

POLARIS TERMS AND CONDITIONS

1. Contracting

The Parties acknowledge and agree that:

1.1. Relationship

- (a) WBS Technology's rights and obligations under or in respect of this Contract will be performed as an independent contractor.
- (b) Nothing in this Contract constitutes any relationship of employer and employee, agency, partnership, fiduciary or joint venture.

1.2. Sub-contracting

WBS Technology is entitled to engage, contract and use other Persons to perform and supply all or any part of:

- (a) The Maintenance Work;
- (b) Any Varied Work.

2. Maintenance Work

The Parties acknowledge and agree that:

2.1. Maintenance Work

- (a) WBS Technology will do and supply the Maintenance Work at the Premises on and at the Scheduled Dates and Times and during the Term.
- (b) The method of doing and supplying the Maintenance Work will be determined at WBS Technology's sole discretion from time to time which may include by onsite attendance, by telephone or remotely.
- (c) Where, in WBS Technology's sole opinion, any of the Principal's Property requires repair, replacement, additional support or support beyond the scope of WBS Technology's obligations under this Contract, due to the age, configuration or implementation of the Principal's Property, WBS Technology may cease any support or use of the Principal's Property until it is, in WBS Technology's sole opinion, brought up to industry or accepted standard.

2.2. Exclusions

- (a) The Maintenance Work does not consist of any Exclusions.
- (b) Replaced parts are and remain property of the Principal.

3. Variation

The Parties acknowledge and agree that:

3.1. This Contract (including the Contract Price) will be varied by a Variation only if:

- (a) The Principal gives to WBS Technology a Variation Request Notice;
- (b) WBS Technology, at their sole discretion, gives to the Principal a Variation Notice;
- (c) The Principal gives to WBS Technology a duly signed and executed copy of the Variation Notice within fifteen (15) Business Days of the day of receipt of the Variation Notice;
- (d) The Variation Notice is duly signed and executed by or on behalf of both WBS Technology and the Principal (constituting acceptance of the Variation Notice by them).

3.2. WBS Technology will do and supply Varied Work:

- (a) On the dates and at the times set out in the respective Variation Notice; or
- (b) If no date and/or time is set out in the respective Variation Notice, then within 15 Business Days of the day on which that Variation Notice was duly signed and executed by both WBS Technology and the Principal.

3.3. If any part (or parts) of the Maintenance Work or Varied Work (if applicable) is residential building work, and the varied Contract Price will exceed \$20,000.00, then the Principal, at their own Cost, must, and must cause, direct and procure their Representatives to, immediately take all steps and carry out and do all acts and things, and sign, execute and deliver any deed, contract, agreement, document, instrument or Notice, and otherwise act as specified in any Notice given by WBS Technology to the Principal, necessary for:

- (a) a contract of insurance that complies with the HBA;
- (b) a certificate/s of all insurances under the Home Building Compensation Fund, to be obtained in respect of any and all Maintenance Work, Varied Work and any other work or materials, goods or services undertaken to be done and supplied by WBS Technology at the Premises.

4. Principal's obligations

The Parties acknowledge and agree that the Principal, at their own Cost, must, and must cause, direct and procure their Representatives to:

- 4.1. Provide to WBS Technology and their Representatives safe access to, and egress from, any part of the Premises as may be required for WBS Technology to do and supply the Maintenance Work or any Varied Work (if applicable) and otherwise perform their obligations under or in respect of this Contract.
- 4.2. Provide access, and make available, to WBS Technology and their Representatives any and all information, documents, facilities or part of the Premises as may be required for WBS Technology to do and supply the Maintenance Work or any Varied Work (if applicable) and otherwise perform their obligations under or in respect of this Contract.
- 4.3. Not:
 - (a) take over;
 - (b) hinder the doing, supply or progress of;
 - (c) interfere with;
 - (d) obstruct the doing, supply or progress of,any part of the Maintenance Work or any Varied Work (if applicable) during the Term.
- 4.4. Not move or make any addition, modification or adjustment to the Maintenance Work or any Varied Work (if applicable), including by any Non-Party, without obtaining WBS Technology's prior written authorisation.
- 4.5. Comply with all laws, codes, standards and guidelines concerning the use and maintenance of the Maintenance Work or any Varied Work (if applicable).
- 4.6. Provide all reasonable assistance requested by WBS Technology and their Representatives in the diagnosis of any issue or problem within infrastructure and other part of the Premises.
- 4.7. Unless permitted under this Contract, not use or permit any Non-Party to use any of the Maintenance Work or any Varied Work (if applicable) for any unauthorised purpose.
- 4.8. If the Principal becomes aware of any Defect, give to WBS Technology a Notice specifying any such Defect as soon as practicable.
- 4.9. To the extent of the Premises and the Principal's Property proximate to or nearby Maintenance Work or any Varied Work (if applicable) done and supplied, keep, operate and maintain in a proper and prudent manner, and minimise any error, fault, non-conformity, non-compliance or malfunction in, such parts of the Premises and the Principal's Property.

5. Requirements under the HBA

The Parties acknowledge and agree that:

5.1. Application of this clause

This clause 5 is only applicable and enforceable between the Parties to the extent:

- (a) Of a part (or parts) of Maintenance Work or Varied Work (if applicable) done and supplied that is residential building work;
- (b) Required by the HBA and no more than required.

