

Radlink Pty Ltd ACN 128 968 865 as trustee for The Radlink Unit Trust ABN 62 890 602 388 trading as Radlink Communications, also referred to within this document as Radlink.

## 1. INCORPORATION OF TERMS

1.1 These terms and conditions set out the basis upon which Radlink is contracted to supply professional services to the Client

## 2. FORMATION OF CONTRACT

2.2 A Contract is formed between the Client and Radlink upon the terms contained in these Terms and Conditions when an Authorisation to Commence Work has been signed by the Client and Radlink.

## 3. FEE ARRANGEMENT

### 3.1 Fee for Work

All rates applicable to this Contract are set out in the Fee for Work section of the Authority to Commence Work.

### 3.2 Travel and Accommodation

UNLESS varied by Radlink and the Client in writing, where Radlink incurs a cost associated with:

(a) the transport of its consultants and/or employees from the relevant Radlink office to the Client's site and/or return to the relevant Radlink office (or a vehicular transport on-site or incidental as required for the Scope of Works)

(b) meals or accommodation, or

(c) other actual disbursement costs associated with the provision of the service,

then this cost will constitute a charge payable by the Client to Radlink at a rate of costs to Radlink plus a margin of 10%.

### 3.3 Standby Rates

If the Client suspends work under Clause 10, Radlink shall be entitled to charge standby rates for its consultants and/or employees at:

(a) the rate set out in the Authorisation to Commence Work for the duration of the Standby period; or

(b) if no rate is set out in the Authorisation to Commence Work, then 50% of the daily rate set out in the Authorisation to Commence Work for the duration of the Standby period.

## 4. INVOICING

4.1 Radlink shall invoice the Client at the end of each calendar month on an interim basis and at the conclusion of the service (or as is otherwise mutually agreed).

4.2 The Client shall pay to Radlink all invoices rendered by Radlink in accordance with this Clause without deduction or set-off not later than 30 days from date of the statement.

## 5. VARIATIONS

5.1 During the term of the Contract, the Client may, by notice request that Radlink vary any aspect of the Works.

5.2 If the Client requests any variations and those variations will alter the cost of the works, then Radlink shall be entitled to either:

(a) charge for the additional works required at the hourly or daily rates as set out in the Authorisation to Commence Work; or

(b) issue a formal revision to the cost of the works on the basis that:

(i) such cost will be calculated and notified to the Client as soon as practicable after the receipt of the notice of the Variation; and

- (ii) Radlink is not obliged to carry out any of the works which are the subject of the variations until such a time as Radlink receives written approval from the Client of the increase in cost.

5.3 Any variations which are accepted by Radlink will be binding on the Client and Radlink as if it was included in the original contract.

5.4 The Client acknowledges that Variations to the contract may result in delays to the completion date and hereby indemnifies Radlink for any loss arising due to variations causing delays to the Completion Date.

## 6 OBLIGATIONS OF THE CLIENT

### 6.1 Deliverables

The Client is obliged to provide to Radlink those items specified in the “Deliverables Section”, of the Authorisation to Commence Work, in the manner, and within the timeframe specified therein.

### 6.2 Site Safety and Employee Training

The Client warrants it will adhere to established industry standards to provide and maintain a healthy, safe and environmentally sound working environment for Radlink consultants and/or employees, and warrants it will, without limiting the foregoing:

- (a) Meet the relevant Occupational Safety and Health Act obligations, Regulations, Standards and approved Codes of Practice.
- (b) Do all things reasonably practicable to eliminate hazards and control risks to health and safety at the Client’s office or designated work location where the work is performed.
- (c) Notify Radlink of any fundamental changes to the Premises, work practices or procedures, plant and equipment or substances that may affect the safety and health of Radlink, its consultants and / or employees.
- (d) Provide Radlink consultants and/or employees with specific information, instruction and training as required in order for them to safely perform the Tasks and manage safety at the Premises.

### 6.3 Compliance with Acts and Regulations

- (a) During the term of these Terms and Conditions, the Client agrees it will conform at the Client’s expense with:
  - (i) all site agreements whether obtained by Radlink or the Client
  - (ii) Acts of both Federal and State Parliaments and all regulations, by-laws, ordinances and orders made under them; and
  - (iii) the lawful requirements of any public, municipal or other authority as far as they affect or apply to the Client or the works being carried out by the Client and Radlink .
- (b) The Client agrees to indemnify and keep indemnified Radlink against all liability for losses, damages, actions, claims, demands, costs and charges arising out of the Client’s breach of its obligations under this Clause.

