

**1 DEFINITIONS**

- 1.1 In this Contract:
  - 1.1.1 “Attachment” means an attachment to this Contract;
  - 1.1.2 “Buyer” means “the contracting party that by Instructing the Seller to commence its Services accepts the Seller’s offer set out in the Proposal;
  - 1.1.3 “Claim” includes any claim, action, proceeding, demand, liability, obligation, cost (including legal costs on a solicitor and own client basis), loss, damage or expense, including those arising out of the terms of any settlement;
  - 1.1.4 “Confidential Information” means specifications, drawings, designs, technical data, know-how, trade secrets, commercial data, and other information of a confidential or proprietary nature (whether in written, oral or presentation form) and any notes, summaries, reports, analyses or other material that contain or are based upon Confidential Information (collectively “Notes”), that:
    - a. is by its nature confidential; or
    - b. the Receiving Party knows or ought to know is confidential;
 but does not include information which:
    - c. is or becomes public knowledge other than by breach of this Contract;
    - d. is in the possession of a Party without restriction in relation to disclosure before the date of receipt; or
    - e. has been independently developed or acquired by the receiving Party.
  - 1.1.5 “Contract” means the entire agreement between the Buyer and the Seller as described in Clause 3;
  - 1.1.6 “Contract Price” means the total price payable to the Seller by the Buyer, calculated by reference to the rates and prices described in the Proposal and the duration and scope specified in the Instruction;
  - 1.1.7 “day” means a Calendar Day unless otherwise specified by the Parties;
  - 1.1.8 “Effective Date” means the date that the Seller receives:
    - a. a valid Instruction from the Buyer which references the Proposal and these terms and conditions; and
    - b. payment in accordance with clause 4.3.a;
  - 1.1.9 “GST Act” means A New Tax System (Goods and Services Tax) Act 1999;
  - 1.1.10 “GST” means as defined in the GST Act;
  - 1.1.11 “Intellectual Property Rights” means any and all tangible and intangible intellectual property rights (including copyrights, patent rights, design rights, software rights, know-how and trade secret rights and trademark and service mark rights), industrial property rights, proprietary rights or similarly protected rights that are recognized under the domestic law in any country, now or in the future, whether or not registered or perfected, and whether arising by operation of law, contract, license, or otherwise, including any such rights arising in technical information, data and processes whether tangible or intangible;
  - 1.1.12 “Instruction” is the written notification from the Buyer, in the Buyer’s format advising that it accepts the Seller’s offer to perform the Services.  
The Instruction may be in the form of a Purchase Order.
  - 1.1.13 “Location” means the country, area or facility where the Worker will perform the Services as agreed between the Parties;
  - 1.1.14 “Invoice” means a valid Tax Invoice within the meaning of the GST Act;
  - 1.1.15 “Party” or “Parties” means the Buyer and/or the Seller, or their permitted successors and assigns, as the context requires;
  - 1.1.16 “Proposal” means the written offer provided by the Seller to the Buyer to perform Services, for a price and on the basis of caveats, exceptions, provisos and limitations set out in the Proposal;

- 1.1.17 “Seller” means Insitu Pacific Pty Ltd, and its related entities required to perform this Contract;
- 1.1.18 “Services” means all those services, works or activities which are to be provided by the Seller in accordance with this Contract;
- 1.1.19 “Workers” means the personnel supplied by the Seller for the purposes of performing the Services.

**2 CONTRACT EFFECTIVENESS**

- 2.1 Subject to the Seller having first obtained all regulatory approvals necessary for it to conduct the Services, including authorization to use the airspace, the Contract between the Buyer and the Seller shall become effective upon the Effective Date.
- 2.2 Any Instruction, acknowledgement or other form issued by the Buyer which contains scope of work or terms and conditions shall not have any effect of modifying these terms and conditions or of adding any different terms and conditions. No change shall be binding upon the Seller unless explicitly accepted in writing.