5.2. Plans and specifications

- (a) All plans and specifications for work to be done under this Contract, including any variations to those plans and specifications, are taken to form part of this Contract.
- (b) Any agreement to vary this Contract, or to vary the plans and specifications for work to be done under this Contract, must be in writing signed by or on behalf of each Party to this Contract.
- (c) This clause only applies to a contract to which section 7AA (Consumer information) of the HBA applies.

5.3. Quality of construction

- (a) All work done under this Contract will comply with:
 - (i) The Building Code of Australia (to the extent required under the EPAA, including any regulation or other instrument made under the EPAA), and
 - (ii) All other relevant codes, standards and specifications that the work is required to comply with under any law; and
 - (iii) The conditions of any relevant development consent or complying development certificate.
- (b) Despite clause 5.3(a) of this Contract, this Contract may limit the liability of WBS Technology for a failure to comply with clause 5.3(a) of this Contract if the failure relates solely to:
 - (i) A design or specification prepared by or on behalf of the Principal (but not by or on behalf of WBS Technology); or
 - (ii) A design or specification required by the Principal, if WBS Technology has advised the Principal in writing that the design or specification contravenes clause 5.3(a).

5.4. Statutory warranties

During the applicable warranty periods, WBS Technology warrants that:

- (a) The work will be done with due care and skill and in accordance with the plans and specifications set out in this Contract.
- (b) All materials supplied by WBS Technology will be good and suitable for the purpose for which they are used and that, unless otherwise stated in this Contract, those materials will be new.
- (c) The work will be done in accordance with, and will comply with, this or any other law.
- (d) The work will be done with due diligence and within the time stipulated in this Contract, or if no time is stipulated, within a reasonable time.
- (e) If the work consists of the construction of a dwelling, the making of alterations or additions to a dwelling or the repairing, renovation, decoration or protective treatment of a dwelling, the work will result, to the extent of the work conducted, in a dwelling that is reasonably fit for occupation as a dwelling.
- (f) The work and any materials used in doing the work will be reasonably fit for the specified purpose or result, if the Principal expressly makes known to WBS Technology, or another person with express or apparent authority to enter into or vary contractual arrangements on behalf of WBS Technology, the particular purpose for which the work is required or the result that the Principal desires the work to achieve, so as to show that the Principal relies on WBS Technology's skill and judgment.

5.5. Statement regarding termination of this Contract in the circumstances provided by the general law

This Contract may be terminated in the circumstances provided by the general law and that does not prevent the Parties agreeing to additional circumstances in which this Contract may be terminated.

6. Payment

The Parties acknowledge and agree that:

6.1. Deposit

The Principal must pay the Deposit to WBS Technology on the Execution Date.

6.2. Payment of the Contract Price

In consideration of WBS Technology undertaking to do and supply the Maintenance Work, the Principal must pay the entire Contract Price to WBS Technology.

6.3. Additional Fees and Costs

- (a) The Principal must pay any Additional Fee within 30 days of the day that WBS Technology gives to the Principal a related invoice or other Notice setting out the Additional Fee.
- (b) Where WBS Technology's Additional Fees are based on an hourly rate, any time spent which is less than an hour is charged on a pro-rata basis.
- (c) The Principal must pay for any Costs spent, incurred or sustained by WBS Technology in respect of a Variation, within 30 days of the day that WBS Technology gives to the Principal a related invoice or other Notice setting out those Costs.

6.4. SOP Act

- (a) WBS Technology may serve a payment claim on the Principal on and from:
 - (i) The due dates in respect of payments of the Contract Price and any Additional Fees and Costs (if applicable);
 - (ii) The day on which the Maintenance Work is done and supplied by WBS Technology;
 - (iii) The day on which the Varied Work is done and supplied by WBS Technology; (iv) The day on which any other act or thing is done or performed by WBS Technology.
- (b) WBS Technology may serve more than one (1) payment claim on the Principal in any particular Month.
- (c) If WBS Technology serves a payment claim on the Principal, then the Principal must provide a payment schedule to WBS Technology within ten (10) Business Days of the day of service of that payment claim on the Principal.
- (d) WBS Technology may serve payment claims on the Principal:
 - (i) During the Term;
 - (ii) If the Term has expired, and the Contract is not terminated or discharged for any reason whatsoever, within 72 Months of the later of:
 - (A) The day on which the Maintenance Work was last done and supplied by WBS Technology;

(B) The day on which any Varied Work was last done and supplied by WBS Technology;

(e) In addition to those methods of service set out in the SOP Act, and despite any other term of this Contract, a payment claim may be served by WBS Technology on the Principal:

(i) By leaving it at the Premises from time to time, and service is taken to have been effected on the day on which it is left at the Premises; or

(ii) By sending it by post addressed to the Premises from time to time, and service is taken to have been effected three (3) Business Days after posting; or

(iii) By leaving it at the Principal's residential address from time to time, and service is taken to have been effected on the day on which it is left at such address; or

(iv) By sending it by post addressed to the Principal's residential address (or any of them if more than one (1) address) from time to time, and service is taken to have been effected three (3) Business Days after posting; or

(v) By email to an email address used by the Principal or any Representative of the Principal from time to time, and service is taken to have been effected at the time of transmission; or

(f) The Principal is not entitled to provide any payment schedule to WBS Technology in accordance with clauses 6.4(e) or 12.20 of this Contract.

6.5. Default interest

(a) The Default Interest is calculated at 15% per annum.

(b) If any:

(i) part of the Contract Price;

(ii) Additional Fees and/or Costs;

(iii) other amounts,

due and owing by the Principal to WBS Technology under or in respect of this Contract, or otherwise, for any reason whatsoever, is not paid by the respective Due Date, and remains unpaid following the respective Due Date, whether or not prior formal demand has been made by WBS Technology, then the Principal must pay, in addition to that amount, Default Interest on that amount on and from the respective Due Date until such time that entire amount is paid to, or otherwise recovered from the Principal by, WBS Technology;

6.6. Retention of title

(a) Title and property in the Maintenance Work or any Varied Work (if applicable) will remain with, revert to, or vest in, WBS Technology until any amount due or owing under or in respect of this Contract has been paid by the Principal to WBS Technology.

(b) If payment in full is not made, WBS Technology has the right and entitlement, with or without prior Notice given by WBS Technology to the Principal, to recover possession of the whole or any part of the Maintenance Work or any Varied Work (if applicable) and the Principal irrevocably authorises WBS Technology to enter the Premises to satisfy that purpose without prejudice to any other Claim.

6.7. Set-off

Without limiting any other right or Claim arising under or in respect of this Contract, or otherwise at common law, in equity, under statute, or otherwise, WBS Technology may at any time, in their sole discretion, deduct from, reduce, or set off against, any amounts due or owing by WBS Technology to the Principal or any Loss actually or purportedly incurred or sustained by the Principal, under or in respect of this Contract or any other deed, contract, agreement, document, instrument or Notice executed or otherwise binding as between WBS Technology and the Principal.

7. Limitation of liability

The Parties acknowledge and agree that:

7.1. To the extent permitted by law, and except for any Excluded Claim:

(a) WBS Technology's total aggregate liability for Claims and Loss incurred or sustained by the Principal or any Non-Party arising under or in respect of this Contract is at all times limited to the value of the Contract Price.

(b) The liability of WBS Technology in respect of a Claim brought, or Loss incurred or sustained, by the Principal or any Non-Party is reduced proportionately to the extent that Claim or Loss was caused or contributed to by:

(i) The Principal's breach of this Contract; or

(ii) A negligent act or omission of the Principal.

7.2. To the extent permitted by law, and except for the statutory warranties, the Parties irrevocably exclude any and all warranties, guarantees, conditions, obligations, indemnities or representations given, made or imposed by WBS Technology (whether in writing or orally and whether express or implied) other than those expressly stipulated in this Contract.

7.3. Pursuant to section 64A of Schedule 2 to the Competition and Consumer Act 2010 (Cth), this clause 7.3 applies in respect of any goods or services provided or supplied under this Contract which are not of a kind ordinarily acquired for personal, domestic or household use or consumption, provided that this clause 7.3 will not apply if a Party establishes that reliance on it would not be fair and reasonable. This Contract must be read subject to any law which prohibits or restricts the exclusion, restriction or modification of any implied warranties, guarantees, conditions or obligations. If such law applies, to the extent permitted, WBS Technology limits their liability in respect of any Claim and Loss incurred or sustained:

(a) In the case of goods:

- (i) The replacement of the goods or the supply of equivalent goods;
 - (ii) The repair of the goods;
 - (iii) The payment of the cost of replacing the goods or of acquiring equivalent goods; or
 - (iv) The payment of having the goods repaired;
- (b) In the case of services:
- (i) The supply of the services again; or
 - (ii) The payment of the cost of having the services supplied again.

8. Indemnity

The Parties acknowledge and agree that:

- 8.1. To the extent permitted by law, and notwithstanding anything else in this Contract, the Principal must indemnify and keep WBS Technology indemnified against any Loss incurred or sustained, or any Claim brought, by a Party or Non-Party as a result, whether directly or indirectly, of a breach of any of clauses 3, 4, 6 or 10.4 of this Contract by the Principal.
- 8.2. Clause 8.1 of this Contract applies irrespective of whether WBS Technology is in breach of any term of this Contract.
- 8.3. To the extent that the indemnity stipulated in 8.1 of this Contract is by law void or unenforceable, the indemnity will apply, however, will be reduced to the extent the Loss arises from, or is contributed to by, a wilful or deliberate act by WBS Technology.
- 8.4. The Principal must make payment of any amounts arising or accruing from time to time by reason of or in respect of the indemnity stipulated in 8.1 of this Contract to WBS Technology:
- (a) On demand;
 - (b) In a manner reasonably required by WBS Technology;
 - (c) In immediately available funds and without any Claim, condition or, unless required by law, deduction or withholding.
- 8.5. The Principal's obligations under this clause 8 are absolute and unconditional. They are not subject to any set-off, counter claims or conditions. In particular, WBS Technology's obligations will not be affected by anything which may affect, limit, abrogate or prejudice them.

9. Suspension

The Parties acknowledge and agree that:

- 9.1. If, WBS Technology's sole opinion, the Principal is in breach of any of clauses 3, 4, 6 or 8.4 or of this Contract then WBS Technology may give to the Principal a Notice:
- (a) Suspending the performance of all of WBS Technology's obligations under this Contract (Maintenance Work or any Varied Work (if applicable)) with immediate effect;

(b) Setting out the details of the Principal's breach.

9.2. The right to suspend as stipulated in 9.1 of this Contract will cease and WBS Technology will recommence performing their obligations under this Contract (including the Maintenance Work and any Varied Work) within 10 working days after the Principal remedies the breach in full and gives to WBS Technology a Notice setting out that fact.

9.3. WBS Technology, in exercising the right to suspend as stipulated in 9.1 of this Contract:

(a) Is not liable for any Claim and Loss incurred or sustained by the Principal or any Non-Party arising in respect of WBS Technology not performing any of their obligations under this Contract during any period of suspension;

(b) Will not affect, limit or prejudice any of WBS Technology's rights they may have in respect of termination of this Contract.

