

BUILDING DISPUTES TRIBUNAL  
TE TARAPIUNURA MŌ NGĀ TAUTOHE WHARE

**AGREEMENT FOR EARLY NEUTRAL EVALUATION  
AND RULES FOR EARLY NEUTRAL EVALUATION OF DISPUTED MATTERS**

BY AN AGREEMENT made the \_\_\_\_\_ day of \_\_\_\_\_ 2010

**BETWEEN THE FOLLOWING PARTIES:**

(Name of 1<sup>st</sup> Party) \_\_\_\_\_

and

(Name of 2<sup>nd</sup> Party) \_\_\_\_\_

and

(Name of 3<sup>rd</sup> Party) \_\_\_\_\_

and

(Name of 4<sup>th</sup> Party) \_\_\_\_\_

Jointly referred to herein as “**the parties**”

**WHEREAS:**

- A. Various disputes and differences have arisen between the parties.
- B. The parties have agreed to refer all matters in dispute between them to Early Neutral Evaluation in accordance with these Rules and the Building Disputes Tribunal’s Protocol for Early Neutral Evaluation.
- C. The parties agree that the reference to Early Neutral Evaluation shall be on the following terms:

**THE PARTIES AGREE AS FOLLOWS:**

**1.0 Purpose of these Rules**

1.1 The purpose of these Rules is to ensure that the Early Neutral Evaluation is

conducted fairly, promptly and cost effectively and in a manner that is proportionate to the amounts in dispute and the complexity of the issues involved.

- 1.2 The Overriding Objective of the Early Neutral Evaluation is to enable the Evaluator to produce an independent, objective, non-binding Evaluation of the facts, evidence and legal merits of the matters in dispute within 10 working days of the Evaluation Conference.
- 1.3 The Purpose of the Early Neutral Evaluation is to provide the parties to the dispute with guidance as to the likely outcome if the dispute were to be heard by a court and to promote settlement discussions at an early stage in the litigation process.
- 1.4 To give effect to the Purpose and Overriding Objective of the Early Neutral Evaluation, the parties agree to be bound by, and will comply without delay with, the timetabling and procedural provisions in these Rules and any further directions or rulings of the Evaluator as to procedural or evidentiary matters.

## **2.0 Time Periods for the purpose of the Evaluation**

- 2.1 A working day (**day**) means a day of the week other than:
  - (a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, Labour Day, and Waitangi Day; and,
  - (b) The day observed in the appropriate area as the anniversary of the province of which the area forms a part; and,
  - (c) A day in the period commencing on 24 December in any year and ending with the close of 15 January in the following year.
- 2.2 Any period of days under these Rules shall begin on the day following the date upon which the Building Disputes Tribunal communicates acceptance of the Evaluator's appointment to the parties, called the acceptance date.
- 2.3 Any times fixed in accordance with these Rules may be varied by agreement of the parties. In the absence of such agreement, the Evaluator may vary the times for actions by the participants if the Evaluator is satisfied that, in the circumstances, the additional time is reasonably required.

## **3.0 The Evaluator**

- 3.1 The matters in dispute between the parties referred to in this agreement are submitted to Early Neutral Evaluation by (*insert name of Evaluator*).
- 3.2 The Evaluator shall act as an independent neutral expert and not as an adviser to the parties or as an arbitrator.
- 3.3 The Evaluator shall be impartial and independent of the parties and shall assume a continuing duty to immediately disclose to the parties any circumstances arising in the future likely to give rise to justifiable doubts as to the Evaluator's impartiality or independence in the eyes of any of the parties, until the Evaluation is concluded.

#### **4.0 Replacement of an Evaluator**

- 4.1 If the Evaluator becomes in fact or in law unable to perform the functions of that office, the Building Disputes Tribunal shall appoint a substitute Evaluator within five (5) working days of receipt of a request by a party to appoint a substitute Evaluator.
- 4.2 If an Evaluator resigns or is replaced, the proceedings shall resume at the stage where the Evaluator who resigned or was replaced ceased to perform the Evaluator's functions, unless the replacement Evaluator decides that any part of the prior proceedings are to be repeated.
- 4.3 If an Evaluator resigns or is replaced all time limits under these Rules will be extended by the period of time that elapses between the Evaluator's resignation or removal and the appointment of a substitute Evaluator unless the replacement Evaluator decides that any part of the prior proceedings are to be repeated. In that event, the period of time that elapses will run from the date of the earliest action to be taken by any party that is to be repeated and the appointment of a substitute Evaluator.

#### **5.0 Conduct and co-operation by the parties**

- 5.1 The parties shall co-operate in good faith with the Evaluator and with any other party to the dispute and will comply with the Evaluator's directions to attend conferences and provide documents or other evidentiary material.
- 5.2 The parties and their representatives must attend the Preliminary Conference and the Evaluation Conference unless otherwise agreed with the Evaluator.
- 5.3 Parties and/or their representatives who attend the Preliminary Conference and/or the Evaluation Conference must have personal knowledge of the background facts and relevant circumstances in relation to the dispute and must have the authority to provide all necessary information required by the Evaluator for the purpose of the Evaluation
- 5.4 A party must provide a copy of any document or any other evidentiary material provided by it to the Evaluator, to every other party.

#### **6.0 Representation**

- 6.1 Each party must be represented by a legally trained person for the purpose of the Early Neutral Evaluation.
- 6.2 Unless the parties agree otherwise, any party to the Early Neutral Evaluation may also be represented by up to two further persons, whether legally trained or not, that the party considers appropriate to provide assistance and advice and to perform such roles as the parties and the Evaluator require for the purpose of the evaluation.
- 6.3 The parties shall provide the Building Disputes Tribunal with the names and relevant details of those persons who will be representing them for the purpose of the Evaluation not less than three (3) working days prior to the Evaluation

Conference. The Building Disputes Tribunal will inform the Evaluator and the parties accordingly.

- 6.4 All representatives will be required to sign a Confidentiality Agreement in the form found at Appendix 1 to this Agreement as a condition of their participation and attendance at the Evaluation Conference.
- 6.5 Any person representing a party other than an individual for the purpose of the Early Neutral Evaluation must be able to make final and conclusive decisions for or on behalf of that party.
- 6.6 Representatives of the insurers of any party must attend the Preliminary Conference and the Evaluation Conference if their agreement would be necessary to achieve a settlement.

## **7.0 Preliminary Conference**

- 7.1 The Evaluator shall convene a Preliminary Conference whether in person or by telephone conference as soon as possible after the date of acceptance to discuss procedural and timetabling matters and to fix a timetable for the Evaluation process.
- 7.2 The parties and their representatives who are to attend the Evaluation Conference must attend the Preliminary Conference.

## **8.0 Procedure**

- 8.1 The Evaluator may conduct the Evaluation in any manner that the Evaluator thinks fit having regard to the nature and circumstances of the matters in dispute and in accordance with the purpose of these Rules.
- 8.2 The Evaluator shall adopt procedures and give directions and rulings as required to ensure that the process for the Evaluation of the matters in dispute is fair, prompt and cost effective and the Overriding Objective and the Purpose of the Early Neutral Evaluation are achieved.
- 8.3 The rules of evidence do not apply to Early Neutral Evaluation.
- 8.4 Unless the parties agree otherwise, the Evaluator may only meet with a party in the presence of the other parties and all communications by the Evaluator to a party or parties or from a party to the Evaluator must be copied to all other parties.
- 8.5 The Evaluator shall endeavour to agree the procedure for the Evaluation with the parties.
- 8.6 In the absence of agreement, the Evaluator's procedural directions shall prevail and the parties shall be bound by the Evaluator's directions or rulings. The parties may not challenge the Evaluator's directions or rulings made for the purpose of the Early Neutral Evaluation process.
- 8.7 Unless the parties and the Evaluator agree otherwise, or the Evaluator directs otherwise, the procedure for the Early Neutral Evaluation in Appendix 2 to this

Agreement shall apply.

## **9.0 The Evaluation Conference**

- 9.1 The parties may ask the Evaluator to provide an Evaluation based only on the parties' submissions of case, supporting documents and other evidentiary material relied upon by the parties.
- 9.2 If one or more of the parties request an Evaluation Conference, or the Evaluator determines that a Conference is necessary to resolve any conflicts in the written or other material, or for the presentation of further submissions of case and/or evidence, the Evaluator shall convene an Evaluation Conference.
- 9.3 The Evaluator shall fix the date, time and place of the Evaluation Conference and advise the parties accordingly. Except in exceptional circumstances, or as otherwise agreed by the parties and the Evaluator, the Evaluation Conference shall not exceed one (1) day and shall be conducted as directed by the Evaluator who may impose time limits for the presentation of submissions of case.
- 9.4 There shall be no testimony by witnesses and no direct examination or cross-examination of witnesses at the Evaluation Conference.
- 9.5 The Evaluator may ask clarifying questions at any time.

## **10.0 The Evaluation**

- 10.1 The Evaluator shall provide the Evaluation to the parties in writing within ten (10) working days of whichever event is the latter of:
- (a) Receipt of the final submissions of case or other documents or evidentiary material of the parties; or,
  - (b) The Evaluation Conference; or,
  - (c) Receipt by the Evaluator of any further submissions, information, documents or evidentiary material requested by the Evaluator of any party following the Evaluation Conference.
- 10.2 The Evaluation shall be made in writing and shall state the reasons upon which it is based unless the parties have agreed that no reasons are to be given.
- 10.3 The Evaluation shall record the Evaluator's opinion as to the likely incidence of liability, and where appropriate, a range of damages if the dispute were to be resolved by a court based on the material put forward by the parties in the course of the Early Neutral Evaluation.
- 10.4 The parties agree that the Evaluation will not be binding on the parties.

## **11.0 Mediation option**

- 11.1 At any time before the Evaluator's Evaluation is provided to the parties, the parties

may agree to refer the dispute to mediation in accordance with the Building Dispute Tribunal's Mediation Programme.

- 11.2 In that case the parties must immediately notify the Evaluator and the Building Disputes Tribunal and the Evaluation is suspended.
- 11.3 The parties may either request the Evaluator to chair settlement negotiations, or they may request the Building Disputes Tribunal to appoint an independent person to act as Mediator.
- 11.4 If the parties request the Evaluator to chair settlement negotiations, the Evaluator will not act as a Mediator or undertake a mediation process for the purpose of generating settlement options. The Evaluator may not disclose any part of the Evaluation to the parties and may not conduct separate conferences with any of the parties.
- 11.5 If the dispute is settled by negotiation or mediation, the parties must record the agreement in writing together with the signatures of the parties. Any such agreement will be legally binding on the parties and any party may enforce the terms of the agreement by issuing court proceedings.
- 11.6 If the dispute is settled by negotiation or mediation, the Early Neutral Evaluation will be terminated upon the signing of a settlement agreement in respect of the dispute referred to Early Neutral Determination and the parties must settle the fees and expenses of the Mediation and the Evaluation.
- 11.7 If the dispute is not settled by negotiation or mediation, the parties must settle any fees and expenses of the Mediation, and the Early Neutral Evaluation resumes.

## **12.0 Termination**

- 12.1 The Early Neutral Evaluation may be terminated at any time by a party after consultation with the Evaluator.
- 12.2 The Evaluator may suspend or terminate the Evaluation at any time if the Evaluator feels unable to assist the parties in providing an Evaluation of the dispute.
- 12.3 The Early Neutral Evaluation will be terminated upon the signing of a settlement agreement in respect of the dispute referred to Early Neutral Evaluation or upon the provision of the Evaluation to the parties.

## **13.0 Fees and expenses**

- 13.1 The parties shall together and separately be liable for the Evaluator's fees and expenses.
- 13.2 The Evaluator's fees shall be calculated at the rate of \$ *(insert GST excl. rate)* per hour plus Goods and Services Tax for each hour during which the Evaluator is engaged on the duties of the Early Neutral Evaluation, together with all expenses and outgoings incurred by the Evaluator in the execution of those duties.
- 13.3 Prior to the Evaluator engaging on the duties of the Early Neutral Evaluation, the

parties shall pay into the trust account of the Building Disputes Tribunal Ltd, a sum as security for the Evaluator's fees and expenses in accordance with the amounts and terms set out in Appendix 3 to this Agreement.

- 13.4 Any amount paid as security for the Early Neutral Evaluation is a nominal sum only and shall not be considered an estimate of the Evaluator's fees and expenses which shall be calculated in accordance with clause 13.2 above.
- 13.5 If the dispute between the parties is settled, or the request for Early Neutral Evaluation is withdrawn or terminated by the parties for any reason whatsoever before the Evaluation is made, the parties shall be jointly and severally liable to pay the Building Disputes Tribunal's administration fee in accordance with clause 8 of Appendix 3 to this Agreement together with all fees and expenses incurred by the Evaluator in the execution of the duties of the Early Neutral Evaluation up to and including the date on which the request for Early Neutral Evaluation was withdrawn or terminated, or the date on which the Evaluator was notified that the dispute had been resolved.
- 13.6 The parties shall be jointly and severally liable for the costs of the Early Neutral Evaluation together with any additional costs howsoever incurred by the Building Disputes Tribunal in recovering any overdue monies on a full indemnity basis.
- 13.7 Where time has been scheduled for an Evaluation Conference, or some matter relating to the Early Neutral Evaluation, and the conference or matter is cancelled or postponed by a party less than three (3) full working days before the scheduled date, the Evaluator shall be paid a cancellation fee for each day reserved for the conference or matter.

#### **14.0 Subsequent proceedings**

- 14.1 The parties will not at any time before, during or after the Evaluation of this dispute, call the Evaluator to testify in any legal or administrative proceeding concerning this dispute or the nature and extent of any agreement(s) that may be reached as a result of the Evaluation.
- 14.2 The parties will not call for the records, notes or work product of the Evaluator in any legal or administrative proceeding that arises before, during, or after the Evaluation of this dispute. However, any written agreement reached during the course of the Evaluation that is intended by the parties to have legal effect and to be legally enforceable may be subpoenaed, called for, or produced in any proceedings to which it is relevant.

#### **15.0 Privacy and Confidentiality**

- 15.1 The Early Neutral Evaluation process shall be private and confidential.
- 15.2 The Evaluator must conduct the Early Neutral Evaluation in private.
- 15.3 The parties shall maintain the confidentiality of the process and shall not publish, disclose, or communicate any information relating to the Early Neutral Evaluation or to an Evaluation provided under this Agreement.

15.4 Any statement, admission, or any document created or made for the purpose of the Evaluation, and all matters disclosed orally in the course of the Evaluation shall remain confidential to the parties and shall not be disclosed or adduced in subsequent proceedings by the Evaluator, the parties, or their representatives and advisers. This requirement is subject to disclosure:

- [a] For the purpose of enforcing any settlement agreement reached during the course of the Evaluation; or,
- [b] When compelled to by court order or subpoena; or,
- [c] To a professional or other adviser of any of the parties after that person has executed the Confidentiality Agreement for Representatives of Parties to Early Neutral Evaluation at Appendix 1 to this Agreement; or,
- [d] Where publication, disclosure, or communication is necessarily involved for the protection of a party's legal rights in relation to a third party; or
- [e] Where publication, disclosure, or communication is necessarily required to prevent the safety of any person from being endangered,

provided always that such publication, disclosure or communication is no more than what is reasonably required for those purposes and to the extent that any person is required to disclose any information either by law or otherwise, all persons agree to immediately notify every other party of such requirement.

## **16.0 Exclusion of Liability and Indemnity**

16.1 The parties together and separately release and discharge the Evaluator and the Building Disputes Tribunal, its agents, and servants, from all liability of any kind whether involving negligence, breach of contract, breach of fiduciary duty, breach of statutory duty or otherwise which may be alleged to arise in connection with, or to result from, or to in any way relate to the exercise of any of the Evaluator's or the Building Disputes Tribunal's functions, duties, or powers under this Agreement or otherwise, unless the act or omission is fraudulent.

16.2 The parties will together and separately indemnify the Evaluator and the Building Disputes Tribunal, its agents, and servants, against all claims, costs, expenses, liabilities, awards, damages and proceedings of any kind incurred by the Evaluator, the Building Disputes Tribunal, its agents, or its servants, in the exercise of the Evaluator's and the Building Disputes Tribunal's functions, duties, or powers whether under this Agreement or otherwise, unless the act or omission is fraudulent.

## **17.0 Communications and Contact Details**

17.1 All documents or information provided to the Evaluator by one party shall simultaneously be communicated by that party to every other party.

17.2 Routine communications and notifications between the Building Disputes Tribunal, the Evaluator and the parties may validly be made by facsimile or email.

- 17.3 The submissions of case and supporting documents and any other evidentiary material must be delivered to the Evaluator and every other party by courier at the addresses for service recorded below:

**Notice to the Evaluator:**

Notices to the Evaluator shall be given to an address for service which is:

Phone: (0 )

Fax: (0 )

Mobile: (02 )

E-mail:

**Notice to the First party:**

Notices to the First Party shall be given to an address for service which is:

Phone: (0 )

Fax: (0 )

Mobile: (02 )

E-mail:

**Notice to the Second party:**

Notices to the Second Party shall be given to an address for service which is:

Phone: (0 )

Fax: (0 )

Mobile: (02 )

E-mail:

**Notice to the Third party:**

Notices to the Third Party shall be given to an address for service which is:

Phone: (0 )

Fax: (0 )

Mobile: (02 )

E-mail:

**Notice to the Fourth party:**

Notices to the Third Party shall be given to an address for service which is:

Phone: (0 )

Fax: (0 )

Mobile: (02 )

E-mail:

We confirm that we have read and understood this Agreement for Early Neutral Evaluation. We have no further questions about the nature or confidentiality of the Early Neutral Evaluation process and we, our servants, agents, successors and permitted assigns agree to be bound by the terms of this Agreement.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 2010

**SIGNED:** \_\_\_\_\_

**AS FOR OR ON BEHALF OF** *(Name of first party)* \_\_\_\_\_

**SIGNED:** \_\_\_\_\_

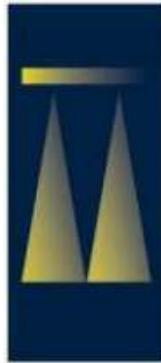
**AS FOR OR ON BEHALF OF** *(Name of second party)* \_\_\_\_\_

**SIGNED:** \_\_\_\_\_

**AS FOR OR ON BEHALF OF** *(Name of third party)* \_\_\_\_\_

**SIGNED:** \_\_\_\_\_

**AS FOR OR ON BEHALF OF** *(Name of fourth party)* \_\_\_\_\_



BUILDING DISPUTES TRIBUNAL  
TE TARAIPUNURA MŌ NGĀ TAUTOHE WHARE

**CONFIDENTIALITY AGREEMENT  
FOR REPRESENTATIVES OF PARTIES TO EARLY NEUTRAL EVALUATION**

The purpose of this agreement is to ensure that you understand the responsibilities that you have to the parties and to the Early Neutral Evaluation process and that you agree to maintain the confidentiality of the Early Neutral Evaluation process involving the following parties:

**THE PARTIES:**      *(Name of first party)* \_\_\_\_\_

**and**

*(Name of second party)* \_\_\_\_\_

**and**

*(Name of third party)* \_\_\_\_\_

**and**

*(Name of fourth party)* \_\_\_\_\_

I understand that the Early Neutral Evaluation process is private and agree to maintain the confidentiality of the process.

I understand that any statement or document created or made for the purpose of the Early Neutral Evaluation and all matters disclosed orally in the course of the Early Neutral Evaluation including any statement, admission, or settlement proposal and any agreed terms of settlement reached during the course of the Early Neutral Evaluation, whether by negotiation or mediation or otherwise, shall remain confidential to the parties and shall not be disclosed or adduced in subsequent proceedings. This requirement is subject to disclosure:

- [a] For the purpose of enforcing any settlement agreement reached in the Early Neutral Evaluation; or,

- [b] When compelled to by court order or subpoena; or,
- [c] To a professional or other adviser of any of the parties after that person has executed the Confidentiality Agreement for Representatives at Appendix 1 to the Agreement for Early Neutral Evaluation; or,
- [d] Where publication, disclosure, or communication is necessarily involved for the protection of a party's legal rights in relation to a third party; or
- [e] Where publication, disclosure, or communication is necessarily required to prevent the safety of any person from being endangered,

provided always that such publication, disclosure or communication is no more than what is reasonably required for those purposes. To the extent that I am required to disclose any information either by law or otherwise, I agree to immediately notify the parties of such requirement.

I confirm that I have read and understood this confidentiality agreement.

I have no further questions with regard to the nature or confidentiality of the Early Neutral Evaluation process, and I agree to be bound by the terms of this agreement.

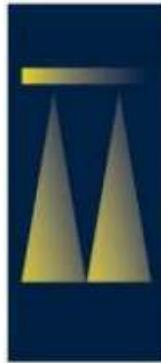
Dated this \_\_\_\_\_ day of \_\_\_\_\_ 2010

Signature:

Name:

Party:

Role:



BUILDING DISPUTES TRIBUNAL  
TE TARAPIUNURA MŌ NGĀ TAUTOHE WHARE

### DEFAULT PROCEDURE FOR EARLY NEUTRAL EVALUATION

- 1.0** The Evaluator shall convene a Preliminary Conference with the parties and their representatives within five (5) working days of the date of acceptance.
- 2.0** Each party shall, within ten (10) working days of the date of acceptance, serve on the Evaluator and every other party in hard copy by courier, a copy of that party's submission of case together with all supporting documents and evidentiary material.

The submissions of case shall include:

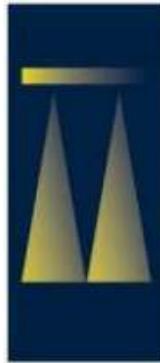
- (a) The nature and basis of the dispute; and,
  - (b) The factual and legal issues involved in the dispute and the party's contentions as to those issues; and,
  - (c) The relief or remedy sought and the quantum of any claim, counterclaim or cross claim; and,
  - (d) A copy of the contract or relevant sections thereof, or in a case where the contract is oral, or partly oral, a statutory declaration as to the terms of the contract; and,
  - (e) All statements, reports, documents or other evidential material relied upon by that party in support of its contentions.
- 3.0** The Evaluator shall convene an Evaluation Conference on or before the fifteenth (15<sup>th</sup>) working day from the date of acceptance.
  - 4.0** The procedure for the Evaluation Conference will be as follows:
    - Each party may in turn present a summary of its case, its evidence and relevant supporting material.
    - Each party may refer to any documents or other evidentiary material during the summary of its case if appropriate to explain or support its contentions or to refute the contentions of any other party. The rules of evidence do not apply.

- The Evaluator may ask clarifying questions at any time.
  - There will be no testimony or cross-examination of witnesses.
  - At the conclusion of the presentation of each party's summary of its case, each party may in turn, and in reverse order to the earlier presentations, make a closing submission in reply to the submissions of any other party.
  - The Evaluator will clarify and focus the issues and identify areas of agreement and disagreement.
  - The Evaluator will identify further key documents or additional information required to be disclosed.
  - The Evaluator will help the parties realistically assess litigation costs.
  - The Evaluator may establish a plan for sharing additional information and/or conducting the key discovery that will allow the parties to enter into meaningful settlement discussions or position the case for resolution by trial.
  - The Evaluator will determine whether some form of follow up session would contribute toward case development or settlement.
  - The Evaluator will encourage the parties to enter into settlement negotiations either chaired by the Evaluator or mediated by an independent Mediator from the Building Disputes Tribunal's Panel of Mediators.
- 5.0** The Evaluator may request any party to provide further information or evidential material which shall be provided to the Evaluator and every other party within three (3) working days of receipt of any such request and in the manner requested by the Evaluator.
- 6.0** Any other party may file a submission in response with the Evaluator and every other party within a further three (3) working days.
- 7.0** The Evaluator shall make an Evaluation of the disputed matters within ten (10) working days of whichever event is the latter of:
- (a) The Evaluation Conference; or,
  - (b) Receipt by the Evaluator of any further submissions, information, documents or evidentiary material requested by the Evaluator of any party following the Evaluation Conference.
- 8.0** The Evaluation shall be made in writing and shall state the reasons upon which it is based.
- 9.0** The Evaluation shall record the Evaluator's opinion as to the likely incidence of liability, and where appropriate, a range of damages if the dispute were to be resolved by a court based on the material put forward by the parties in the course of