### 6.4 Right of Access

The Client warrants that it has the authority to enter on to the premises and perform the obligations contained in the Contract, and furthermore, has the authority to grant access to Radlink.

### 6.5 Insurance

The Client warrants that it has in place, and will continue to have in place until the termination of these Terms and Conditions, Public Liability Insurance for an amount to the satisfaction of Radlink.

### 6.6 Client Representations & Warranties

- (a) The Client represents to Radlink that, as at the date of these Terms and Conditions, it has the corporate power to enter into the Deed.
- (b) The Client hereby warrants and represents to Radlink that:

- (i) it owns or has the requisite license to provide Radlink with any technical specifications supplied to Radlink for the completion of the Tasks
- (ii) it will co-operate with Radlink and provide Radlink with such information and assistance as Radlink may reasonably require in order to enable or facilitate Radlink duly and punctually to comply with its obligations under these terms.

## 7 OBLIGATIONS OF Radlink

### 7.1 Performance of Work

Radlink warrants to the Client that:

- (a) the Services shall be supplied and rendered by appropriately experienced, qualified and trained consultants and/or employees with all due skill, care and diligence
- (b) Radlink will employ skilled and experienced consultants and/or employees in all matters relating to the service to be provided to the Client in accordance with best industry practice
- (c) Radlink shall endeavour to provide the Service in accordance with Client specifications and with the timeframe parameters prescribed in the Authorisation to Commence Work; and
- (d) Radlink has all necessary licences, permits and consents to enter into and to provide the Services.

## 8 INSURANCE

Radlink warrants that it has in place, and will continue to have in place until the termination of these Terms and Conditions, the following insurances:

- (a) Professional Indemnity Insurance to the sum commensurate with the value of the Contract as prescribed in the Authority to Commence Work document.
- (b) Public Liability Insurance to the sum of \$20 million until the Tasks are completed, and
- (c) Workers Compensation Insurance until the Tasks are completed.

## 9 SUSPENSION OF SERVICES BY CLIENT

- 9.1 The Client may suspend the performance of the services at any time by giving notice in writing to Radlink.
- 9.2 Unless the suspension is as a result of Radlink ' wrongful conduct, the Client must pay to Radlink for performance of services up to the time of suspension and any costs and expenses reasonably incurred by Radlink as a result of the suspension.
- 9.3 The Client will be liable for the costs of accommodating Radlink consultants and/or employees during the suspension.
- 9.4 If the suspension lasts longer than 7 days, Radlink may terminate the contract.
- 9.5 The deadline for the delivery of any of the Tasks shall be deferred for a period equivalent to the period that the Client has suspended work in accordance with this Clause 10.

## 10 SUSPENSION OF SERVICES BY Radlink

- 10.1 Radlink may suspend the provision of services in the following circumstances:
  - (a) if a risk to the health and safety of any person arises in the performance of services (other than at any premises owned or controlled by Radlink )
  - (b) a default in payment of invoices, which default is ongoing for a period exceeding seven days
  - (c) a default of the Client's insurance obligations
  - (d) in the event of a dispute arising between Radlink , its consultants and/or employees and the employees, officers, managers or clients of the Client in relation to the performance of Tasks, whereby the Client issues a direction to Radlink , with which Radlink reasonably disagrees; or
  - (e) failure by the Client to comply with Clause 7.1 of these Terms and Conditions.
- 10.2 Radlink will give prompt notice to the Client of the suspension, the reason for the suspension and, if known by Radlink , it is likely duration.
- 10.3 Radlink will recommence the provision of services as soon as is practicable immediately after the resolution of the issues giving rise to the suspension, and will give prompt notice to the Client.
- 10.4 In the event of an ongoing dispute which cannot be resolved under Clause 11.4 the parties agree to engage in the dispute resolution mechanisms set out in Clause 19 below.

10.5 The deadline for the delivery of any of the Tasks shall be deferred for a period equivalent to the period that Radlink has suspended its work in accordance with this Clause 11.

## 11 TERMINATION

11.1 These Terms and Conditions may be terminated by Radlink , without notice, in the event of the following:

- (a) The Client commits a substantial or persistent breach of any of its obligations under these Terms and Conditions, and where such breach is remediable, fails to remedy it in five (5) business days after service of written notice from Radlink requiring such remedy
- (b) The Client is unable to pay its debts as they fall due, or compounds with or negotiates for any composition with its creditors generally or permits any judgement against it to remain unsatisfied for seven days
- (c) Appoints an administrator or receiver of all or any of its assets appointed or applies for, or enters into liquidation
- (d) Termination of the Contract, or
- (e) If a suspension of works under the Contract exceeds 7 days.