10. Term and termination

The Parties acknowledge and agree that:

10.1. Term

(a) This Contract will terminate with immediate effect on the Term Expiration Date only if a Party gives to the other Party a Notice:

(i) Stating that this Contract will terminate on the Term Expiration Date; and (ii)

At least 40 Business Days prior to the Term Expiration Date.

(b) If no Notice is given in accordance with clause 10.1(a) of this Contract, then: (i) This Contract will not terminate with immediate effect on the Term Expiration Date;

(ii) This Contract will terminate with immediate effect on the Subsequent Term Expiration Date.

10.2. Termination by WBS Technology

WBS Technology may terminate this Contract with immediate effect by giving to the Principal a Notice of the termination, if:

(a) The Principal is in breach of any of clauses 3, 4, 6 or 8.4 of this Contract and does not remedy the breach within 10 Business Days of the day of receipt of a Notice specifying the breach given by WBS Technology to the Principal;

(b) The Principal commits a material, serious or fundamental breach of a term of this Contract;

(c) The Principal repudiates this Contract.

10.3. Termination by a Party

A Party may, for any reason whatsoever, and at any time, terminate this Contract with immediate effect by giving at least 30 Business Days' notice to the other Party.

10.4. On and after the termination

(a) If this Contract is terminated or otherwise discharged for any reason whatsoever:

(i) WBS Technology will cease doing and supplying the Maintenance Work and any Varied Work (if applicable) and otherwise performing their obligations under this Contract;

(ii) WBS Technology may immediately:

(A) Forfeit the Deposit paid by the Principal; or

(B) If the Deposit has not been paid in whole or in part by the Principal, recover the Deposit from the Principal as a debt, without prior demand, and not as a penalty, and forfeit the Deposit;

(iii) WBS Technology may immediately recover from the Principal any:

(A) unpaid part of the Contract Price;

(B) Additional Fees and Costs;

(C) other amounts,

due and owing by the Principal to WBS Technology under or in respect of this Contract as at the date of termination of this Contract, as a debt, without prior demand, and not as a penalty.

(iv) The Principal must, without prior demand, immediately return, deliver up, make available for collection or delivery, to WBS Technology any:

(A) Tools, equipment, plant and unfixed materials and goods in the possession (actual, immediate or constructive), ownership or control of WBS Technology;

(B) WBS Technology's Confidential Information provided to the Principal (including records, files, notebooks, correspondence, marketing, advertisement or promotional material/s and papers or documents [in machine readable form or otherwise]) in the possession (actual, immediate or constructive) or control of the Principal;

(v) As and when required by WBS Technology, the Principal must immediately disclose to WBS Technology any password, security access codes or other information in connection with any of WBS Technology's Confidential Information provided by WBS Technology to the Principal.

10.5. Accrued rights and remedies

Termination of this Contract will not affect, limit or prejudice any accrued rights, remedies or Claims that WBS Technology may have against the Principal.

11. General warranties

Each Party warrants to the other Parties in respect of their own position that:

- 11.1. They have full legal capacity to validly execute and enter into this Contract and to perform all their terms.
- 11.2. They have had adequate opportunity to obtain competent legal and other professional advice concerning the terms and effect of this Contract.
- 11.3. They have had the opportunity to negotiate the terms and contents of this Contract. 11.4. They consider the terms and contents of this Contract are fair in all of the circumstances. 11.5. They enter into this Contract voluntarily without duress.
- 11.6. The terms and contents of this Contract are binding upon them according to their terms and contents.
- 11.7. The execution, delivery and performance of this Contract has been properly authorised by it.
- 11.8. Sufficient and valuable consideration has passed between the Parties in, and by reason of, this Contract.
- 11.9. If they are a Corporation:
- (a) They are duly incorporated and validly existing under the laws of the place of its incorporation;
 - (b) They have full corporate power and proper authority to execute, deliver and perform its obligations under this Contract.
- 11.10. There are no Claims pending or to the best of their knowledge threatened against them or by them that may have a material adverse effect on their ability to perform their obligations under this Contract.
- 11.11. It is entering into this Contract as an entrepreneurial exercise and after it has conducted their own investigations and assessments as to the potential viability of the business.

12. General

The Parties acknowledge and agree that:

12.1. **Contra proferentem**

This document (and any schedule or annexure to this document) is not to be interpreted against the interests of a Party merely because that Party proposed this document or any part of this document or because that Party relies on any part of this document to protect themselves.

12.2. **Entire agreement**

This Contract constitutes the entire agreement and arrangement between the Parties only as to the doing and supply of all Maintenance Work, Varied Work (if applicable) and any other work, materials, goods and services by WBS Technology at the Premises and/or otherwise for the Principal, and supersedes any prior understanding, agreement, arrangement, condition, warranty, indemnity, or representation given, made or imposed by a Party in respect of only such subject matter.

12.3. No waiver

- (a) The failure or delay of a Party to require full or partial performance or compliance of a term of this Contract by another Party does not affect any request, direction or demand to subsequently perform.
- (b) A single or partial exercise of or waiver of the exercise of any Claim arising under or in respect of this Contract does not preclude any other or further exercise of that or any other Claim arising under or in respect of this Contract, nor will it affect, impair or hinder any enforcement of this Contract and any subsequent breach of the terms of this Contract.
- (c) No failure or non-performance to exercise and any delay in exercising any Claim by a Party under or in respect of this Contract will constitute a waiver and that Party may still exercise such Claim/s.
- (d) Waiver of any term or part of this Contract or any Claim arising under or in respect of this must be in writing signed by the Party giving or granting the waiver and is only effective to the extent specifically set out in that written waiver.

