

**MUTUAL CONFIDENTIALITY AGREEMENT**

**BETWEEN**

**INSITU PACIFIC PTY LTD**

**ABN 82 122 991 333**

**AND**

**INSERT COMPANY NAME**

**ABN**

**THIS MUTUAL CONFIDENTIALITY AGREEMENT** (the “Agreement”) is made on .....  
(the “Commencement Date”)

**BETWEEN:**

**INSITU PACIFIC PTY LTD** (ABN 82 122 991 333), a company incorporated in Australia, with offices at 86 Brookes Street, Fortitude Valley, Queensland 4006 (“Insitu Pacific”)

**AND**

[ **INSERT FULL COMPANY NAME** ] (ABN [ insert ABN number ]), a company incorporated in [ insert country of incorporation ], with offices at [ insert company address details ] (“[ insert company ]”).

**BACKGROUND**

- a. Insitu Pacific and [ insert company ] wish to engage in discussions and share information in relation to [ insert purpose and description of disclosure ] (the “Purpose”).
- b. To encourage an unimpeded exchange of information relating to the Purpose and acknowledging that the information may be Confidential Information, it may be necessary or desirable for the parties to disclose to each other certain technical or business information of a proprietary or confidential nature relating to the Purpose.
- c. In consideration of the exchange of promises contained in this Agreement, the parties agree to disclose Confidential Information to each other for the Purpose.

**OPERATIVE PART**

**1. DEFINITIONS**

1.1 In this Agreement, unless the contrary intention appears:

‘**Commencement Date**’ means the date of this Agreement as defined above.

‘**Confidential Information**’ means any information that is by its nature confidential; and

- a. is designated by a party as confidential; or
- b. a party knows or ought to know is confidential

but does not include information which is or becomes public knowledge other than by breach of this Agreement or any other confidentiality obligation.

‘**Disclosing Party**’ means the party who, as between the parties, is the owner or discloser of the Confidential Information.

'Party' means a party to this Agreement.

'Receiving Party' means the party, as between the parties, in possession of or with access to the Disclosing Party's Confidential Information.

## 2. INTERPRETATION

2.1 In this Agreement, unless the contrary intention appears:

- a. the clause headings are for reference only and shall not be relevant to interpretation;
- b. a reference to a clause is a reference to its sub-clauses;
- c. words in the singular include the collective and vice versa;
- d. "includes" and any derivation thereof shall not be construed as words of limitation; and
- e. words importing a gender include any other gender.

## 3. COMMENCEMENT OF AGREEMENT

3.1 This Agreement will apply from the Commencement Date.

## 4. UNDERTAKING

4.1 The Parties agree that the Receiving Party will:

- a. keep confidential all Confidential Information which may come to its knowledge, either directly or indirectly, and shall not disclose any Confidential Information to any person except in accordance with this Agreement;
- b. not make use of any Confidential Information except for the Purpose;
- c. not remove any proprietary or confidential designations from the Confidential Information; and
- d. cease to disclose, copy or reproduce any Confidential Information on written demand by the Disclosing Party.

4.2 The Receiving Party shall ensure that:

- a. Confidential Information will only be disclosed to its employees (including employees of its parent company or employees of a wholly owned subsidiary of its parent company or employees of the Receiving Party's wholly owned subsidiaries), advisors, consultants, suppliers, subcontractors or representatives for the Purpose on a need to know basis;
- b. the Receiving Party's employees, advisors, consultants, suppliers, agents, subcontractors or representatives abide by the provisions contained in this Agreement;
- c. the Receiving Party's employees, advisors, consultants, suppliers, agents, subcontractors or representatives will copy Proprietary Information only as reasonably necessary to accomplish the Purpose covered by this Agreement; and
- d. during the term of this Agreement and for a period of ten (10) years following the expiration or termination of this Agreement, the Receiving Party shall use at least the same degree of care in safeguarding the Confidential Information as it uses for its own proprietary information of like importance provided such degree of care is reasonably calculated to prevent inadvertent disclosure or unauthorized use thereof. Upon discovery of any inadvertent disclosure or unauthorized use of the Confidential Information, the Receiving Party shall promptly use reasonable efforts to retrieve such Confidential Information and to prevent any further inadvertent disclosure or unauthorized use thereof.

- 4.3 Nothing in this Agreement shall require the Receiving Party to keep confidential or otherwise maintain the confidentiality of the Confidential Information in question if:
- a. at the time the Confidential Information was first disclosed by the Disclosing Party to the Receiving Party, the Receiving Party was already in lawful possession of the Confidential Information;
  - b. the Confidential Information was developed by the Receiving Party independently of the Disclosing Party;
  - c. the Confidential Information becomes generally available to the public other than as a result of the negligence or a breach of this Agreement by the Receiving Party; or
  - d. disclosure of the Confidential Information is required by legislation or court order and the Receiving Party has provided written notice prior to disclosing the Confidential Information.
- 4.4 The Disclosing Party may make, and the Receiving Party must comply with, any restrictions on the use of the Confidential Information the Disclosing Party identifies to the Receiving Party, which compliance shall be at no cost to the Disclosing Party.

**5. EXPORT CONTROLLED INFORMATION**

- 5.1 The Confidential Information that the Parties may wish to disclose pursuant to this Agreement may be subject to the provisions of US export control laws or similar regulations of the country of the Disclosing Party.
- 5.2 The Disclosing Party discloses the Confidential Information on the basis that the Receiving Party possesses the necessary export approvals to receive the Confidential Information and is authorised to further use or disclose the Confidential Information for the Purpose.
- 5.3 The Receiving Party indemnifies and holds the Disclosing Party harmless from any fine, loss, fee, claim or penalty arising from any breach of export rules arising from the disclosure of the Confidential information to the Receiving Party or the Receiving Party's use of the Confidential Information.
- 5.4 This Agreement is not a NDA required for the purposes of export. No rights, licence or agreement to export is created as a result of this Agreement. If necessary the Parties may agree separately to execute a NDA, licence or other agreement for the purposes of export.
- 5.5 No "defense article", as defined within the United States International Traffic in Arms regulations (ITARs) will be manufactured or exported in furtherance or support of this Agreement. For the avoidance of doubt, the Receiving Party shall have no right to utilise any of the Confidential Information for the manufacture or export of defense articles.

**6. NOT USED**

**7. RETURN OF MATERIAL**

- 7.1 Upon receipt of written notice from the Disclosing Party at any time after termination or expiry of this Agreement, the Receiving Party will lose all rights to have or use the Confidential Information of the Disclosing Party and must immediately:
- a. return to the Disclosing Party; or
  - b. to the extent the Disclosing Party consents – destroy, delete or erase,
- all copies of the Confidential Information in its possession and control at the time of the termination or expiry of this Agreement and all such other documents, materials or media containing, summarizing or derived from the Confidential Information and ensure that the same obligations are performed by any of its employees, advisors, consultants, suppliers, subcontractors or representatives.

7.2 This Agreement automatically expires 5 years from the Commencement date unless sooner terminated in accordance with clause 7.1 above.

**8. ASSIGNMENT**

8.1 Neither Party shall assign this Agreement or any of its rights or obligations under this Agreement without the prior written consent of the other Party.

**9. ENTIRE AGREEMENT**

9.1 This Agreement:

- a. constitutes the entire agreement between the Parties as to its subject matter and supersedes and cancels all prior agreements, undertakings and negotiations in connection with it; and
- b. shall only be altered in writing signed by both Parties.

**10. EQUITABLE RELIEF**

10.1 The Receiving Party acknowledges that:

- a. the value of the Confidential Information to the Disclosing Party is such that an award of damages or an account of profits may not adequately compensate the Disclosing Party in the event of a breach of this Agreement by the Receiving Party; and
- b. without in any way compromising its right to seek damages or any other form of relief in the event of a breach of this Agreement, the Disclosing Party may seek and obtain an ex parte interlocutory or final injunction to prohibit or restrain the Receiving Party or its employees, advisors, consultants, suppliers, agents, subcontractors or representatives from any breach or threatened breach of this Agreement.

**11. WARRANTY RELATED MATTERS**

11.1 Neither Party makes any representation or warranty to the other Party as to the accuracy or completeness of any information (including Confidential Information) provided or obtained under or in connection with this Agreement.

