

DETERMINATION AGREEMENT

File #

THIS AGREEMENT is made

BETWEEN:-

Applicant's name and address

AND

Respondent's name and address

(each a “Party” and together “the Parties”)

AND

Determiner's name and address

(the “Determiner”)

WHEREAS;

A dispute exists between the Parties with respect to a matter under the Motor Vehicle Insurance and Repair Industry Code of Conduct (1 May 2017) (the "Code") and one of the Parties is a small business.

The Parties have complied with the requirement in clause 10 of the Code to seek to resolve the dispute through internal dispute resolution (where required) and mediation, and such attempts to resolve the dispute have been unsuccessful.

Pursuant to clause 12 of the Code, one of the Parties or the Parties jointly have referred the dispute to the Victorian Small Business Commission ("VSBC"), in its capacity as an Approved Determination Provider under the Code, for determination.

In performance of its function under section 5(2)(e) of the *Small Business Commission Act 2017* (Vic), VSBC has arranged for the determination of the dispute between the Parties (the "Determination").

The Parties wish for the terms of this Agreement to apply to the Determination.

EACH PARTY AGREES AS FOLLOWS:

1. That the Approved Determination Scheme Rules created under clause 12 of the Code do not apply to the Determination and are substituted by this Agreement.
2. To pay $500.00 each for the Determination.
3. To co-operate and act in good faith during the Determination process.
4. To meet the timeframes for the provision of information to support their case and to use their best endeavours to comply with reasonable requests made by the Determiner.
5. That each Party may appoint other persons to assist and advise the Party in the Determination process.
6. Subject to Clause 27, to keep all information disclosed by the other Party during the Determination process confidential and not to disclose that information to any other person other than that Party's professional advisors for the purpose of the Determination process unless compelled by law to do so and not to use that information for a purpose other than the Determination process.
7. That the written Determination provided by the Determiner is final and binding upon the Parties.
8. To not at any time before, during or after the determination process, call the Determiner as witness in any legal or administrative proceedings concerning the dispute.
9. In accordance with section 23 of the *Small Business Commission Act 2017*, that neither the Determiner nor the Victorian Small Business Commissioner is personally liable for anything necessarily or reasonably done or omitted to be done in good faith in the performance of the determination function or in the reasonable belief that the act or omission was in the performance of the determination function.
10. That each Party indemnifies the Determiner for and against all claims by that Party arising out of or in connection with any act done or omitted to be done by the Determiner in the performance of the Determiner's obligations under this Agreement, unless the act or omission was fraudulent.
11. That the Parties jointly indemnify the Determiner for and against all claims by any third party arising out of or in connection with any act done or omitted to be done by the Determiner in the performance of the Determiner's obligations under this Agreement, unless the act or omission was fraudulent.
12. This agreement may be produced and relied upon as a defence to any such claim as is contemplated in Clauses 9, 10 and 11.

THE DETERMINER AGREES AS FOLLOWS:

1. To inform the Parties of any circumstances which may affect his/her capacity to act impartially and, if the parties agree, to continue the determination process.
2. To conduct the Determination in accordance with the requirements of procedural fairness.
3. That he/she is not bound by the rules of evidence.
4. To review the Parties’ submissions within the prescribed timelines.
5. To only seek from the Parties information related specifically to the dispute.
6. To determine the dispute ‘on the papers’ by evaluating the facts, any applicable law and evidence provided by each Party, unless a preliminary conference with the Parties is necessary to resolve any outstanding issues.
7. If a preliminary conference is necessary, to request the VSBC to make all the necessary arrangements for the conference.
8. To determine this dispute as soon as practicable after receiving all submissions and evidence.
9. To provide reasons for the decisions made in the Determination.
10. To provide the written Determination to the Parties and the VSBC within ten (10) working days after the Determination is made.
11. To keep all information disclosed by the Parties during the Determination process confidential and not to disclose that information to any other person other than the Parties’ professional advisors for the purpose of the Determination process unless compelled by lawand not to use that information for a purpose other than the determination process.

GENERAL PROVISIONS MUTUALLY AGREED BETWEEN THE PARTIES AND THE DETERMINER:

1. The Determiner is not an arbitrator of the matters in dispute and is deemed not to be acting in an arbitral capacity. The process is not an arbitration within the meaning of any statute.
2. Any statement or admission made by any person during the Determination process are made without prejudice and shall not be admissible in any other legal proceedings.
3. If either party has not met the timeframes for the provision of information to support their case, the Determiner may rely upon any available written material, industry standards and relevant legislation to make the Determination, or terminate the process by giving written notice to the Parties advising the Victorian Small Business Commissioner accordingly.
4. Either Party will be at liberty to enforce the Determination by judicial or tribunal proceedings and in such proceedings to adduce evidence of and incidental to the Determination (other than the matters that are privileged by reason of Clause 25).
5. The VSBC, as an Approved Determination Provider under the Code, will provide a copy of the Determination, which will not include the names or any identifying information of the parties to the dispute or of any customers associated with the dispute, to the Code Administration Committee (CAC).
6. If any provision of this Agreement is prohibited, invalid or unenforceable, that provision will be ineffective to the extent of the prohibition, invalidity or unenforceability without invalidating the remaining provisions of this Agreement, unless it materially alters the nature or material terms of this Agreement.
7. Termination of the determination process will not terminate the operation of Clauses 6, 7, 8, 9, 10, 11, 23, 25 and 27.

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| SIGNED by or for and on behalf of Applicant's name  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Date  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| SIGNED by or for and on behalf of Respondent's name  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Date  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| SIGNED by the Determiner, Determiner's name  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Date  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |