

MEDIATION AGREEMENT

THIS AGREEMENT IS MADE BETWEEN the parties referred to in Item 1 of the Schedule hereto (**the Schedule**) (**the Parties**), Andrew Kitchin Barrister-at-Law (**the Mediator**), and such other person as may execute this Agreement in accordance with the Operative Terms set out below.

WHEREAS:

- A. The Parties have requested the Mediator to mediate a dispute between the Parties (**the Mediation**).
- B. The Parties and the Mediator have agreed to the Mediation on the following terms and conditions:

OPERATIVE TERMS:

Appointment

- 1. The Parties agree to the appointment of the Mediator to assist in resolving the dispute briefly described in Item 2 of the Schedule.

Attempt to resolve dispute

- 2. The Parties will attempt in good faith¹ to resolve the dispute with the assistance of the Mediator. For that purpose, the Parties will meet the Mediator at such places and times as may be agreed between the Parties and the Mediator (if there is currently a place/time for the mediation agreed then this will be noted at Item 3 in the Schedule).

¹ Note that mediations in respect of specific contexts may involve an express requirement of good faith, or similar. Note, for example, s.39 of the Franchising Code of Conduct, s.45 of the Oil code, and Rule 34.118 of the *Federal Court Rules* (in respect of mediation of Native Title disputes).

3. The parties acknowledge and agree that this agreement incorporates as may be necessary:
 - (a) The terms of the costs disclosure agreement with the mediator;
 - (b) If applicable to the mediation any of the provisions of Part 4, Division 5A of the *Motor Accident Insurance Act 1994*, Chapter 2, Part 1, Division 4 of the *Personal Injuries Proceedings Act 2002* and Chapter 5, Part 5 of the *Workers' Compensation and Rehabilitation Act 2003*;
 - (c) All or any of the provisions of Part 6 of the *Civil Proceedings Act 2011*;
 - (d) All or any of the provisions of Chapter 9 Part 4 of the *Uniform Civil Procedure Rules 1999*.

Conduct of the mediation

4. The Parties shall comply with all reasonable directions of the Mediator in relation to the conduct of the Mediation.
5. The Mediation shall be conducted in private with only the Mediator, the Parties and the Parties' representatives in attendance, unless the Parties and the Mediator agree otherwise.
6. In the event the Parties and the Mediator agree to the attendance of any other persons at the Mediation, the Party(s) requesting the attendance of such other persons must:
 - (a) obtain, for the benefit of all other Parties and the Mediator, agreement from those other persons that all information received in the course of the Mediation:
 - (i) is and will be treated as confidential; and
 - (ii) has been provided on a "without prejudice" basis and solely for the purposes of the mediation;

and

- (b) confirm the agreement required under subparagraph (a) to the other Party(s) and the Mediator either at, or prior to, the commencement of the Mediation.

The agreement of other persons attending the Mediation described in subparagraph (a) above may be formalised by those other persons executing this Agreement.

7. The Parties (including any representative of any Party), the Mediator and any other person attending at the Mediation (together, **the Attendees**) will keep confidential all things said or done during the Mediation, including all processes incidental to the Mediation.
8. All statements made at the Mediation concerning the Dispute, including but not limited to the following matters, will be regarded as having been made on a “without prejudice” basis:
 - (a) any statements made by any Party concerning any matter or issue in dispute;
 - (b) any views expressed or suggestions made by the Mediator, any Party or any other Attendee, in respect of the possible settlement of any matter in dispute;
 - (c) any proposals for the purposes of resolving or settling any matter in dispute, whether made by the Mediator, any Party or any other Attendee; and
 - (d) the fact that any Party has indicated any willingness to accept any proposal or basis for settlement or resolution of any matter or issue in relation to the Dispute.
9. The parties agree that there is to be no audio or video recording (by whatever means – including AI or similar transcription type service or program) of any part of the mediation including any conversations with the Mediator.

Mediator not empowered to decide the dispute

10. The Parties and any other Attendees agree and acknowledge that the Mediator is not empowered to make any determination or decision (final or otherwise) concerning the dispute.

Mediator's statements not binding

11. The Parties and any other Attendees will not be bound by any comments, suggestions or recommendations of the Mediator.

Mediator's statements not legal or professional advice

12. The Parties and any other Attendees agree that no comments, suggestions or recommendations or other statements of the Mediator concerning or relating to the dispute, or the possible or actual resolution or settlement of the dispute, will be treated, regarded or relied upon, as legal or professional advice in any respect.

Mediator's notes

13. The Parties acknowledge that:
 - (a) the Mediator may take notes during the course of the Mediation;
 - (b) the notes will be made by the Mediator to assist him in his / her role as Mediator;
 - (c) the notes, when made, and that upon which they will be written are the property of the Mediator;
 - (d) no Party shall ask for, nor shall they be entitled to receive, the original or any copy of any notes made by the Mediator.

Documentation for the Mediation

14. The Parties agree to provide to the Mediator such documents as are necessary to enable the mediator to understand the dispute, the issues and the present stage of the proceedings.

15. The Parties will confer and do their best to agree upon the preparation of an indexed copy of all material that:
 - (a) is necessary for the Mediator to gain an understanding of the critical issues in the Dispute; and,
 - (b) which any of the Parties or any other Attendees might wish to refer to in the course of the Mediation;
("agreed material")

such material not to exceed one lever arch folder of up to 400 pages (or equivalent sized e-brief) ("normal brief size"), except with the express agreement of the Mediator.
16. The Parties will, for the purposes of the Mediation, provide such documents and summaries of arguments to the other Attendees as the Mediator may direct, or as the Parties otherwise agree.
17. If the Parties can not reasonably agree on all of the material to be part of the agreed material, then the Parties are to provide to the Mediator the agreed material as contemplated above and each party can then send additional documents to the Mediator separately providing that in total the additional documents and the agreed material do not exceed the normal brief size except with the express agreement of the Mediator.

Termination of the Mediation

18. Mediation under this Agreement may be terminated:
 - (a) by all Parties giving written notice to the Mediator that the Parties have resolved their dispute; or
 - (b) by any of the Parties at any time giving written notice of termination of the Mediation to the other Parties and to the Mediator; or
 - (c) by the Mediator giving notice to each of the Parties that:
 - (i) in the Mediator's opinion, further efforts at mediation are not justified, desirable or appropriate; and
 - (ii) the Mediator has accordingly ceased to act as a Mediator;

or

- (d) otherwise according to law.

Notification of settlement, cancellation or postponement

19. In the event of settlement of the dispute, or of agreement to cancel or postpone the Mediation, the Parties shall immediately notify the Mediator in writing.

Mediator's fees

20. The Parties will pay the Mediator's fees as specified in the Fee Agreement provided as attached or as provided separately by the Mediator to the Parties.
21. To the extent permitted by law, the Parties acknowledge and agree that the first acceptance by the Mediator of the Parties' request to mediate the Dispute will render the Parties jointly liable to pay the Mediator's fees.

Application of provisions of the *Civil Proceedings Act 2011 (Qld)*²

22. In the event that the Mediation arises in consequence of a court order that the Parties engage in mediation, the Parties acknowledge the existence and operation of each of ss.52 and 53 of the *Civil Proceedings Act 2011 (Qld)*.
23. In the event that the Mediation does not arise in consequence of a court order that the Parties engage in mediation, the Parties agree that:
- (a) the Mediation shall be treated as if it arose in consequence of a court order and, or alternatively, an agreement between the

² In respect of disputes in the Federal Court, comparable provisions to ss.42, 52 and 53 of the *Civil Proceeding Act 2011 (Qld)* exist in ss.53A, 53B and 53C of the *Federal Court of Australia Act 1976 (Cth)*.

Parties under s.42 of the *Civil Proceedings Act 2011* (Qld), to mediate the Dispute³; and

- (b) each of ss.52 and 53 of the *Civil Proceedings Act 2011* (Qld) shall apply in relation to the Mediation.

24. Without limiting paragraphs 22 and 23 above, the Parties agree:
- (a) that the Mediator is not a necessary party to any application, litigation, arbitration or proceeding between the Parties relating to any dispute between them;
 - (b) not to join the Mediator as a party to any application, litigation, arbitration or proceeding between the Parties;
 - (c) jointly and severally, to indemnify the Mediator for any costs or expense to which the Mediator may be put in the event of being joined or made a party to any such application, litigation, arbitration or proceeding; and
 - (d) that none of the Parties will require the Mediator to give evidence or to produce any document in any legal proceeding concerning the Dispute or in respect of anything in relation to the Mediation, other than a legal proceeding brought to enforce, or to challenge the validity of, any agreement that has been reduced to writing and signed by the Parties in the course of the Mediation.