the Early Neutral Evaluation.

- 10.0** The Evaluation shall not be binding on the parties.
- 11.0** The Early Neutral Evaluation may be terminated at any time by a party after consultation with the Evaluator.
- 12.0** The Evaluator may suspend or terminate the Evaluation at any time if the Evaluator feels unable to assist the parties in providing an Evaluation of the dispute.
- 13.0** The Early Neutral Evaluation will be terminated upon the signing of a settlement agreement in respect of the dispute referred to Early Neutral Evaluation or upon the provision of the Evaluation to the parties, whichever is the earlier event.

SAMPLE



BUILDING DISPUTES TRIBUNAL  
TE TARAIPIUNURA MŌ NGĀ TAUTOHE WHARE

**FEES AND EXPENSES FOR EARLY NEUTRAL EVALUATION**

**1.0 Application/Nomination Fee**

The Building Disputes Tribunal does not charge an application or nomination fee.

**2.0 Early Neutral Evaluation Fees**

The Building Disputes Tribunal provides a fully administered, Early Neutral Evaluation service for disputes of all values.

A Notice of Acceptance of Appointment as Evaluator will not be served on the parties to the Early Neutral Evaluation by the Building Disputes Tribunal until the parties have paid (in clear funds) into the trust account of the Building Disputes Tribunal a deposit as security for the Evaluator’s fees and expenses in accordance with the following schedule:

Code	Amount of claim	Security payment required
ENE1	≤ \$ 99,999.99	\$10,000.00
ENE2	\$100,000.00 ≤ \$199,999.99	\$15,000.00
ENE3	\$200,000.00 ≤ \$999,999.99	\$20,000.00
ENE4	≥ \$1M	\$25,000.00

Please note that any amount paid as security for the Evaluator’s fees and expenses is a nominal amount only and **is not, and shall not be considered an estimate of the cost of the Evaluation** which shall be calculated according to the time engaged on the duties of the Evaluation by the Evaluator together with any expenses incurred by the Evaluator in the execution of those duties.

In the event that the Evaluator’s fees and expenses prove to be less than the amount held by the Building Disputes Tribunal as security, the Building Disputes Tribunal will provide the Evaluator’s Evaluation to the parties to the Early Neutral Evaluation as soon as practicable after the Evaluator has made his or her Evaluation. The Building Disputes Tribunal will disburse the balance of the monies held as security to the parties in the proportions in which the security was originally paid by the parties unless the parties agree

otherwise and instruct the Building Disputes Tribunal accordingly in writing within two (2) working days of receipt of the Evaluation.

In the event that the Evaluator's fees and expenses prove to be greater than the amount held as security, the parties will be advised of the Evaluator's actual fees and expenses by the Building Disputes Tribunal and the parties will be requested to pay the balance in order to uplift the Evaluation. When the balance is paid in full, a copy of the Evaluation will be provided to each of the parties to the Early Neutral Evaluation by the Building Disputes Tribunal.

If an Evaluator becomes unable to perform the functions of that office, the Evaluator shall not be entitled to be paid any fees or expenses in connection with the Evaluation and any amount paid as security for the Evaluator's fees and expenses will be applied by the Building Disputes Tribunal to meeting the fees and expenses of the substitute Evaluator.

