

Dispute Resolution Agreement

Between:

(the homeowner)

and

(the insurer)

Dated:

Parties

This agreement is between:

- (a) (the homeowner);
- (b) (the insurer);

together, the **parties**.

Background

- A. The homeowner and insurer have brought an insurance claim arising from the Christchurch earthquakes to the New Zealand Claims Resolution Service (**NZCRS**).
- B. The homeowner and insurer would now like to take advantage of the NZCRS dispute resolution service to resolve the disputed claim (**the dispute**).
- C. The NZCRS dispute resolution service provides homeowner and insurers with a choice of dispute resolution processes.
- D. These processes are provided by NZCRS to the homeowner and insurer subject to the terms of this agreement.

1. The resolution processes

- 1.1 The parties agree to use NZCRS's mediation and/or determination services as set out in schedules 1 and 2 respectively or a combination of these processes (**the dispute resolution processes**).

2. Guiding Principles

- 2.1 The guiding principles of the dispute resolution processes, which will be adopted by mediators and decision-makers, are that processes will be voluntary, independent, fair and just, prompt, and cost efficient.
- 2.2 The parties agree that they will deal with each other in good faith on all matters associated with this Agreement.

3. Mediation

- 3.1 The mediation process (**mediation**) is outlined in schedule 1.

4. Determination

- 4.1 The determination process (**determination**) is outlined in schedule 2.

5. Choice of process

- 5.1 The parties may agree at the outset, or at any stage of the dispute resolution processes, whether to pursue mediation [or determination] or a combination mediation/determination process (including where the mediator and decision-maker may be the same person).
- 5.2 The parties will record their initial election and any subsequent election and date of those elections in schedule 3.
- 5.3 The parties' participation in the dispute resolution processes is voluntary, except that when determination is elected neither party may opt out of that process, once commenced, unless agreed by both parties.

6. Settlement of the dispute

- 6.1 If settlement of the dispute is reached by mediation the terms of the settlement agreement will be recorded in writing at the mediation and signed by the parties (**the settlement agreement**).
- 6.2 Once a decision is made by determination, the parties agree that the decision-maker's written decision(s) is/are the settlement agreement for the purposes of this agreement.
- 6.3 A settlement agreement under this Agreement constitutes full and final settlement of the dispute between the parties.
- 6.4 The parties agree to give effect to, and implement, any settlement agreement.

7. Costs

- 7.1 NZCRS will meet the costs of the mediator or decision-maker, any venue costs and other associated disbursements.
- 7.2 NZCRS will pay for the cost of expert advice from one of the NZCRS expert panels where requested by, and to assist, the decision-maker to resolve the dispute.
- 7.3 NZCRS may recover such costs incurred, as referred to in clauses 7.1 and 7.2, from the insurer.
- 7.4 NZCRS may, at its discretion, provide the homeowner with legal and/or expert advisor assistance where that may assist resolution of the dispute.
- 7.5 The parties agree that they will otherwise meet their own costs and expenses associated with the mediation and/or determination, including the costs associated with any expert advice and/or legal representation.
- 7.6 The decision-maker may decide the insurer/s will meet some or all of the costs incurred by the homeowner in respect of a determination where:

- 7.61 the decision-maker has reached a decision in the homeowner's favour; and/or
- 7.62 the decision-maker considers there are exceptional circumstances that justify an award of costs against the insurer/s.

7.7 If a proceeding has been issued in the High Court relating to the Christchurch earthquakes and at the time of referral to determination costs issues in that proceeding have not been agreed or determined by the Court, the parties agree/do not agree that the decision-maker may award costs in that proceeding in accordance with Part 14 of the High Court Rules.

8. Enforcement

8.1 The homeowner or the insurer may enforce the terms of any settlement agreement by a court proceeding. For the purposes of such a proceeding evidence of the settlement agreement may be relied on for this purpose.

9. Confidentiality

9.1 Unless otherwise agreed the parties and their agents agree that all communications between the homeowner, the insurer and the mediator and/or decision-maker made during mediation and/or determination processes (including but not limited to settlement offers) are confidential. For the purposes of mediation, such communications are subject to privilege for settlement negotiations under section 57 of the Evidence Act 2006 and will not be relied on or used as evidence in any court, arbitral, tribunal or other proceeding other than as set out in clause 8.1 above.