11.2 The Client shall have the right to terminate these Terms and Conditions if, having served a notice in writing to Radlink setting out the breach, Radlink has not remedied that breach within ten (10) Business Days.

## 12 INDEMNITIES

12.1 The Client hereby indemnifies and will keep indemnified Radlink from liability, in contract and in tort, (including liability for any and all legal and other costs) for acts and omissions of the Client.

12.2 The Client hereby indemnifies and will keep indemnified Radlink from liability (including liability for any and all legal and other costs) arising from:

- (a) loss or damage to property of Radlink or a third party
- (b) any workplace injury occasioned by any of the Client's employees working with or in association with, Radlink consultants and/or employees
- (c) claims in respect of personal injury or death, arising out of, connected to or as a consequence of the Client breaching the Client's obligations under these Terms and Conditions; and
- (d) any liability that Radlink may suffer or incur under a statutory warranty in connection with the scope of work as prescribed in the Authority to Commence Work document.

## 13 LIMITATION OF LIABILITY

13.1 Neither Radlink nor the Client shall be liable to the other party for any liquidated damages.

13.2 In no event shall Radlink , its employees, its directors or its consultants be liable in contract, tort, strict liability, warranty or otherwise, for any special, incidental or consequential damage, such as, but not limited to, delay, disruption, loss of product, loss of anticipated profits, revenue, loss of opportunity, loss of use of the equipment or system, non- operation or increased expense of operation of other equipment or systems, cost of capital, or cost of purchase or replacement equipment, systems or power.

13.3 Notwithstanding anything to the contrary contained within this Agreement (including without limitation negligence by any of Radlink consultants and/or employees) Radlink ' liability to the Client will be limited to the value of the services provided according to the Authorisation to Commence Work but excluding the value of any fee increases which are the result of variations.

## 14 CONFIDENTIALITY AND INTELLECTUAL PROPERTY

14.1 Radlink and the Client hereby undertakes to the other to:

- (a) keep confidential all Confidential Information belonging to the other and treat Confidential Information belonging to the other with the same degree of care that it uses for its own confidential information
- (b) not, without the prior written consent of the other, disclose Confidential Information belonging to the other in whole or in part to any other person save those of its consultants, contractors

and/or employees, involved in the provision or receipt of the Services and who need to know the Confidential Information in question

- (c) use the Confidential Information belonging to the other solely in connection with the provision or receipt of the Services and not for its own benefit or the benefit of any third party.

- 14.2 Neither party shall use Confidential Information belonging to the other party for any purpose other than carrying out the scope of works as described in the Authority to Commence Work document.
- 14.3 The Client and Radlink hereby undertakes to take all such steps as necessary to ensure compliance by its consultants, contractors and/or employees with the provisions of this Clause 14 and indemnify the other Party against any breach of this Clause 14.
- 14.4 The provisions of Clauses 14.1(a), (b), & (c) shall not apply to any information which:
  - (a) is or becomes public knowledge other than by breach of this Clause 14
  - (b) is in the possession of the receiving party without restriction in relation to disclosure before the date of receipt from the disclosing party
  - (c) is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure
  - (d) is independently developed without access to any Confidential Information belonging to the other
  - (e) is required to be disclosed by any Court, Tribunal or Government Authority with competent jurisdiction (but only to the extent of such requirement).
- 14.5 The Client warrants that any design, materials, documents and methods of working provided by the Client will not infringe any Intellectual Property right.
- 14.6 Radlink retains the Intellectual Property rights in material created by Radlink during, or in contemplation of, the carrying out of the Tasks.
- 14.7 Radlink retains all background Intellectual Property created prior to the issue by Radlink of the Authorisation to Commence Work.
- 14.8 If any material, matter or thing (including software, documentation or data) is owned by the Client, the Client grants Radlink an irrevocable, royalty free, transferable licence (and the right to sub-licence) to use such material, matter or thing for the purpose of completing the Tasks.

## 15 USE OF SUBCONTRACTORS

- 15.1 The Client acknowledges that Radlink may engage the services of subcontractors. No additional consent, either verbal or written will be obtained from the Client.
- 15.2 The selection of subcontractors will be at the discretion of Radlink, who may, if so required, terminate and replace any subcontractor they in their absolute discretion see fit.
- 15.3 Radlink warrants to the Client that any subcontractors engaged by Radlink will be covered by all necessary insurance, and the Client will not have the right to raise any further queries in relation to insurance cover of the subcontractors or request certificates of currency for those insurance policies.