11.2 The Disclosing Party warrants that to the best of its actual knowledge, it has the right and authority to disclose Confidential Information to the Receiving Party.

11.3 The Receiving Party acknowledges that the Confidential Information was developed for the Disclosing Party's own use, and may contain conclusions which do not represent the Disclosing Party's opinion.

11.4 The Receiving Party warrants that it shall conduct its own due diligence in investigating the facts or conclusions indicated in the Confidential Information, and it shall not rely on the facts or conclusions made by the Disclosing Party and incorporated in the Confidential Information in anyway.

**12. RIGHTS TO INFORMATION**

12.1 It is expressly understood and agreed by the Parties that the disclosure and provision of Confidential Information under this Agreement by either Party to the other shall not be construed as granting to the Receiving Party any rights, whether express or implied, by licence or otherwise, on the matters, inventions or discoveries to which such Confidential Information pertains or any copyright, trademark or trade secret.

- 12.2 The intellectual property rights in all Confidential Information disclosed by either Party to the other under this Agreement shall, subject to any right of any other owner, be and remain the property of the Disclosing Party.
- 12.3 Intellectual property rights which arise from any improvement, development, modification, alteration or derivation of the intellectual property in any of the Confidential Information whether or not authorised or unauthorised, shall be and remain the property of the Disclosing Party, and the Disclosing Party shall have the sole right to exploit the intellectual property or register or arrange for the registration or protection of the intellectual property in any jurisdiction.

**13. GOVERNING LAW**

- 13.1 This Agreement shall be governed by and construed according to the laws of the State of Queensland, Australia. The Parties submit to the non-exclusive jurisdiction of the courts of Queensland over any dispute or difference arising out of this Agreement.

**14. COUNTERPARTS**

- 14.1 This Agreement may consist of a number of counterparts and the counterparts taken together constitute one and the same instrument which shall come into effect on the Commencement Date.

**15. NOTICES**

- 15.1 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 Insitu Pacific Limited:  
86 Brookes Street  
FORTITUDE VALLEY QLD 4006  
  
Attention: [insert title nominated officer]  
Facsimile:  
Email:
  
  - b. If to [insert company name of other party]:  
[insert other party's address details]  
  
Attention: [insert title nominated officer]  
Facsimile:  
Email:
- 15.2 Any notice 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 15.1.

**16. LIMITATION ON OBLIGATIONS**

- 16.1 This Agreement does not obligate either Party to disclose any information to the other Party. Each Party will bear its own costs and expenses it incurs in complying with this Agreement. The Parties are independent contractors and this Agreement does not obligate either Party to enter into a contract, subcontract, teaming agreement, joint venture, partnership, or other business relationship with the other Party.

16.2 No Party shall contact any customer or potential customer of the other Party on behalf of the other Party, or represent the other Parties in any manner whatsoever, in connection with the Purpose of this Agreement.

16.3 To the fullest extent allowed by law, no Party shall be liable for any special, incidental, punitive, indirect or consequential damages (including loss of economic advantage, business, profits, data or inaccuracy of data), in connection with or arising out of this Agreement, whether or not a Party has been advised of the possibility of such damages and regardless of the form of action or legal theory (whether in contract or in tort, including strict tortious liability or based on a warranty) under which the liability may be asserted.

**17. PUBLICITY.**

17.1 Neither Party shall issue any press release or make any other statement to the media relating to this Agreement, any work done under this Agreement, or any of the transactions contemplated by this Agreement without obtaining the prior written approval of the other Party as to the contents and the manner of presentation and publication of such press release or public statement.

**EXECUTED** as an Agreement.

SIGNED for and on behalf of

**INSITU PACIFIC LIMITED**

By a duly authorised officer:

In the presence of:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Witness Name

\_\_\_\_\_  
Position/Title

\_\_\_\_\_  
Position/Title

\_\_\_\_\_  
Date

SIGNED for and on behalf of

[ INSERT FULL COMPANY NAME ]

By a duly authorised officer:

In the presence of:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Witness Name

\_\_\_\_\_  
Position/Title

\_\_\_\_\_  
Position/Title

\_\_\_\_\_  
Date