12.4. Endeavours

An obligation on a Party to use “best endeavours” or “reasonable endeavours” is an obligation on that Party to do all they reasonably can in the circumstances to achieve the contractual object or outcome, but no more.

12.5. Time

Time is of the essence except where:

- (a) Delay is caused by the act or omission of a Non-Party to this Contract or where it results from factors outside the control of the Parties;
- (b) A dependent obligation has not been initially performed or fulfilled by a Party.

12.6. Assignment, novate or encumber

- (a) Subject to any other term of this Contract, if a Party wishes to assign, novate, encumber or otherwise secure against any of their rights, interests, Claims, duties or obligations arising under or in respect of this Contract to any Person:
 - (i) That proposing Party must give to all other Parties a Notice of the proposed assignment, novation, encumbrance or security;
 - (ii) The other Parties may then give to the proposing Party a Notice/s (either collectively or individually) within 10 Business Days of the day of receipt of the proposing Parties' Notice stating that the other Parties:
 - (A) Accept the proposed assignment, novation, encumbrance or security; or
 - (B) Reject the proposed assignment, novation, encumbrance or security.
 - (iii) If all other Parties give to the proposing Party a Notice/s accepting the assignment, novation, encumbrance or security, then it will be deemed to occur only on:
 - (A) The day that the Notice of acceptance is given by all other Parties to the proposed Party; or
 - (B) If more than one (1) Notice of acceptance is given by all other Parties to the proposed Party, the day on which the last such Notice is given.
- (b) The Parties must continue to perform the terms of this Contract, and any purported assignment, novation, encumbrance or security under or in respect of this Contract is deemed to be void, if one (1) or more of the other Parties:
 - (i) do not give to the proposing Party a Notice/s of acceptance;
 - (ii) give to the proposing Party a Notice/s of rejection, within 10 Business Days of the day of receipt of the proposing Parties' Notice of the proposed assignment, novation, encumbrance or security.

12.7. Rights of a Non-Party

This Contract does not, and is not intended to, confer any rights or Claims upon or in favour of any Non-Party and only the Parties may enforce rights and obligations arising under or in respect of this Contract.

12.8. Severance

If any term or part of this Contract is, for any reason, be held to be void, invalid, illegal or unenforceable in any respect, then such voidability, invalidity, illegality or unenforceability must not affect any other term or part of this Contract, but this Contract must be construed as if such voidable, invalid, illegal or unenforceable term or part had never been stipulated or contained in this Contract, unless the deletion of such term or part of this Contract would result in such a material change so as to cause completion of the transactions contemplated in this Contract to be unreasonable.

12.9. No merger

Any term of part of this Contract which is capable of taking effect after completion will not merge on such completion and will continue in full force and effect.

12.10. **Survival**

Clauses 4.6, 4.7, 4.9, 6.2, 6.3, 6.4, 6.5, 6.6, 6.7, 7, 8 and 10.4 survive any termination or other discharge of this Contract for any reason whatsoever.

12.11. **Assurances**

- (a) Each Party must, and must cause, direct and procure their Representatives to, take all steps and carry out and do all acts and things, and sign, execute and deliver any deeds, contracts, agreements, documents or instruments, and act reasonably required of them by Notice given by the other Parties, necessary to effectively carry out and give full effect to this Contract.
- (b) If an obligation is imposed on a Party to refrain from doing, or to not do, an act or thing, then that Party must use their best endeavours to:
 - (i) Not permit that act or thing being done by that Party and their Representatives; (ii) Direct their Representatives to refrain from doing, or to not do, that act or thing; (iii) Direct and/or prevent that act or thing being done by a Non-Party.

12.12. **Electronic transactions and execution**

- (a) Where a Party (or a Representative of that Party) by electronic or mechanical means places a digital or visual representation of their signature or mark on this Contract or any Notice, document or instrument under or in respect of this Contract, that Party acknowledges and agrees that signature or mark has been used to identify the Party signing or executing and to indicate that Party intends to be bound by such signature or mark.
- (b) For the purposes of the Electronic Transactions Legislation this Contract may be delivered and exchanged between the Parties by email or such other electronic or mechanical means as may be agreed in writing between the Parties.

12.13. **Counterpart**

This Contract may be executed in any number of counterparts, each of which when executed and delivered must constitute an original of this Contract, but all the counterparts must together constitute the same Deed. No counterpart must be effective until each Party has executed at least one (1) counterpart of the same document.

12.14. **Language**

Unless otherwise agreed in writing between the Parties:

- (a) all records, books and other documents prepared by a Party under or in respect of this Contract must be in English;
- (b) all meetings, discussions and communications between the Parties and Persons under or in respect of this Contract must be in English;
- (c) all disputes and Claims between the Parties arising in respect of this Contract must be conducted in English,

and each Party must nominate at least one (1) contact Natural Person who can speak fluent English and who will provide to the other Parties any information requested under or in respect

of this Contract.

12.15. Remedy

- (a) Damages are not necessarily an adequate remedy if there is a breach of any of clauses 3.3, 4, 6 or 10.4 of this Contract.
- (b) A Party may apply for injunctive relief if there is a breach or threatened breach of any of clauses 3.3, 4, 6 or 10.4 of this Contract or that Party believes a breach of any of clauses 3.3, 4, 6 or 10.4 of this Contract is likely.
- (c) A Party may also seek specific performance, an account of profits, equitable compensation, equitable damages or any other relief available at law or in equity as a remedy for a breach or threatened breach of any of clauses 3.3, 4, 6 or 10.4 of this Contract.