**3 CONTRACT**

- 3.1 The Contract constitutes the entire agreement between the Buyer and the Seller. The Parties are not, and will not be, bound by any statement, representation, promise, inducement, or understanding of any kind not set forth in the Contract. Any change, amendment, or modification of any of the terms and conditions of the Contract or waiver of any of the terms hereof shall be made in writing and executed by the Parties.
- 3.2 If any conflict, inconsistency or ambiguity exists among any of the documents comprising or relating to the Contract or among any of the requirements or provisions thereof, the conflict, inconsistency or ambiguity shall be resolved by applying a descending order of precedence set out below:
  - a. the Proposal;
  - b. this Contract for the provision of Commercial Services; and
  - c. each Instruction (as relevant).
- 3.3 Where an Instruction is issued and seeks to impose special conditions other than these agreed terms and conditions, the Seller will not accept the Instruction.

**4 PRICE AND PAYMENT**

- 4.1 The price for each Service agreed between the Parties will be specified in the Proposal.
- 4.2 Unless otherwise expressly stated in the Proposal, all prices for the Services are firm and are not subject to price escalation for any reason whatsoever and include any applicable taxes, fees, or expenses other than GST.
- 4.3 Payment for the Services is due from the Buyer:
  - a. 50% upon issuance of the Instruction and prior to commencement of the Services; and
  - b. 50% within seven (7) days of completion of the Services and issuance by the Seller of a claim for payment in the form of an Invoice.
- 4.4 If the Buyer fails to pay the Seller under this clause 4, the Buyer shall pay the Seller interest in the amount of one (1) per cent of the amount due to the Seller per week until the amount due to the Seller is paid.
- 4.5 The price and payment for the Services, and any activities related to it, shall be paid by the Seller in Australian Dollars.

**5 TERM**

- 5.1 The term of each Service shall be the period of performance specified in the Instruction. Should the Term need to be extended, the Parties may do so by mutual written agreement.

**6 SERVICES SCHEDULE**

6.1 The Seller shall use best endeavours to notify the Buyer in writing immediately where the Seller identifies any actual, anticipated or potential causes of delay to its provision of the Services.

**7 CHANGES**

7.1 No change to or deviation from any requirements of the Contract, including without limitation, those requirements relating to schedule, location of Services, price or payment methodology shall occur without the prior written consent of both Parties.

**8 WARRANTY**

8.1 Subject to Clause 9.2, Seller warrants that:

- a. all Workers possess the necessary skills, qualifications, training and expertise to complete the Seller's obligations pursuant to this agreement and to complete the Services;
- b. it and its Workers will complete all Services in a thorough, professional and workmanlike manner; and
- c. it will not infringe the intellectual property rights of any third party or otherwise breach any law or obligation to any third party in completing the Services.

8.2 The Buyer acknowledges that it has not advised the Seller regarding its ultimate use of the Services. The Seller hereby disclaims any warranty:

- a. of fitness for purpose in the Services, or any implication in this Contract, the Instruction or the Worker's statements, actions or omissions, that the Services are sufficient for the Buyer's requirements; or
- b. of accuracy, correctness, completeness or appropriateness of the imagery, data or information supplied by the Buyer in the course of or as a result of the Services. The Buyer should perform its own due diligence to determine whether or not it wishes to act in accordance with any imagery, data or information supplied by the Buyer.

**9 NOTICES**

9.1 Any notice or other communication to be served or given in accordance with this Agreement is to be in writing and addressed to the appropriate Party as follows:

- a. If to the Seller, to the representative nominated in the Proposal; and
- b. If to the Buyer, to the representative nominated in the Instruction.

9.2 Any notice or other communication is to be delivered by hand or sent by pre paid post or facsimile to the address of the party to which it is sent and is taken to have been given when it is received by the party to whom it is addressed or is delivered to the address of the party specified at clause 9.1.

**10 THE BUYER'S REPRESENTATIVE**

10.1 The Workers shall report to a representative of the Buyer nominated by the Buyer and be tasked by the Buyer's Representative only unless otherwise advised by the Buyer.

10.2 Any conflicts in tasking or limitations on the Worker's capacity to perform a task shall be notified to the Buyer's Representative, for resolution.