## 16 NON –SOLICITATION

- 16.1 The Client agrees that it shall not (either on the Client’s own behalf, or on behalf of any person, firm, or third party company) directly or indirectly solicit, engage or recruit Radlink ’ employees or consultants during their deployment pursuant to this work or during a period of six [6] months after their deployment has ceased without prior agreement of Radlink .
- 16.2 In the event such employment or engagement takes place within the six month period without Radlink ’ agreement, then the Client shall pay a fee of A\$125,000 excluding GST payable to Radlink within seven (7) days of the direct engagement commencing.

## 17 FORCE MAJEURE

- 17.1 Neither Party shall be liable for any delay or failure to carry out its obligations under these Terms and Conditions (other than the obligation to pay invoices) caused by Force Majeure provided:
  - (a) that it promptly gives written notice of the occurrence of the Force Majeure relied on to the other party; and

(b) it uses all reasonable endeavours to remove or avoid the effect of such Force Majeure as promptly as practicable.

17.2 If a delay or failure to perform an obligation is caused by a Force Majeure event, that obligation will be suspended for so long as the cause of the delay or failure continues, provided that if the delay or failure exceeds 14 days either party may, by notice in writing terminate this contract.

## 18 DISPUTE RESOLUTION

18.1 If a dispute arises in connection with these Terms and Conditions, a party to the dispute must give to the other party to the dispute notice specifying the dispute and requiring its resolution under this Clause ("Notice of Dispute").

18.2 If the dispute is not resolved within ten (10) Business Days after the Notice of Dispute is given to the other party ("First Period"), the dispute is by this Clause submitted to mediation on the following terms:

- (a) the mediation must be conducted in the State; and
- (b) the *Institute of Arbitrators Australia Rules for the Mediation of Commercial Disputes (Edition 2 – September 1995)* as amended by this Clause apply to the mediation, except where they conflict with this Clause.

18.3 If the parties have not agreed upon the mediator and the mediator's remuneration within ten (10) Business Days after the First Period:

- (a) the mediator is the person appointed by
- (b) the remuneration of the mediator is the amount or rate determined by the President or the Law Society ("President") or the President's nominee, acting on the request of a party
- (c) the parties must pay the mediator's remuneration in equal Units; and
- (d) each party must pay its own costs of the mediation.

18.4 If the dispute is not resolved within sixty (60) Business Days after the appointment of the mediator ("Second Period"), the dispute is by this Clause referred to arbitration. The arbitration must be conducted in the State by a single arbitrator.

18.5 Despite the submission of a dispute to mediation or the reference of a dispute to mediation under this Clause 19, subject to Clause 10 and 11, the parties must continue to perform their obligations under these Terms and Conditions.

18.6 In the award, the mediator may make any appropriate adjustment for the performance of obligations under these Terms and Conditions since the Notice of Dispute was given.

18.7 Subject to Clause 19, a party must not commence or maintain a court action or proceeding upon a dispute in connection with these Terms and Conditions until the dispute has been submitted to mediation, and determined under this Clause.

18.8 This Clause continues in force even where the Terms and Conditions have been fully performed, terminated or rescinded or where the parties or any of them have been discharged from the obligation to further perform the Terms and Conditions for any reason.

## 19 NOTICES

19.1 Any notice or other document in writing required to be given by these Terms and Conditions shall be in writing and signed by the party giving it or their solicitors and is deemed to have been given or made if served on the party concerned by:

- (a) posting it to that corporation at its registered office; or
- (b) handing it to one of the directors of that corporation; or
- (c) posting it to that party at its address as is notified from time to time; or
- (d) sending it by facsimile to the facsimile number as is notified by the parties from time to time.

19.2 A notice is deemed to have been served:

- (a) upon receipt in the event of personal service
- (b) at the expiry of two (2) Business Days after the date of posting
- (c) at 12 noon on the next Business Day after facsimile transmission.

## 20 SEVERABILITY

If any provision of these Terms and Conditions:

- (a) is declared void; or
- (b) if effective, would render either:
  - (i) these Terms and Conditions; or
  - (ii) any provision in these Terms and Conditions void or unenforceable

Then that provision shall have no force or effect whatsoever and shall be ineffective and severed from these Terms and Conditions to the extent necessary to avoid that consequence without affecting the validity and enforceability of these Terms and Conditions.