12.16. Jurisdiction

- (a) The proper law of this Contract is the law of the State of New South Wales and will be governed by and construed and interpreted in accordance with the laws of the State of New South Wales.
- (b) The Parties irrevocably and unconditionally submit to the non-exclusive jurisdiction of the courts of the State of New South Wales and waives any Claim to object to any Claim being brought in those courts including by asserting, alleging, pleading or claiming that it has been brought in an inconvenient forum or that the courts of the State of New South Wales do not have jurisdiction.

12.17. Joint and several benefit and liability

- (a) An agreement, representation, condition, warranty, indemnity or Claim in favour of two (2) or more Persons under or in respect of this Contract is for the benefit of them jointly and severally.
- (b) An agreement, representation, condition, warranty, indemnity, liability or obligation on the part of two (2) or more Persons under or in respect of this Contract bind them jointly and severally.

12.18. Proportionate liability

- (a) In determining the obligations and liabilities of the Parties in any Claim arising under or in respect of this Contract or the subject matter of this Contract for any reason whatsoever:
 - (i) The operation of any Proportionate Liability Legislation which would otherwise be applicable is expressly excluded to the extent permitted by law;
 - (ii) Any indemnity stipulated in this Contract will apply despite any applicable Proportionate Liability Legislation, to the maximum extent permitted by law.
- (b) To the extent permitted by law:
 - (i) Each Party must not seek to apply any Proportionate Liability Legislation in any Claim by any other Party arising under or in respect of this Contract or the subject matter of this Contract; and

- (ii) If any Proportionate Liability Legislation are applied in any Claim arising under or in respect of this Contract or the subject matter of this Contract, the applying Party must indemnify and keep the claiming Party against any and all Loss the claiming Party is not able to seek or recover because of the operation of Proportionate Liability Legislation.

12.19. **Costs**

Each Party must bear and is responsible for their own costs in connection with the preparation, negotiation and execution of this Contract.

12.20. **Notices**

(a) Any Notice given under or in respect of this Contract:

- (i) Must be given in writing;
 - (ii) Must be properly addressed to the recipient Party;
 - (iii) Must be:
 - (A) Delivered to that person's address;
 - (B) Sent by pre-paid mail to that person's address; or
 - (C) Sent by email to that person's email address;
 - (iv) If:
 - (A) Delivered by hand, the Notice is deemed to be given at the time of delivery;
 - (B) Sent by pre-paid post, the Notice is deemed to be given on the third Business Day after the day on which it is posted, the first Business Day being the day of posting; or
 - (C) Sent by email, the Notice is deemed to be given at the time that would be the time of receipt under the Electronic Transactions Legislation;
 - (v) Will only be effective upon being given to the recipient Party in accordance with this clause 12.20.
- (b) If a Notice is given after 5:00pm on any day or Business Day, the Notice is deemed to have been received on and from 9:00am on the next Business Day.

13. **Definitions**

The Parties acknowledge and agree that to the extent permitted by law, in this Contract the following words have their corresponding meanings unless the context indicates otherwise:

13.1. **Additional Fees** means additional fees charges arising from or in respect of: (a)

Any approved Variation;

(b) any Varied Work done and supplied, or undertaken to be done and supplied by WBS Technology.

13.2. **Affiliate** means

- (a) In relation to a Corporation, any person that directly or indirectly Controls, is Controlled by or is under common Control with, that Corporation and if a Natural Person, their Affiliate as defined in clause 13.2(b) of this Contract;
- (b) In relation to a Natural Person:
 - (i) Their spouse, de facto spouse or child;
 - (ii) A Corporation Controlled by one (1) or more of that Natural Person, their spouse, de facto spouse or child; or
 - (iii) The executor of their estate.

13.3. **authorise** includes authorise, consent, permit, approve, notarise, certify, register, file, lodge, document or apply an exemption prescribed by law or as required by any Government Authority.

13.4. **breach** includes a breach, default, defective performance, non-performance, failure to perform, refusal to perform, or non-observance;

13.5. **Business Day** means a day that is not a:

- (a) Saturday;
- (b) Sunday;
- (c) Public holiday in the State of New South Wales.
- (d) Day in the period between 22 to 31 December;
- (e) Day in the period between 1 to 7 January;

13.6. **Claim** means any claim, right, entitlement, interest, benefit, discretion, power, expectation, obligation, demand, complaint, suit, cause of action (including, without limitation, by way of cross-claim, joinder, application), set off, remedy, debt, damages, compensation, restitution, account, account of profits, equitable compensation, equitable damages, injunctive relief, declaratory relief, specific performance, rectification, repair, replacement, proceeding (whether of a civil, criminal or regulatory nature or category), arbitration, adjudication, petitions, application, motion, finding, determination, verdict and judgment, whatsoever, whether arising in contract, deed, an instrument, a Notice, at common law, in equity, in tort, under statute, or otherwise, whether past, present or future, fixed or ascertained, actual or contingent, whether known or unknown at the Execution Date, and whether or not a Party was notified, advised or made aware or become aware of the possibility or likelihood of any of the above;

13.7. **Consequential Loss** means any loss or damage in the nature of loss of profits, loss of revenue, loss of production, loss of anticipated savings or business, loss of data, interruption of business, pure economic loss, loss of opportunity or any form of general, consequential, special, aggravated, punitive or exemplary loss or damage;

13.8. **Contract** means this Maintenance Work Contract and any schedule, annexure and attachment to this Maintenance Work Contract;

13.9. **Contract Price** means the total price set out in the Schedule, and varied in accordance with this

Contract.