**11 TERMINATION FOR DEFAULT**

11.1 If the Seller:

- a. fails to perform any material obligations under the Contract and does not cure such failure within a period of thirty (30) days after receipt of written notice from the Buyer specifying such failure;
- b. becomes insolvent, makes an assignment in favor of creditors, or enters bankruptcy or dissolution procedures; or
- c. is merged into another company and/or is expropriated or nationalized,

the Buyer may, by written notice to the Seller, terminate the Contract.

11.2 In the event of termination under Clause 11.1, all obligations of the Buyer to make payments hereunder shall forthwith cease and be

cancelled. However, the Buyer shall pay for all Services (or part thereof) which have been performed by the Seller strictly in accordance with Seller's Contractual obligations.

11.3 Without prejudice to its rights to claim damages and any other remedy available to the Seller in contract or tort, the Seller may terminate this Contract upon giving the Buyer notice thirty (30) days in advance of the date of termination, if:

- a. the Buyer does not pay the Seller for work duly performed or Services duly delivered in accordance with this Contract, or indicates by conduct or otherwise its intention not to pay the Seller within 30 days after written notice to the Buyer of delay in payment;
- b. the Buyer fails to perform or observe any of its material obligations under this Contract, including the Buyer's obligation to make available to the Seller any equipment, resources or facility access which may be necessary for the Seller to perform its obligations under the Contract, or any breach of the Seller's Intellectual Property or Commercial-in-Confidence obligations to the Seller; or

**12 BUYER'S OBLIGATIONS**

12.1 Where the Services are performed at the Buyer's facilities or at facilities supplied by the Buyer, the Buyer shall:

- a. obtain any access rights or clearances necessary for the Workers to perform the Services;
- b. provide any necessary Location specific training, site briefs or familiarization tours, or safety inductions for the specific purposes of the Workers working on the Location and the Seller (as part of the Services) will ensure that its Workers attend any such training;

12.2 At all times, the Seller's Workers remain employees of the Seller, and the parties agree that nothing in the Services shall change the status of the Seller's Workers.

12.3 The Workers shall clearly identify themselves, by dress or communication, as applicable, as the employees of the Seller, and shall not represent, or by deliberate omission allow a third party to believe that they represent, the Buyer.

12.4 The Seller reserves the right to withdraw the Workers from any Buyer facility or task, if it considers in its absolute discretion that there is a risk to the health or safety of the Workers. The Seller shall first consult with the Buyer or the Buyer's representative to identify ways of resolving the issue prior to withdrawing the Workers. The Seller's withdrawal of the Workers under this clause shall not give rise to any liability to the Buyer for delay, non-performance, default or damages.

**13 SELLER'S OBLIGATIONS**

**AIRSPACE AND SITE APPROVAL AND MANAGEMENT**

13.1 The Seller is responsible for obtaining all regulatory approvals and performing all actions necessary to operate with the equipment it will use to provide the Services. These approvals and actions include obtaining an Operating Certificate from CASA and obtaining a licence from the Australian Communications and Media Authority (ACMA) for the use of Radio Frequency Spectrum.

13.2 The Seller shall identify an appropriate site for the performance of the Services, and shall use its best endeavours to obtain access and approval to use the site. If no suitable, safe or appropriate site is available, the Seller may terminate the Contract without penalty, however costs incurred and payments due prior to the termination shall still be due from the Buyer to the Seller.

13.3 Excepting the Buyer's Representative, the Buyer acknowledges that the Seller may exclude the Buyer's personnel, invitees, agents and guests from the site.

**INSURANCE**

13.4 The Seller shall obtain and maintain a policy of public liability insurance for an amount of not less than AUD 10,000,000 (Ten Million Australian Dollars).