9.2 Unless otherwise agreed any settlement agreement or determination will be confidential as between the parties and their advisors.

9.3 Notwithstanding clause 9.2, if requested a copy of a determination shall be provided by a party or decision-maker to the legal advisor to the NZCRS dispute resolution service, where he or she reasonably requires the determination for the purposes of monitoring, oversight or improving NZCRS determination services. The legal advisor shall respect the confidential obligations to which the parties are bound.

9.4 Non-parties (including any expert advisers) will sign a confidentiality agreement before participating in a mediation and/or determination.

9.5 The parties and their agents participating in mediation and/or determination will act in accordance with the obligations created by clause 9. The parties acknowledge that a breach of clause 9 will open up the possibility of legal proceedings for any damages flowing from the breach.

10. Exclusion of liability

10.1 The parties agree that they will not make any claims against the mediator or decision-maker in connection with the mediator or decision-maker's performance of their functions under this agreement and that the mediator or decision-maker may rely on this clause.

11. Legal Advice

11.1 The parties acknowledge that they have received independent legal advice about the effect of this agreement.

Signatories

Dated at Christchurch on

The **homeowner**

_____ [Signature]

For the **insurer**

_____ [Signature]

_____ [Signature]

Schedule One: Mediation

1. Mediation is a settlement discussion attended by the parties and a mediator.
2. The parties will each have full authority to settle the dispute.
3. The parties may bring their lawyers, relevant experts (the parties' advisors) and a support person to the mediation.
4. The mediator will be neutral and impartial.
5. The mediator will not provide legal advice, make a decision or impose an outcome on any mediation party.
6. The mediator will hear and encourage each party to listen to the other party's concerns and issues and proactively assist the parties in negotiating a resolution to the homeowner' claim.
7. Prior to the mediation, the mediator may hold a preliminary conference(s) jointly or separately with the parties (and/or their lawyers) to agree the time and venue for the mediation, collation and presentation of any necessary documents and other matters of an administrative nature as well as any matter that will lay the foundation for a successful mediation.
8. During the mediation meeting/s the mediator may speak with the parties together or individually at any time.
9. Any communications between a party and the mediator in private shall be kept confidential by the mediator unless authorisation to disclose is given by that party.

Schedule Two: Determination

1. Determination is an informal adjudicative process attended by the parties and a decision-maker (the decision-maker). The decision-maker will, as well as taking into account the guiding principles set out in clause 2, hear from the parties and make a final binding decision about the dispute taking into account the insurance policy, general legal principles, the merits of the case and the rules of natural justice.
2. The parties may bring their lawyers and relevant experts (the parties' advisors) to the adjudication.
3. Experts will comply with the Code of Conduct for expert witnesses in Schedule 4 of the High Court Rules.
4. Unless the parties agree otherwise, the following process will apply:
 - (a) The decision-maker may make directions as to the adjudicative process to be followed as appropriate.
 - (b) The decision-maker will take an inquisitorial approach and ask for information or documents or any other material that may assist in determining the dispute.
 - (c) The decision-maker may, after consultation with the parties, engage an independent expert from one of the NZCRS panels, such as a structural or geotechnical engineer, or quantity surveyor, to assist him or her with technical issues arising in the determination. Any documentation prepared by an expert for the decision-maker will be provided to the parties.
 - (d) The decision-maker may receive and consider any evidence or material which he or she considers would assist the decision maker in determining the dispute, whether or not that information would be legally admissible in a Court.
 - (e) The parties may make brief submissions (whether at the opening or closing of the adjudication or both), present their evidence, and have their experts present their reports.
 - (f) The decision-maker may allow conferral or questioning of any party or person together or separately and before or at adjudication if he or she considers it appropriate.
5. The decision-maker will provide a written decision of the dispute including brief reasons within 28 days of adjudication.
6. The parties agree that the decision-maker is not an arbitrator. This determination process is not an arbitration for the purposes of the Arbitration Act 1996 and the law relating to arbitration will not apply to the decision-maker or the determination process under this agreement.

Schedule Three: dispute resolution process election

Please tick and date elected dispute resolution process

The homeowner:

Process	Election	Date
Mediation		
Determination		
Mediation followed by Determination		

The insurer:

Process	Election	Date
Mediation		
Determination		
Mediation followed by Determination		