13.10. **control** has the meaning given in section 50AA of the Corporations Act and **controlled** has a corresponding meaning.

13.11. **Corporation** has the meaning given in section 57A of the Corporations Act.

13.12. **Corporations Act** means the Corporations Act 2001 (Cth).

13.13. **Cost** means any cost (including on a solicitor/client basis), expense, charge Tax, whether arising in contract, deed, instrument, Notice, at common law, in equity, in tort, under statute, or otherwise, whether past, present or future, fixed or ascertained, actual or contingent, whether known or unknown at the Execution Date, and whether or not a Party was notified, advised or aware of the possibility or likelihood of such matter or thing;

13.14. **Default Interest** means the interest as set out in the Schedule.

13.15. **Defect** means any defect, deficiency, fault, error, non-conformity or non-compliance in respect of any Maintenance Work or any Varied Work, whether or not by reference to any applicable laws, codes, standards and guidelines.

13.16. **Deposit** means the non-refundable deposit as set out in the Schedule.

13.17. **Due Dates** means the due dates for payment of:

(a) The Contract Price as set out in the Schedule;

(b) Any other amounts (including Additional Fees and Costs) as stipulated in this Contract.

13.18. **Electronic Transactions Legislation** means the Electronic Transactions Act 1999 (Cth) and the Electronic Transactions Act 2000 (NSW).

13.19. **EPAA** means the Environmental Planning and Assessment Act 1979 (NSW). 13.20. **Excluded**

Claim means a Claim arising under or in respect of a breach of a statutory warranty. 13.21. **Exclusion** means:

(a) Any work or materials, goods or services that:

(i) Do not form part of the Maintenance Work;

(ii) Do not form part of any Varied Work set out in a Variation Notice duly signed and executed by both WBS Technology and the Principal;

(b) Any peripheral items, products or consumables of which are available from WBS Technology;

(c) Any licence or associated right which may be granted or conferred by a Party to the other Party;

(d) Any item which in WBS Technology's opinion can no longer be subject to economical maintenance;

(e) Modifications or additions to the Principal's Equipment;

(f) Any defect or fault resulting, in WBS Technology's sole opinion, from the use of, misuse of, neglect of, or accident to the Principal's Equipment by the Principal or Non-Party;

(g) The repair or replacement of parts or items which WBS Technology requires to be completed away from the Premises but which the Principal is unwilling or unable to release to WBS Technology.

13.22. **Execution Date** means the day on which this Contract is signed and executed by the last Party to it.

13.23. **HBA** means the Home Building Act 1989 (NSW).

13.24. **Loss** means any loss, damage, Cost, liability, fine, penalty, penalty notice, infringement, infringement notice, levy, toll and Consequential Loss, whether direct or indirect, whether arising in contract, deed, instrument, Notice, at common law, in equity, in tort, under statute, or otherwise, whether past, present or future, fixed or ascertained, actual or contingent, whether known or unknown at the Execution Date, whether or not a Person was notified, advised or aware of the possibility or likelihood of such matter or thing;

13.25. **Maintenance Work** means the work and materials, goods or services that are:

(a) Set out in the Schedule;

(b) Document/s as referred to in the Schedule.

13.26. **Month** means a period commencing at the beginning of a day of one (1) of the Named Months and ending:

(a) Immediately before the beginning of the corresponding day of the next Named Month; or

(b) If there is no such corresponding day, on the first (1st) Business Day of the next Named Month.

13.27. **Named Month** means January, February, March, April, May, June, July, August, September, October, November or December.

13.28. **Natural Person** means a living human individual.

13.29. **Non-Party:**

(a) Means a Person who is not a Party;

(b) Does not mean a Person who becomes a Party.

13.30. **Notice** means and may include a notice, approval, consent, instruction, order, direction, request, statement, certificate or other communication.

13.31. **Parties** mean:

(a) WBS Technology;

(b) the Principal,

whether jointly or severally.

13.32. **Person** means a Natural Person, a Corporation, a partnership, a joint venture, a firm, a trust, an association (whether incorporated or not) and a Government Authority.

13.33. **Premises** means the land as described in the Schedule and includes:

- (a) the parcel;
- (b) the building;
- (c) any common property,
situated on, forming part of, or used in conjunction with that land.

13.34. **Principal** means the Person named and described the principal in the Schedule.

13.35. **Principal's Property** means:

- (a) Any building, structure, improvement, fixture, fixed apparatus, fitting, facility, fence, wall, encroachment, easement or covenant situated on, forming part of, or used in conjunction with, the Premises;
- (b) Any service, utility or connection situated on, forming part of, or used in conjunction with, the Premises.
- (c) Any goods, chattels, and items whether owned by, or in the possession of, the Principal or a Non-Party, that is situated on, forming part of, or used in conjunction with, the Premises.