13.5	The Seller shall obtain and maintain a policy covering its Worker's Compensation obligations in the State or Territory in which the Services are performed and the Seller is located.		warranties and other obligations and liabilities of the Seller, and any other rights, claims and remedies of the Buyer against the Seller, express or implied, arising by law or otherwise, with respect to failure to fulfill the Contract or any non-conformance or defect in the Services, including but not limited to:
13.6	The Seller shall provide the Buyer within thirty (30) days of the Buyer's written request, a copy of the Certificate of Currency for the insurances obtained and maintained in clauses 13.4 and 13.5.	a)	any implied warranty of merchantability or fitness;
13.7	The Seller shall advise the Buyer if any insurance policy required by this Contract is materially modified or cancelled.	b)	an implied warranty arising from the course of performance, course of dealing or usage of trade;
<b>14 FORCE MAJEURE</b>			
14.1	"Force Majeure" means causes beyond the reasonable control of the Seller, including but not limited to, acts of God (including, without limitation, earthquake and tsunami), war (declared or undeclared), acts of any governmental authorities, any delay or failure to obtain export licenses or approvals sufficient to perform the Services, riot, revolution, civil commotion, fires, epidemic (even if not pandemic), any unavoidable air, water, food or environmental contaminations (including radioactive) and any other events likely to detrimentally affect the health or safety of the Workers, strike (other than Seller's workforce), inclement weather, lack of or disruption to transportation, and lack of available Workers or lack or withdraw of regulatory approval such as CASA and ACMA's authorization to operate at the Location, or export clearances.	c)	any obligation, liability, right, claim or remedy in tort, whether or not arising from the negligent act or omission of the Seller; and
14.2	Should Force Majeure prevent the total or partial performance of an obligation or action required under the Contract, neither Party shall be entitled to claim against the other Party any penalty, interest, damage or any other compensation arising from Force Majeure for such period of Force Majeure. However costs incurred and payments due prior to the Force Majeure event shall still be due from the Buyer to the Seller.	d)	any obligation, liability, right, claim or remedy for loss or damage to any property of the Buyer.
23.4 All limitations and exclusions of liability will operate to the benefit of the Seller and each of the Seller's related bodies corporate, subcontractors and each of their employees, directors, officers, agents and contractors and the benefit of such limitations and exclusions of liability will be held on trust for each of the Seller's related bodies corporate, subcontractors and each of their employees, directors, officers, agents and contractors (and Seller may enforce these provisions on behalf of them).			
23.5 The Seller and the Buyer agree that this clause has been the subject of discussion and negotiation and is fully understood by the parties and that the Services and other mutual agreements of the parties set forth in the Contract were arrived at in consideration of each such provision, specifically including this clause.			
<b>24 CONFIDENTIALITY</b>			
24.1 Both Parties shall keep confidential and shall not disclose, disseminate, provide or otherwise make available, in whole or in part, any Confidential Information to any third party. The Parties shall use Confidential Information exclusively for the purpose of performing the Contract, and neither Party shall use, disclose, disseminate or reproduce Confidential Information in whole or in part for any other purpose.			
24.2 The Party which receives Confidential Information ("the Receiving Party") from the Party which is the originator or owner of the Confidential Information ("the Disclosing Party") shall limit access to Confidential Information to its directors, officers, employees, attorneys and subcontractors who reasonably have a need to know such information in connection with the performance of the Contract (collectively "Authorized Recipients"), provided that each such Authorized Recipient shall be under a separate written obligation to treat Confidential Information as confidential and not to use Confidential Information other than in the manner and to the same extent as specified in the Contract.			
24.3 Nothing in this Contract shall affect the ownership of the Confidential Information or any Intellectual Property Rights which subsists in the Confidential Information.			
24.4 At the Disclosing Party's request, the Receiving Party shall either return all Confidential Information, including any copies thereof, to the Disclosing Party, or shall destroy all Confidential Information and any copies thereof, and provide the Disclosing Party with a letter certifying the Receiving Party's compliance with the requirements of this Clause 24.4.			
24.5 The Receiving Party shall comply with and shall ensure compliance by all Authorized Recipients with the confidentiality requirements set out in this Clause 24 and shall be responsible for any failure by its Authorized Recipients to comply with such requirements.			
<b>25 INTELLECTUAL PROPERTY</b>			
25.1 All Intellectual Property Rights in the Services, including Intellectual Property Rights created in the course of the Seller's performance of the Contract, vests in the Seller, its related bodies corporate, agents or suppliers as the case may be, and the Seller shall have the sole right to protect or register the Intellectual Property Rights in any country of the world.			

25.2 The Buyer acknowledges that this Contract is for the provision of Services and does not constitute a contract for the purposes of creating a work or work(s) made for hire or any Intellectual Property Rights.

