

Bay Dynamics Limited – General Terms and Conditions for the Provision of Services

1. **Definitions:** In these terms of trade (**Terms**):
 - (a) **Asset** means any partly or fully submerged man-made or naturally occurring physical structure or asset upon which or in respect of Physical Works or other Services are to be performed by us under these Terms.
 - (b) **Business Day** means a day that is not a Saturday, Sunday or a public holiday in Tauranga, New Zealand.
 - (c) **CGA** has the meaning set out in clause 10.
 - (d) **Defect** has the meaning set out in clause 7(f).
 - (e) **Defects Warranty Period** means three (3) months from the completion of the Physical Works.
 - (f) **Deposit** has the meaning set out in clause 12.
 - (g) **force majeure event** has the meaning given to it in clause 13.
 - (h) **Physical Works** includes (without limitation) carrying out repairs and maintenance on, installing, removing, relocating, or affixing/removing any accessions to/from, any Asset.
 - (i) **Services** means all of the services provided to you by us under these Terms (including performing Physical Works). By way of example, Services may include the provision and operation of underwater remotely operated vehicles (**ROVs**) to carry out inspections of, or perform Physical Works on, Assets.
 - (j) **we, us, our** means Bay Dynamics Limited (company number 6287508).
 - (k) **you, your** means the customer and, where this is more than one person/party, each such person/party jointly and severally.
2. **Application of Terms:** These Terms apply to all Services provided to you by us (other than those services incidental to and covered by our separate terms and conditions for the supply of products). These Terms prevail over any other terms and conditions (including terms on any purchase order submitted by you, which shall not apply) except for specific terms agreed in a statement of work, which shall prevail over these Terms to the extent of any inconsistency or conflict.
3. **Statements of Work:** We may require that the scope of Services to be provided by us be recorded in a statement of work that is signed by the parties. The statement of work shall include the fees and rates that apply and any specific terms relating to the provision of those Services. We may elect to accept an order without requiring a signed statement of work, in which case these Terms shall apply, subject to any additional specific terms expressly agreed by the parties in writing. Each statement of work or accepted order shall be a separate contract with you.
4. **Timing & Delivery:** The timeframes we give you for providing Services are estimates only and are not guaranteed, and unless and to the extent that the CGA applies, we will not be liable for any claims arising as a result of any delays (including as a result of any factors out of our reasonable control, unforeseen physical conditions, adverse weather or sea conditions, unexpected conditions of any Asset, a force majeure event, or any delays caused by you or a territorial authority). We will use reasonable endeavours to meet those timeframes and to otherwise perform the Services within a reasonable time, and if there are any delays we will keep you updated.
5. **Fees:** The fees and hourly rates for our Services are as set out in the relevant statement of work or as expressly agreed in writing between us or, if no statement of work or agreement applies, our current fees and rates at the time (which may be amended by us at any time without notice), on a "plus GST (if any)" basis.
6. **Cancellations and variations:** Once a statement of work has been signed or an order has been accepted by us, that statement of work or accepted order may not be cancelled or varied by you without our prior written approval. We may impose additional terms as a condition of approving any cancellation or variation requested by you. Any additional Services required as a result of identifying unforeseen physical conditions, the condition of the Asset, adverse weather or sea conditions (including underwater visibility), a delay or suspension (or similar) shall be treated as a variation and we are entitled to charge our usual fees in respect of any such variation. We will work with you to agree the terms of the variation and the fees payable for that variation. Where a delay or suspension is requested by you for any reason, we are entitled to charge for our downtime and travel time at our usual rates, as well as any other reasonable additional costs incurred by us as a result of your request. For any cancellation by you we reserve the right to charge, and you agree to pay:
 - (a) if cancelled within 48 hours of the scheduled commencement date, 100% of the total fees that would be payable had all Services been performed; and
 - (b) in all other cases, an equitable proportion (and in any case not less than 50%) of the total fees that would payable had all Services been performed, as determined by us having regard to the Services provided up to the cancellation date and the actual costs incurred directly by us in connection with the Services (plus a reasonable margin) up to the cancellation date.
7. **Warranties and undertakings for Services:**
 - (a) We warrant that our Services will be performed with reasonable care, skill and diligence and in performing the Services we will comply with all applicable laws.
 - (b) Where the Services require the use of ROVs, we will use a ROV that in our professional opinion is suitable to perform the Services.

- (c) We will perform Physical Works in accordance with agreed drawings and specifications, using materials that are fit for purpose and new (unless otherwise agreed).
- (d) We have and will maintain for the duration of the provision of Services a general liability insurance policy issued by a reputable insurer with a limit of not less than \$5,000,000.00 per occurrence or series of related occurrences, and will provide you with a certificate of currency on request.
- (e) Where a Defect is identified by you and is notified to us in writing within the Defects Warranty Period (with all relevant details reasonably necessary to verify the Defect), we will remediate it at our cost within a reasonable time following notification. Where Services are completed progressively or in stages, the Defects Warranty Period for the Services shall apply from the date the relevant Services were completed (and not from final completion of all Services). Where any repairs or maintenance or other additional Services are required:
 - a. to be performed in order to inspect Assets and/or identify if a Defect is present; or
 - b. for matters that do not constitute a Defect under these Terms (eg any matters within clauses 7(f)(iv) to (vii)), and we are engaged to perform such Services, unless otherwise agreed we are entitled to charge and you will pay our usual fees for such Services.
- (f) A **Defect** means a fault in the workmanship performed or materials provided by us that arises from:
 - (i) a breach of any of the warranties in paragraphs (a) to (c) above;
 - (ii) using materials supplied by us that are not fit for purpose;
 - (iii) unauthorised departure by us from the agreed methodology for undertaking the Services (if any) (except for any departure arising out of an emergency or that we consider is reasonably required to avoid or minimise the risk of material damage to person or property, including a ROV, the Asset, or loss of life),
 but, for the avoidance of doubt, a **Defect** does not include:
 - (iv) fair wear and tear after completion of the Services (having regard to the environment of the relevant Asset in situ);
 - (v) damage not caused by us or our agents;
 - (vi) damage or problems arising from your failure to follow our reasonable instructions or to carry out reasonable, normal or prescribed maintenance; and
 - (vii) further damage or problems arising from the matters in paragraphs (iv) to (vi) above or from your failure to promptly notify us once the Defect was identified or became apparent.

- 8. Qualifications to all warranties:** You acknowledge that the remote performance of tasks underwater is affected by a number of circumstances outside of our control and accordingly we cannot guarantee successful completion or performance of all aspects of the Services. Furthermore, all warranties are void and of no effect and we will not be liable to you in any way if:
- (a) the information you provide us (including any site or engineering drawings or description of the environment within which the Services are to be provided or the Asset that is subject of the Services) is inaccurate or incomplete in any material respect; and
 - (b) the conditions of the environment within which the Services are to be provided are materially and/or adversely different to those upon which our proposal was based or that were reasonably expected by us (including for example sea state, weather conditions, underwater currents and/or visibility).
- 9. No other warranties:** To the maximum extent permitted by law, all other warranties (express or implied by customary practice, statute or at law) are excluded and you agree that in accepting these Terms you have relied entirely on your own enquiries, knowledge, skill and judgement.
- 10. Consumer Guarantees Act:** If you are a consumer as defined in the Consumer Guarantees Act 1993 (**CGA**), nothing in these Terms shall limit or exclude any rights or remedies you have under the CGA. Where the Services are provided for your business purposes, you agree the CGA shall not apply.
- 11. Customer obligations and acknowledgements:** You agree that:
- (a) we will rely on information provided by you in relation to the Services and any costs incurred by us in reliance on incorrect or inadequate information may result in additional costs charged to you. Without limiting clause 6, where Services cannot be performed as a result of any incorrect or inadequate information, you will be liable for and will pay the full amount that would have been payable had all Services been performed;
 - (b) we have not made allowance for any unforeseen physical conditions (e.g. changes in sea states or weather conditions);
 - (c) you are responsible for identifying what consents, approvals and/or inspections are required for the Services (if any) and for obtaining and maintaining them at your cost;
 - (d) it is your responsibility to insure the underlying Assets upon which any Services are performed and you will provide us with details of the relevant insurance;
 - (e) we may delay, suspend or terminate the provision of Services at any time if we consider:
 - (i) sea conditions or weather conditions or any other factors (eg underwater currents or visibility) are unsuitable or may make it unsafe to perform the Services;
 - (ii) there is an unreasonable or increased risk of damage to property, including to the ROV or to other objects;
 - (iii) there is an unreasonable or increased risk of injury or loss of life to any person or marine animal;
 - (iv) that environmental conditions require a different ROV,
 provided that we will consult with you before doing so if it is reasonably practicable in the circumstances to do so;
 - (f) we may suspend the provision of Services if you do not pay any invoiced amount in full by the due date (and we will lift the suspension when the overdue amount is paid in full); and

- (g) we are not liable for any loss or damage suffered by you arising from any suspension by us under these Terms, and you will indemnify us for any loss or expense we suffer as a result of any suspension under clause 11(f) above.

12. Deposit & Payment: Unless otherwise agreed in writing (including in an applicable statement of work):

- (a) a non-refundable deposit (**Deposit**) shall become due and payable immediately upon an order being accepted by us. The amount of the Deposit shall be as set out in the statement of work or as otherwise agreed in writing. We are under no obligation to provide any Services until we receive your Deposit;
- (b) at the end of each month we will issue an invoice for Services provided to you in that month, which is payable by you no later than 10 working days from the date of the invoice;
- (c) all payments by you shall be made to our nominated account without any deduction, withholding or set off;
- (d) we will on-charge to you the cost of any agreed disbursements and reserve the right to require full payment of that disbursement upfront and otherwise on demand;
- (e) we may require full payment upon accepting an order;
- (f) we may revoke any agreed payment terms if we have any concerns about your ability to pay and if required by us, you shall procure that guarantees are provided to our satisfaction in respect of the performance of your obligations;
- (g) if you are late in payment, we may charge default interest on the overdue amount until it is paid at the rate of 12% per annum; and
- (h) you are liable for any costs we incur (including actual solicitor/client costs) in enforcing our rights under these Terms (e.g. debt recovery).

13. Force majeure: We shall not be liable for any act, omission or failure to fulfil our obligations that arises from any cause beyond our reasonable control (**force majeure event**). For as long as the force majeure event continues, we may, at our sole discretion, delay or suspend performance of your order until such time as the circumstances have ceased. If the force majeure event continues for more than 40 Business Days, either party may terminate the relevant contract. You will be liable for all Services provided up to the date performance ceases or our contract with you is terminated.

14. Default: We may immediately terminate our contract with you by notice to you in writing where you commit, or become subject to, any of the following events:

- (a) you breach any provision of these Terms and fail to remedy that breach within 7 Business Days of notice from us;
- (b) where you are a natural person, you become bankrupt; or
- (c) where you are a corporation, you are wound up or deregistered, or where a receiver, manager, trustee, liquidator official assignee or other person is appointed in respect of you and/or of your assets.

Where an order is terminated pursuant to this clause 14, we shall be entitled to retain all moneys received from you and are under no obligation to provide further Services to you. You will be liable for all Services provided up to the date of termination.