13.36. **Proportionate Liability Legislation** means:

- (a) Part 4 of the Civil Liability Act 2002 (NSW);
- (b) Part IVAA of the Wrongs Act 1958 (Vic);
- (c) Part 1F of the Civil Liability Act 2002 (WA);
- (d) Chapter 2 of Part 2 of the Civil Liability Act 2003 (Qld);
- (e) Chapter 7A of the Civil Law (Wrongs) Act 2002 (ACT);
- (f) The Proportionate Liability Act 2005 (NT);
- (g) Part 3 of the Law Reform (Contributory Negligence and Apportionment of Liability Act) 2001 (SA);
- (h) Part 9A of the Civil Liability Act 2002 (Tas);
- (i) Part VIA of the Competition and Consumer Act 2010 (Cth) (including such legislation as in force in each State and Territory by virtue of relevant legislation);
- (j) Division 2A of Part 7.10 of the Corporations Act;
- (k) Subdivision GA of Division 2 of Part 2 of the Australian Securities & Investments Commission Act 2001 (Cth).

- 13.37. **Representative** means any director, officer, member of the relevant strata committee, employee, agent, sub-contractor, consultant or adviser of a Party.
- 13.38. **Schedule** means the schedule to this Contract.
- 13.39. **Scheduled Dates and Times** means those dates and times or period as set out in the Schedule.
- 13.40. **Subsequent Term Expiration Date** means the date or period as set out in the Schedule.
- 13.41. **Tax** means any tax, levy, impost, charge, cost or duty (including stamp and transaction duties) paid or payable to, or accessed as being payable by, any Government Authority together with any fine, penalty or interest in respect of them.
- 13.42. **Term** means the period commencing on the Execution Date and ending on the later of:
- (a) The Term Expiration Date;
 - (b) The Subsequent Term Expiration Date.
- 13.43. **Term Expiration Date** means the date or period as set out in the Schedule.
- 13.44. **Variation** means an agreement:
- (a) To vary this Contract;
 - (b) In respect of Varied Work;
 - (c) To vary the plans and specifications for the Maintenance Work (or other work) to be done and supplied under this Contract.
- 13.45. **Variation Notice** means a Notice setting out in full, the following details:
- (a) The proposed Varied Works;
 - (b) The proposed price (including any Cost) in respect of the Varied Works;
 - (c) The proposed period of time in which the Varied Works will be done and supply.
- 13.46. **Variation Request Notice** means a Notice setting out in full the Varied Works sought.
- 13.47. **Varied Work** means work, materials, goods, services or any other act or thing:
- (a) That is an addition or omission and separate from the scope and nature of the Maintenance Work;
 - (b) Are the subject of a valid Variation under this Contract.
- 13.48. **WBS Technology** means WBS PROJECT H PTY LTD ACN 166 824 906.
- 13.49. **WBS Technology's Confidential Information** means all information that is exchanged between the Parties for the purpose of this Contract before, on or after Execution Date that relates to the business and operations of WBS Technology except information that is:

- (a) Publicly available or subsequently becomes publicly available other than in breach of this Contract;
- (b) Lawfully known to the other Parties on a non-confidential basis before being disclosed by WBS Technology;
- (c) Rightfully acquired from WBS Technology that is not in breach of any agreement or arrangement to keep that information confidential.

13.50. The following words have their corresponding meanings (which include other meanings and expressions as used in such corresponding meanings) as defined and used in:

(a) The HBA:

- (i) dwelling;
- (ii) fixed apparatus;
- (iii) residential building work;
- (iv) statutory warranty;
- (v) warranty period;

(b) The SOP Act:

- (i) due date;
- (ii) payment claim;
- (iii) payment schedule.

(c) The Strata Schemes Management Act 2015 (NSW) and the Strata Schemes Development Act 2015 (NSW):

- (i) building;
- (ii) common property;
- (iii) parcel;
- (iv) strata committee.

14. Interpretation

The Parties acknowledge and agree that in this Contract and unless this Contract expressly provides, or the context indicates, otherwise:

14.1. References

A reference to:

- (a) A Party includes their Representatives, legal personal representatives, successors, executors, administrators, permitted assigns and Affiliates.

(b) A Person which:

- (i) In relation to a Corporation, has ceased to exist or has been reconstituted, amalgamated, reconstructed or merged, be taken to refer to the Person established or constituted in its place;
- (ii) In relation to a Person (including a Corporation), the functions of which have become exercisable by any other Person in their place, be taken to refer to the Person by which their functions have become exercisable.

(c) A group of Persons is a reference to all of them collectively, to any two (2) or more of them collectively and to each of them individually.

(d) A word denoting one (1) gender includes all genders.

(e) The word “dollars” or the expression “\$” refers to the amount in the lawful currency of the Commonwealth of Australia.

(f) Anything is a reference to the whole and each part of it.

(g) A contract (including this Contract), deed, agreement, document or instrument, includes any and all of its terms, provisions, conditions, paragraphs, recitals, parts, sections, schedules and annexures.

(h) A contract (including this Contract), deed, agreement, document or instrument, includes that contract, deed, agreement, document or instrument, as amended, varied, novated, encumbered, supplemented or replaced from time to time.

(i) Law is the common law, principles of equity and laws made by parliament (and laws made by parliament include State, Territory and Commonwealth laws and regulations and other instruments under them and consolidations, amendments, re-enactments or replacements of any of them).

(j) A statute, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them (whether of the same or any other legislative authority having jurisdiction).

(k) Writing includes any method and mode of representing or reproducing words in tangible and permanently visible form and includes electronic mail and facsimile transmissions.

14.2. Expressions

(a) If a word or phrase is defined, cognate words and phrases have corresponding definitions.

(b) Words importing the singular include the plural and vice versa.

(c) A gender includes all other genders.

(d) Mentioning anything after the words “include”, “includes”, “including” or “for example” (or similar expressions) does not limit what else is included.