25.3 The Seller grants the Buyer a royalty-free, irrevocable, world-wide, perpetual, non-exclusive license in respect of any Intellectual Property Rights which subsists in the Services, to use, maintain and dispose of the Services.

**26 INFORMATION AND IMAGERY**

26.1 Unless specified by the Proposal any information or imagery obtained by the Seller in the course of the Services will be provided to the Buyer in an un-edited and un-filtered form.

26.2 Both parties may retain a full copy of all information and imagery obtained by the Seller in the course of the Services, and may store and disseminate it as they see fit, except that:

- a) to the extent that the information and imagery includes Personal Information, information which would be considered 'private' or information which could be considered sensitive or against the public interest to disclose, the party must act in a manner which is in accordance with the Privacy Act 1988 (Cth) or where the Privacy Act 1988 (Cth) does not apply, to the extent reasonable and practical in accordance with the public's expectations of sensitivity and non-disclosure;
- b) unless otherwise agreed, the information and imagery may not be used for publicity or advertising, unless all identifying data is removed, such that the event, nature of the customer and nature of the product is removed; or
- c) despite clause 26.2.b above, the Seller may not use the information or imagery to impute or imply that the Buyer was satisfied with, reacted favourably to, or otherwise endorses the outcomes of the Services or the product and equipment used during the course of the Services.

26.3 The Buyer is solely responsible for any analysis, interpretation or development of, or actions taken as a result of, the data or imagery provided by the Seller. The Buyer shall not rely upon, and shall hold the Seller harmless from any liability, loss or claim arising from its use of the imagery to identify defects, deformation, deterioration or distress in equipment or facilities and subsidence, movement or change in ground characteristics or topology.

**27 DISPUTE RESOLUTION**

27.1 The Parties shall exercise their best efforts to resolve by negotiation any and all disputes, controversies or differences between the Buyer and the Seller arising out of or relating to the Contract, or the breach thereof.

27.2 If a dispute is not settled by the parties within 60 days of a party first sending to the other party written notice that they are in dispute, the dispute may be referred to external dispute resolution mechanisms such as a mediation or litigation by either party.

27.3 Notwithstanding the existence of a dispute and pending final resolution of such dispute, each party must continue to perform its obligation under this Contract.

27.4 Notwithstanding clause 27.2, a party may commence court proceedings relating to any dispute arising from this Contract at any time where that party seeks urgent interlocutory relief.

**28 GOVERNING LAW**

28.1 This Contract shall be interpreted under and governed by the laws of the State of Queensland, Australia without reference to its rules concerning conflict of law. The courts of that State shall have non-exclusive jurisdiction to decide any matter arising out of the Contract.

**29 ASSIGNMENT**

29.1 Neither Party shall assign or transfer the Contract or any part thereof, to any third party without prior written approval of the other Party provided always that the Seller shall have the right, without requiring the consent of the Buyer, to assign or otherwise transfer the performance of any part of this Contract to any of the Seller's related bodies corporate.

29.2 In no event does any approval by the one Party to the assignment of the other Party or any (subsequent) assignment by the other Party relieve the assigning Party of any of its obligations under the Contract.

**30 PUBLICITY**

30.1 Neither Party shall issue any news release or permit any publicity or advertisement concerning the Contract or the Buyer and Seller's relationship without the prior written approval of the other Party.

30.2 The Parties agree that either party may make a press release, or briefing relating specifically to signature of this Contract without prior approval or review by the other Party.

**31 PROCEDURE FOR ESTABLISHING ORDERS FOR SERVICES**

31.1 The Seller may provide the Buyer or may make an open offer to the a world or to a group which includes the Buyer from time to time, or upon the Buyer's request with a Proposal. The prices and services described in the Proposal only remain valid for the period specified in the Proposal.

31.2 Should the Buyer, in its absolute discretion decide to accept the Services, the Buyer shall issue the Seller with an Instruction subject to the terms of this Contract.

31.3 The rights and obligations contained in the contract established under clause 31 shall not merge or terminate upon the expiry of this Contract but, to the extent that they have not been fulfilled and satisfied or are capable of having effect, shall remain in full force and effect.