Entire agreement

25. To the extent permitted by law:
- (a) the express terms of this Agreement contain the whole of the obligations of the Mediator relating to this Agreement and to the Mediation;
 - (b) any obligation of the Mediator which might otherwise be implied, whether under statute or otherwise, is excluded.

³ Note here the potential impact of rules 321 - 333 of the *Uniform Civil Procedure Rules*. If reference is instead made to ss.53A to 53C of the *Federal Court of Australia Act* (1976) (Cth), note rules 28.1 to 28.25 of the *Federal Court Rules*.

26. Nothing in paragraph 25 above derogates from any statutory protections or privileges in favour of the Mediator, including (without limitation) those found in ss.52 and 53 of the *Civil Proceedings Act 2011* (Qld).

Exclusion of liability and indemnity in favour of Mediator

27. To the extent permitted by law:
- (a) the Mediator shall have no liability of any nature whatsoever to any person in respect of:
 - (i) any matter arising out of this Agreement, or in any way connected with this Agreement; or
 - (ii) anything done or omitted to be done under or in connection with this Agreement or the Mediation; and
 - (b) each of the Parties jointly and severally indemnify the Mediator against any liability in respect of:
 - (i) any matter arising out of this Agreement, or in any way connected with this Agreement; or
 - (ii) anything done or omitted to be done under or in connection with this Agreement or the Mediation.

Counterparts

28. This document may be executed in counterparts. All counterparts together are taken to constitute one document.
29. A copy of this document which has been executed by a Party may be relied upon by a Party to the same extent as if it was an original of this document executed by the signatory.

National Mediator Accreditation

30. The Mediator is accredited pursuant to the Australian Mediator and Dispute Resolution Standards (AMDRAS). The AMDRAS contains

Practice Standards for all accredited mediators. Pursuant to the Practice Standards, the Mediator must ensure that the Parties are provided with the following:

- (a) A description of mediation and the steps involved including the use of joint sessions, separate sessions and shuttle negotiations;
- (b) information on how to provide feedback or lodge a formal complaint in relation to the Mediator.

To that end the Mediator:

- (c) refers the Parties to the AMDRAS, as to the matters referred to in paragraph 30(a) hereof. The AMDRAS can be found at <https://amdras.au/wp-content/uploads/2025/04/AMDRAS-Standards-Master-February-2025.pdf>
- (d) informs the Parties that feedback can be given direct to the Mediator after the mediation by email addressed to kitchin@brisbanebar.com.au
- (e) informs the Parties that a formal complaint in relation to the Mediator can be made to the Chairman for the time being of the ADR Committee of the Bar Association of Queensland, Bar Association Office, Ground Floor, Inns of Court, 107 North Quay, Brisbane, Queensland, 4000.

This Agreement is signed by the **Claimant/Plaintiff** on this day of 2026.

SIGNED by
in the presence of:

.....
Signature of witness

.....
Signature of **Claimant/Plaintiff**

.....
Full name of witness

This Agreement is signed by the **Respondent/Defendant** on this day of 2026 .

SIGNED by
in the presence of:

.....
Signature of witness

.....
Signature of **Respondent/Defendant**

.....
Full name of witness

This Agreement is signed by the Mediator this day of 2026.

SIGNED by Andrew Kitchin

.....

Other persons attending at the Mediation (see paragraph 5 of the Operative Terms):

Name: _____

Signature: _____

Name: _____

Signature: _____

Name: _____

Signature: _____

Name: _____

Signature: _____

SCHEDULE

Item 1: Parties

- (a) Claimant/Plaintiff:
- (b) Respondent/Defendant:(& WorkCover Queensland/CTP insurer etc as the case may be)

Item 2: Brief Description of the Dispute

Liability and/or Quantum in a claim for damages for personal injuries brought by the Claimant/Plaintiff against the Respondent/Defendant.

Item 3: Location & Time

The Mediation will take place atat(am/pm) on(date) and the parties agree that the Mediation will be conducted over a period of a half day.

Mediator's fees

Per the Fee Agreement **attached** to this Mediation Agreement (or the Fee Agreement as otherwise provided by the Mediator to the Parties).

For the purposes of the Mediation the parties agree to pay the following proportions of the mediator's fees:

- (a) Claimant/Plaintiff: 50%
- (b) Respondent/Defendant: 50%

The Parties agree to pay their respective proportions of the mediator's fees to the mediator within thirty (30) days of the receipt of the mediator's tax invoice.

The Mediator's fees are payable no matter what the result of the mediation.