## 21 ENTIRE AGREEMENT

These Terms and Conditions represent the entire Agreement between the parties and supersede and replace all prior agreements between the parties regarding the subject matter of these Terms and Conditions.

## 22 APPLICABLE LAW

These Terms and Conditions shall be governed by and construed in accordance with the laws of the State identified in the Authorisation to Commence Work, or if silent on the matter, in accordance with the laws of the State of Western Australia, and the parties agree to submit to the non-exclusive jurisdiction of its courts.

## 23 AMENDMENT

Except in the case of completion of the Authorisation to Commence Work to these Terms and Conditions, these Terms and Conditions can only be amended or varied by a written document, which is executed by all the parties.

## 24 NO ASSIGNMENT

No party to these Terms and Conditions may:

- (a) assign; or
- (b) charge their interest in these Terms and Conditions without the prior written consent of the other parties.

## 25 INTERPRETATION AND DEFINITIONS

25.1 The terms defined have the same meanings when used throughout these Terms and Conditions.

25.2 Unless the contrary intention appears:

- (a) a reference to these Terms and Conditions or any other document includes any variation or replacement of it
- (b) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them
- (c) the singular includes the plural and vice versa
- (d) a reference to a person includes a reference to the person's executors, administrators, successors, transferors, substitutes (including persons taking by novation) and assigns
- (e) an agreement, representations or warranty on the part of or in favour of two (2) or more persons binds or is for the benefit of them jointly and severally
- (f) if a period of time is specified and commences from a given day or the day of an act or event, it is to be calculated exclusive of that day
- (g) a reference to time shall mean the time in the state where the services are being undertaken.
- (h) a term or definition incorporated by reference into these Terms and Conditions remains in force notwithstanding that the document from which it was referred may at any time be no longer in force; and
- (i) gender reference includes all genders.

25.3 Headings are inserted for convenience and do not affect the interpretation of these Terms and Conditions.

25.4 The following words have the following meanings:

<b>“Authorisation to Commence Work”</b>	means the written document provided by Radlink to the Client for the provision of services which incorporates these Terms and Conditions
<b>“Business Day”</b>	means any day on which trading banks in the relevant jurisdiction in Clause 23 are open for business
<b>“The Client”</b>	means the persons or entity set out in the Authorisation to Commence Work
<b>“Commencement Date”</b>	means the date set out in the Authorisation to Commence Work
<b>“Confidential Information”</b>	means: <ul style="list-style-type: none"> <li>a) trade secrets</li> <li>b) confidential operations, processes or dealings; and</li> <li>c) other information concerning the activities, organisation, business, finances, transactions or affairs,</li> </ul> of the Client that comes to the knowledge of or use by Radlink in carrying out the Tasks.
<b>“Day”</b>	means the period of time commencing at midnight and ending 24 hours later
<b>“Deed”</b>	means this document including the Authorisation to Commence Works (if any)
<b>“Force Majeure”</b>	means any events which occur due to reasons beyond either party’s control, which cannot be overcome by reasonable diligence and without reasonable expense and includes, but is not limited to, industrial dispute (including strike, lockout, ban, limitation of work) insurrection, riot, war, acts of God, acts of Government or Government agency (including an executive or administrative order) or any other natural, technological, political or similar cause
<b>“Intellectual Property”</b>	means every form of intellectual property, whether created before or after the commencement of this agreement, including inventions, know-how, patents, patent applications, registered trademarks, unregistered trademarks, designs copyrights, confidential information, trade secrets and trade business or company names.
<b>“Person”</b>	includes a firm, a body corporate, an unincorporated association and an authority
<b>“Premises”</b>	means the location set out in the Authorisation to Commence Work



<b>“Policies of Insurance”</b>	means insurance cover that the Client reasonably requires Radlink to hold, and Radlink reasonably requires the Client to hold which, without limiting the generality of this definition, may include public, product and professional liability insurance cover
<b>“Report”</b>	means a report by Radlink : <ul style="list-style-type: none"><li>a) reporting on Radlink ’ performance of Tasks provided and in progress during the reporting period</li><li>b) presented in a format specified by or acceptable to the Client</li></ul>
<b>“State”</b>	means the State identified in the Authorisation to Commence Work, or if silent on the matter, the State of Western Australia
<b>“Tasks”</b>	means the professional services to be provided by Radlink to the Client which are the subject matter of an Authorisation to Commence Work
<b>“Term”</b>	means the period set out in the Authorisation to Commence Work
<b>“Trademarks”</b>	means the trademarks the Client and Radlink use only in connection with the provision of the Tasks