### **3.0 When is Payment Required?**

Payment of security for the Evaluator's fees and expenses is required to be made at the time the signed Agreement for Early Neutral Evaluation is filed with the Building Disputes Tribunal. No administrative or procedural steps will be taken by the Building Disputes Tribunal until payment of the required security is made in full and the funds are clear.

In the event that the Evaluator's fees and expenses are greater than the amount held as security, the parties must pay the balance of the Evaluator's fees and expenses within two (2) working days of receipt of notification by the Building Disputes Tribunal of such additional fees and expenses.

### **4.0 Liability for Payment**

The parties are free to make any arrangements as between them for payment of the Early Neutral Evaluation fees and expenses. However, it is most common, and indeed desirable, that the parties contribute equally to the cost of the Early Neutral Evaluation process thus confirming that the Evaluator is employed for the benefit of all parties and ensuring the 'neutral' status of the Evaluator.

Notwithstanding any agreement as between the parties, under the Early Neutral Evaluation Agreement the parties are jointly and severally liable for the fees and expenses of the Early Neutral Evaluation together with any additional costs howsoever incurred by the Building Disputes Tribunal in recovering any overdue monies on a full indemnity basis.

If the dispute between the parties is settled, or the request for Early Neutral Evaluation is withdrawn or terminated by the parties for any reason whatsoever before the Evaluation is made, the Evaluator is entitled to be paid all fees and expenses incurred by the Evaluator in the execution of the duties of the Early Neutral Evaluation up to and including, as the case may be, the date on which the request for Early Neutral Evaluation was withdrawn or terminated, or the date on which the Evaluator was notified that the dispute had been resolved.

### **5.0 Methods of Payment**

Payment of all Building Disputes Tribunal fees and Early Neutral Evaluation expenses may be made by cheque, direct credit, or by credit card (Visa and MasterCard only). Please

note that if paying by credit card there is a merchant transaction fee of 2.75% payable in addition to any invoiced amount.

## **6.0 Cancellation Fees**

In any case where a party notifies the Evaluator in writing that a scheduled Evaluation Conference is to be vacated, whether or not the dispute between the parties has been settled, or the Evaluation Conference is adjourned by agreement, or the application for Early Neutral Evaluation is withdrawn or terminated by the parties for any reason whatsoever, and the notice is received by the Evaluator during ordinary business hours three (3) working days or less from and including the date of the scheduled Evaluation Conference, the Building Disputes Tribunal will charge a cancellation fee in accordance with the following schedule:

<b>Code</b>	<b>Amount of claim</b>	<b>Cancellation fee per day or part day</b>
<b>ENE1</b>	<b>\$ 50,000.00 ≤ \$ 99,999.99</b>	<b>\$3,000.00</b>
<b>ENE2</b>	<b>\$100,000.00 ≤ \$199,999.99</b>	<b>\$4,000.00</b>
<b>ENE3</b>	<b>\$200,000.00 ≤ \$999,999.99</b>	<b>\$4,500.00</b>
<b>ENE4</b>	<b>≥ \$1M</b>	<b>\$5,000.00</b>

In the event that the dispute is settled or the agreement for Early Neutral Evaluation is withdrawn by the parties, the Evaluator's fees and expenses including any entitlement to cancellation fees will be deducted from the amount paid as security for the Evaluator's fees and expenses. The balance of the security monies, if any, will be refunded to the parties in the proportions in which the security was originally paid by the parties unless the parties agree otherwise and instruct the Building Disputes Tribunal accordingly in writing within two (2) working days of notice of settlement or withdrawal.

## **7.0 Administration Fee payable on Withdrawal or Settlement of Claim**

In any case where an application for Early Neutral Evaluation is withdrawn or terminated, or the dispute between the parties is resolved after receipt by the Building Disputes Tribunal of an application to appoint an Evaluator and before the provision of an Evaluation, the Building Disputes Tribunal will charge a fee being not less than \$750.00 in respect of the fees and expenses incurred in relation to the administration of the Early Neutral Evaluation up to and including the date on which the application for Early Neutral Evaluation was withdrawn or terminated or the Building Disputes Tribunal was notified that the dispute had been resolved.