/assets/oia-responses/agreement-with-fairway-and-other-review-related-information-gov-006958-response.pdf>

**Please find attached a copy of the current variation to the original agreement**

We have withheld fees in the pricing schedule under section 9(2)(b)(ii) of the Act as the release of the information would likely unreasonably prejudice the commercial position of the subject of the information. In doing so, we have considered the public interest in making the information available and have determined that it does not outweigh the need to protect the commercial position of the parties involved.

**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). If you are not happy with this response, you can also contact the Ombudsman via [info@ombudsman.parliament.nz](mailto:info@ombudsman.parliament.nz) or by phoning 0800 802 602. Information about how to make a complaint is available at [www.ombudsman.parliament.nz](http://www.ombudsman.parliament.nz).

Ngā mihi

Sara Freitag

**Acting Manager Official Information Act Services**  
Government Engagement

**This Variation #2 Agreement is dated October 2022.**

Between            Accident Compensation Corporation, a statutory corporation continued by the Accident Compensation Act 2001 (“**ACC**”)

And                FairWay Resolution Limited, NZBN 9429034028292 (“**the Supplier**”)

## **BACKGROUND**

ACC and the Supplier entered into an agreement dated 1 July 2019 (“**the Agreement**”) for the supply of Reviewer Administration Services and Dispute Resolution Services during the period 1 July 2019 to 30 June 2022, as more particularly described in the Agreement.

ACC and the Supplier varied the Agreement in December 2021 (Variation #1) with a number of changes which included exercising the first right of renewal and extending the end date to 30 June 2024.

ACC and the Supplier have agreed to a further variation of the Agreement (this “**Variation**”), as detailed below.

## **VARIATION AGREED BETWEEN ACC AND THE SUPPLIER**

With effect from 1 July 2022, the Agreement is varied as follows:

### **1. Change to Customer Group**

Due to ACC’s Resolution Services move from ACC’s Customer Group to ACC’s Service Delivery Group, Clause 2.7.3 of Schedule 1 – Scope of Services, is deleted and replaced with the following:

Where ACC has provided instructions in a timely manner and the actions or inaction of the Supplier in providing the Services result in a deemed decision under section 146 of the AC Act, ACC may, by notice, claim from the Supplier costs (including amounts ACC is required to pay to a Customer), liabilities and losses suffered or incurred by ACC as a direct result of the deemed decision. Determination of whether ACC will make a claim against the Supplier under this paragraph will lie with ACC’s Head of Service Support following a recommendation from ACC’s Manager Resolution Services and following consultation with the Supplier’s Contract Manager. ACC may at its sole discretion amend the ACC roles specified in this clause from time to time by notice to the Supplier.

### **2. Pricing**


The pricing contained in Schedule 2 – Pricing Schedule is deleted in its entirety and replaced with the pricing contained in Annex A below.

### **3. Remaining terms and conditions**

The terms and conditions of the Agreement are hereby confirmed and remain in full force and effect, except to the extent that they have been varied by this Variation. Where there is any inconsistency between a provision of this Variation and a provision of the Agreement and existing variations, the provision of this Variation shall take precedence.



Signed for and behalf of Accident Compensation Corporation

Signature: 

Name: Megan Main

Position: Chief Executive

Date: 6/10/2022

Signed for and behalf of FairWay Resolution Limited

Signature: 

Name: Rhys West

Position: CEO

Date: 25 October 2022

## Annex A - Schedule 2 - Pricing Schedule

### Fees

In this Schedule 2:

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

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

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

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

Dispute Resolution Services	Fee (exclusive of GST)
Dispute Resolution Fee	[ s 9(2)(b)(ii) ]
Multi issue/Complex Dispute	
In-person Dispute Resolution (additional fee on top of Dispute Resolution/mediation set-fee)	

Customer non-attendance at schedule In-person Dispute Resolution meeting (to a maximum of two non-attendances per matter)	[ s 9(2)(b)(ii) ]
Withdrawn dispute resolution	
Exceptional Case Fee (where pre-approved by ACC)	
Digital Inclusion Fee	

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

- In the case of Reviewer Administration Services: the relevant case has been successfully concluded:
  - a) where the review is withdrawn by the Customer. Where the review is withdrawn:
    - i. prior to the case conference or in the event of the hearing not being set down, the Supplier will be entitled to invoice ACC for the withdrawn review fee; or
    - ii. at or following the case conference, or after the review has been set down, the Supplier will be entitled to invoice ACC for the standard review or complex review fee, depending on which category the review falls into; or
  - b) where the Reviewer issues a review decision to the Customer and ACC in accordance with paragraph 3.9.6 of Schedule 1 – Scope of Services, the Supplier will be entitled to invoice ACC for the standard review or complex review fee, depending on which category the review falls into.
- In the case of Dispute Resolution Services (including where Dispute Resolution Services are provided in parallel with Reviewer Administration Services):
  - a) where the Supplier holds a dispute resolution meeting and following this issues an outcome notice to the Customer and ACC in accordance with paragraph 5.7 of Schedule 1 – Scope of Services, the Supplier may invoice ACC for the standard dispute resolution or complex dispute resolution fee depending on which category the review falls into; or
  - b) where the dispute resolution meeting does not proceed after the direct professional intervention of the Supplier by a dispute resolution practitioner has occurred or cancellation notice is given of less than 48 hours prior to the dispute resolution meeting time, the Supplier can invoice ACC for the standard or complex dispute resolution fee depending on which category the review falls into; or
  - c) where the dispute resolution meeting does not proceed because the Customer gives notice to the Supplier they no longer want to participate in dispute resolution and the notice is given prior to any direct intervention of the Supplier by a dispute resolution practitioner, the Supplier can invoice the withdrawn dispute resolution fee of [ s 9(2)(b)(ii) ]
  - d) in addition to any fees invoiced under paragraph a), b) or c) above, if:
    - i. the Customer withdraws the review prior to a case conference, the Supplier may invoice for the withdrawn review fee of [ s 9(2)(b)(ii) ] or
    - ii. the Referred Matter proceeds to a review hearing, on completion of the review hearing the Supplier may invoice ACC for the standard

review or complex review fee, depending on which category the review falls into.

- e) Where the Supplier is providing Services in relation to a claim which is currently under appeal in the District Court (or higher court), ACC and the Supplier may negotiate and agree on a fee to be payable for the Services provided while the Customer is waiting for a decision from the District Court. This fee must be approved by ACC before these services are provided. The fee will be based on an hourly rate of <sup>[ s 9(2)(b)</sup>  
(ii) ] excluding GST).

### Permitted Expenses

5. The Supplier may invoice ACC for the actual (with no mark-up) reasonable costs of hiring:
  - a security guard if required for an in-person meeting, to ensure safe review hearings can be conducted. This will apply either on the Supplier's premises or in hired venues;
  - kaumātua and/or kuia and other costs associated with a tikanga Māori process; or
  - a translation/interpreter, where required.
6. Invoices for the above cost will be provided to ACC on request.
7. It is anticipated that the fees described in this Schedule 2 for in-person meetings will cover almost all travel costs. ACC will consider negotiating additional travel costs with the Supplier in very rare circumstances where a in-person meeting occurs over 50 kilometres outside of the specified locations, and where extenuating circumstances apply. Any such additional travel costs must be approved in writing by ACC.