

# TERMS AND CONDITIONS FOR PROVISION OF SERVICES

## 1. GENERAL

These terms and conditions, together with the executed **Offer for Provision of Services**, form an agreement ("Agreement") between Environmental Isotopes Pty Ltd ("**EI**") and the **Customer**. These terms and conditions will prevail over the information contained in the **Offer for Provision of Services** to the extent of any inconsistency between the two. This Agreement can be amended only by written agreement between the Parties.

## 2. WORK AND FEES

In consideration for payment of **Fees** specified, **EI** will perform the **Work** specified in accordance with this Agreement. All payment of **Fees** are to be in the nominated currency and shall exclude tax (e.g. sales tax, GST, import duties or withholding tax, or other direct, indirect or foreign taxes) which shall be additional, if applicable, and at the expense of the Customer. All **Fees** must be paid by the date indicated on the invoice, overdue amounts may attract interest calculated daily.

## 3. CUSTOMER'S MATERIALS

The **Customer** is responsible for delivery to **EI** of, and will bear the risk of loss of or damage to, any testing samples required to perform the **Work**.

## 4. INTELLECTUAL PROPERTY

In this Agreement:

"**Customer Results**" means any data, analysis/test reports, and recommendations which specifically relate to the **Customer**; and

"**EI Results**" means:

(a) anything created, invented or discovered in the course of carrying out the **Work** which are not **Customer Results**

(b) any skills, techniques, knowledge or methodologies which are in **EI's** possession prior to entering this Agreement, (and includes any accretion thereto which is acquired as a result of carrying out the **Work**).

**EI** owns **EI Results** including all intellectual property subsisting therein. The **Customer** owns **Customer Results** including all intellectual property subsisting therein. **EI** may retain copies of **Customer Results** for its records. Property in any **Customer Results** will pass upon payment of **Fees and charges** in full.

## 5. CONFIDENTIALITY

Each Party shall treat the terms of this Agreement and all confidential information owned by the other Party as confidential and shall not, without the prior written consent of the other Party, disclose or permit the same to be disclosed to any other person. Each Party's obligations under this clause shall survive the termination of this Agreement and endure until the confidential information disclosed to it lawfully becomes part of the public domain.

## 6. FORCE MAJEURE

If any cause or event beyond **EI's** reasonable control prevents **EI** in whole or in part from performing its obligations under this Agreement, then as soon as practicable **EI** will notify the **Customer** that the cause or event has occurred, and to the extent and for the period that **EI** is affected from performing its obligations, those obligations will be suspended.

## 7. DISPUTES

The Parties must use reasonable endeavours to resolve any disputes, differences, questions, or claims in connection with this Agreement. If resolution does not occur within thirty (30) days, the matter must be referred to Australian Commercial Dispute Centre Limited ("ACDC") for mediation in accordance with ACDC's Mediation Guidelines. The Parties agree to enter into ACDC's standard Mediation Agreement in force at the time this Agreement is made.

## 8. INDEMNITY

The **Customer** shall at all times indemnify and hold harmless **EI**, from and against any loss or damage (including costs on a solicitor and own client basis) that **EI** or the **Customer** may sustain or incur as a result of any claim by a third party in connection with the use of **Customer Results**.

## 9. EXCLUSION AND LIMITATION OF LIABILITY

**EI** excludes all implied conditions and warranties except to the extent that any such exclusion would contravene any applicable law or cause this clause to be void ("Non-excludable provision"). Where such applicable law permits, **EI's** entire liability for breach of this Agreement or for any Non-excludable provision or otherwise arising out of the performance of the **Work** by **EI**, its officers, employees and/or its sub-contractors or the use of **Customer Results** provided by **EI** is limited, at the exclusive option of **EI**, to the obligation to re-perform **Work** not performed in accordance with this Agreement or to repay the **Customer** the **Fee** paid to **EI** under this Agreement. In any event, **EI** shall not be liable in any way whatsoever for any direct, indirect or consequential loss or loss of profit suffered by the **Customer** or any other party from **EI**, its officers, employees and/or its subcontractors performance of the **Work** or failure to perform the **Work**. The **Customer** acknowledges that neither **EI** nor any person purporting to act on its behalf has made any representation or given any promise or undertaking which is not expressly set out in writing whether as to the suitability or fitness of the services for any particular purpose or any other matter. The **Customer** agrees that it has engaged **EI** to perform the **Work** and uses the **Customer Results** provided by **EI** at its own risk.

## 10. WAIVER

**EI's** failure at any time to exercise any of its rights under this Agreement shall not constitute a waiver of those rights, and in any event, any waiver by **EI** of its rights shall not constitute a continuing or subsequent waiver of its rights under this Agreement.

## 11. INSURANCE

Each Party warrants that it has and will maintain adequate insurance to cover any liability that may arise in connection with this Agreement and in particular (but without limitation) a policy of public liability insurance with a level of cover not less than \$10 million dollars (\$10,000,000) for any one claim.

## 12. USE OF EI'S NAME OR LOGO

The **Customer** may not use **EI's** name or Logo without the prior written consent of **EI**.

## 13. NOTICES

Any notice sent by either Party in connection with this Agreement must be sent by registered mail or facsimile to the relevant recipient's address specified overleaf. Notices sent by registered mail will be deemed to have been received on the date delivery is registered. Notices sent by facsimile will be deemed to have been received on the date the sender receives confirmation of the facsimile transmission.

## 14. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of New South Wales, Australia.