

## Approved Deed of Indemnity from Applicant

This Deed in favour of the AUSTRALIAN COMMUNICATIONS AND MEDIA AUTHORITY ('ACMA'), a body corporate established by the *Australian Communications and Media Authority Act 2005*, is made:

by  (the Applicant)  
(Insert name of the Applicant and ABN if applicable)

of   
(Insert the Applicant's address)

### BACKGROUND:

- A. Part 5.4 of the *Radiocommunications Act 1992* ('Radcoms Act') enables the ACMA to, subject to certain conditions being satisfied, give to a person an accreditation of a particular kind to issue particular certificates under the Radcoms Act. Under section 266 of the Radcoms Act, the ACMA may determine principles that govern the accreditation process and specify the matters for which the ACMA may accredit persons. Subsection 263(3) of the Radcoms Act provides that the ACMA must apply these principles when deciding whether to give a person an accreditation.
- B. The *Radiocommunications (Accreditation-Prescribed Certificates) Principles 2003* ('the Principles') require each applicant for accreditation to give the ACMA a completed Deed of Indemnity and several additional approved undertakings.
- C. This Deed is an approved Deed of Indemnity, and contains undertakings in a form approved by the ACMA, for the purposes of section 7 of the Principles.
- D. The Applicant has agreed to provide the indemnity and undertakings contained in this Deed to and in favour of the ACMA.

### WHAT IS AGREED:

#### 1. INTERPRETATION

1.1 In this Deed, unless the context otherwise requires:

- (a) The ACMA includes any assignees of, or successors in title to, the ACMA;
- (b) terms used shall have the same meanings as those provided for in the Principles and in the Radcoms Act;

Accreditation under Part 5.4 of the *Radiocommunications Act 1992*  
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- (c) words imputing one gender include each other gender;
- (d) a cross reference to a clause number is a reference to all its subclauses;
- (e) words in the singular number include the plural and vice versa;
- (f) a reference to a person includes a partnership or a body whether politic, corporate or otherwise;
- (g) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including, but not limited to, persons taking by novation) and permitted assigns;
- (h) a reference to this Deed includes any variation to this Deed;
- (i) 'including' and its derivatives (such as 'include' and 'includes') mean including without limitation;
- (j) where any word or phrase is given a defined meaning, any derivative or other grammatical form in respect of that word or phrase has a corresponding meaning; and
- (k) reference to any statute or other legislation (whether primary or subordinate) is to that statute or other legislation as amended or replaced from time to time.

## **2. OPERATION OF THIS DEED**

2.1 This Deed commences on execution, however the Applicant's indemnity and undertakings contained in this Deed are subject to accreditation being given to the Applicant.

2.2 The Applicant understands and acknowledges that he or she is and will be bound by the obligations referred to in:

- (a) the Principles; and
- (b) any applicable determination made under section 266A of the Radcoms Act;

and agrees to strictly comply with each and every provision of these legislative instruments.

2.3 The Applicant acknowledges that his or her indemnity and undertakings contained in this Deed are continuing obligations.

## **3. INDEMNITY**

3.1 The Applicant undertakes to at all times indemnify and hold harmless the ACMA from and against any:

- (a) liability incurred or sustained by the ACMA;
- (b) loss of, or damage to, property of the ACMA;
- (c) loss, cost or expense incurred or sustained by the ACMA in dealing with any claim, suit, demand, complaint, action or proceeding made or brought against it by any person in respect of personal injury, property damage, economic loss, damage to reputation, personal, public or business standing, or any other matter (including legal costs and expenses on a solicitor/own client basis and the cost of time spent, resources used or disbursements paid by the ACMA);

arising from:

- (d) any act or omission by the Applicant (or by any employee, agent, subcontractor, volunteer or other associate of the Applicant) relating to the Applicant's capacity as an accredited person;

irrespective of whether there was fault on the part of the person whose conduct gave rise to that liability, loss, damage, cost or expense.

3.2 In the event that the Applicant is ever a government employee, the indemnity in subclause 3.1 will not apply in respect of acts or omissions by the Applicant which directly relate to the performance of the Applicant's duties in that government employment.

3.3 The Applicant's liability to indemnify the ACMA under subclause 3.1 does not include any loss, cost or expense incurred, sustained or contributed to by the ACMA as a result of the ACMA's own negligent acts or omissions.

3.4 The right of the ACMA to be indemnified under subclause 3.1 is in addition to, and not exclusive of, any other right, power or remedy provided by statute, common law, equity or otherwise.

3.5 In this clause 3, the ACMA includes the members, officers, employees, contractors, subcontractors, volunteers, bailees and agents of the ACMA.

#### **4. GOVERNMENT EMPLOYMENT**

4.1 In the event that the Applicant is ever a government employee, then the Applicant undertakes that, prior to issuing the first prescribed certificate relevant to his or her duties as a government employee, he or she:

- (a) will obtain an approved Deed of Indemnity from his or her employer in respect of that government employment; and
- (b) will give that Deed to the ACMA.

#### **5. INSURANCE**

5.1 The Applicant undertakes that at the time the Applicant issues a prescribed certificate that does not relate to his or her duties as a government employee, the Applicant will hold a current insurance policy.

#### **6. HANDLING OF CLAIMS**

6.1 As soon as practicable after becoming aware of a proceeding or claim covered by subclause 3.1, or of an event which might reasonably be thought to give rise to such a proceeding or claim, the Applicant undertakes to promptly notify the ACMA and provide full details of the proceeding, claim or event.

## **7. SEVERABILITY**

7.1 Each and every provision (or part of a provision) of this Deed shall, unless the context otherwise necessarily requires it, be read and construed as a separate and severable provision (or part), so that if any provision (or part) is void or otherwise unenforceable for any reason, then that provision (or part) shall be severed and the remainder shall be read and construed as if the severable provision (or part) had never existed.

## **8. NOTICES**

8.1 Any notice, or other communication required or otherwise to be given or sent to the ACMA under this Deed shall be in writing and shall be deemed to be duly given or sent, if:

- (a) delivered by hand; or
- (b) sent by prepaid post; or
- (c) sent electronically (including by facsimile);

to the addresses or contact details as may be notified by the ACMA to the Applicant from time to time.

8.2 A notice or other communication shall be deemed to have been given or received:

- (a) if delivered by hand, upon delivery; or
- (b) if sent by prepaid post upon the expiration of four working days after the date on which it was so sent; or
- (c) if sent electronically (including by facsimile), upon receipt by the sender of an acknowledgment that the communication has been properly transmitted to the recipient.

Executed as a deed on the            day of

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**Signed, sealed and delivered**

by

(Print name of Applicant and ABN if applicable)

(Signature of Applicant)

in the  
presence  
of

(Print name of Witness)

(Signature of Witness)