15. Liability: To the maximum extent permitted by law, and subject always to clause 10 (CGA):

- (a) our liability for any Defect or for any cost, loss, damage, injury or claim arising directly or indirectly in relation to the Services supplied by us, whether arising from contract, tort (including negligence) or otherwise, shall be limited to (at our option), re-performing the Services, or providing you with a refund of the price paid for the Services;
- (b) without limiting anything else in these Terms we are not responsible for any costs, losses, liability or claims that results wholly or partly from the acts or omissions of any other person, forces of nature, or any other cause beyond our reasonable control;
- (c) we are not responsible in any circumstances for any indirect, consequential or special loss, loss of profits or economic loss, loss of data, loss of reputation or loss of opportunity;
- (d) our maximum aggregate liability to you at all times under any statement of work or accepted order that incorporates these Terms shall be limited to the amount actually recovered under our insurance policy for the event giving rise to the liability or 20% (twenty per cent) of the amount paid to us by you for the relevant Services, whichever is greater;
- (e) we are not legally responsible or liable for any loss or damage you or any third party incurs or suffers in relation to your purchase or use of our Services (other than for a breach of these Terms);
- (f) we are not liable under these Terms to you to the extent that such liability arose as a direct result of the acts or omissions of you or your personnel, representatives, agents or contractors, or as a direct result of any facts, matters or circumstances outside of our reasonable control; and
- (g) we are not liable for any loss or damage suffered by you (including any interruption to Services or the cost of additional works or Services):
 - (i) to the extent that the loss or damage arises from the state or condition of the relevant Asset or structure in respect of which Services are to be performed and where that loss or damage could not have been reasonably foreseen or avoided by us; or
 - (ii) for any loss or damage arising from any existing defects or other issues that were not, or would not have been, discoverable by us on a reasonable inspection of the Asset; or
 - (iii) for any loss or damage arising out of our acts or omissions in response to an emergency or that we consider is reasonably required to avoid or minimise the risk of material damage to person or property, including a ROV, the Asset, or loss of life).

16. Intellectual property: You agree and acknowledge that we are the exclusive owner or licensee of any intellectual property in our Services and any new intellectual property that we create in connection with performing the Services (including relating to

the development of any new ROVs or other products) vests in us automatically when they are created. For the avoidance of doubt, no intellectual property rights relating to or arising out of the provision of Services shall vest in you at any time.

- 17. Ownership of ROVs:** Where the provision of Services requires us to design and/or build and/or acquire a new ROV or any other product, then unless expressly agreed in the relevant statement of work, ownership of that new ROV or other product shall vest in and remain with us, and you shall not acquire any proprietary interest in it.
- 18. Privacy:** We may collect, hold, use and disclose any personal information about you and any guarantor for the purposes of:
 - (a) assessing your/any guarantor's creditworthiness;
 - (b) creating, administering, and maintaining an account with us;
 - (c) performing our contract with you;
 - (d) collecting payments, including debt collection;
 - (e) marketing our products to you;
 - (f) enforcing our rights under these terms; and/or
 - (g) communicating with you/any guarantor for any such purpose.The Privacy Act 2020 entitles an individual to have access to, and to seek the correction of, their personal information that is held by an agency. You can request this by contacting us at our business address.
- 19. Assignment:** You are not permitted to assign your obligations under these Terms to any person without our prior written consent. We may engage subcontractors to perform Services under these Terms and we remain liable to the acts and omissions of our subcontractors.
- 20. Entire agreement:** These Terms (plus any special terms in an applicable statement of work or expressly agreed in writing with you) constitute the entire agreement between the parties about the provision of Services, and supersedes all prior agreements, undertakings, warranties, representations and negotiations.
- 21. No waiver:** A waiver of a right or remedy under these Terms is ineffective unless it is in writing.
- 22. Severability:** If any clause of these Terms is found by any court of law to be invalid or otherwise not binding on the parties, or if the parties between themselves agree that one or more clauses are no longer to have effect, the rest of the clauses of these Terms shall continue in full force and effect.
- 23. Governing law:** This agreement is governed by New Zealand law. The parties irrevocably submit to the non-exclusive jurisdiction of the New Zealand Courts.