JCA LIFT CONSULTANTS
NATIONAL CONSULTING SERVICES

Terms & Conditions

1 JCA's Obligations

1.1 **Quality**: JCA agrees to provide the Services:
(a) with reasonable care and skill;
(b) using appropriately experienced, qualified and competent personnel; and
(c) in accordance with all legislative requirements applicable to a consultant providing services in the nature of the Services.

1.2 **Insurance**: JCA will maintain:
(a) professional indemnity insurance providing $10 Million in cover in the aggregate for the duration of the Services, and for a period of 6 years thereafter, to the extent commercially available;
(b) public liability insurance providing for $20 Million in cover per occurrence and in the aggregate; and
(c) workers compensation insurance for death of or injury (including occupations disease) to those engaged or employed by JCA or its subconsultants performing Services, as required by Law.

1.3 **WHS**: JCA has a proactive approach to safety and will comply with all of its obligations under the WHS Legislation.

2 Client's Acknowledgements and Obligations

2.1 **Acceptance**: The Client acknowledges that if (after receiving a copy of these terms and the Proposal) the Client Indicates Acceptance, then the Client will be taken to have accepted the terms of this Contract, and it will apply to any Services provided by JCA to the Client prior to, on or after the date of this Contract in respect of the Project.

2.2 **Generally**: The Client must:
(a) pay JCA the Fee, plus any applicable GST, as and when required by the Contract;
(b) provide JCA with Directions, Client Inputs and safe access to the Site (to the extent necessary for JCA to provide the Services), in a timely manner so that JCA can perform the Services without delay or disruption;
(c) promptly notify JCA of any material matter that affects (or could affect) the Services that the Client becomes aware of;
(d) comply with the Client's obligations under the WHS Legislation, and all other applicable Laws;
(e) (if the Client is not a natural person) nominate an authorised representative who has full authority from the Client to give and receive notices, Directions, instructions and information on behalf of the Client;
(f) otherwise co-operate and coordinate with JCA (and ensure that the Third Parties co-operate and coordinate with JCA), in order for JCA to perform the Services without delay or disruption; and
(g) comply with JCA's Policies and Procedures.

2.3 **Client Inputs**: The Client:
(a) acknowledges that JCA, in performing the Services, is relying upon the Client Inputs being Accurate;
(b) warrants to JCA that the Client Inputs are Accurate;
(c) agrees that it has No Claim against JCA (or any employee of JCA), in relation to or connection with any Losses suffered or incurred by the Client as a result of the Client Inputs not being Accurate, including where that inaccuracy results in some defect or non-compliance in the Services;
(d) must promptly notify JCA if it becomes aware that any Client Deliverable is not Accurate;
(e) if any Client Deliverable is not Accurate, must promptly provide JCA with a replacement Client Deliverable that is Accurate; and
(f) will pay JCA its reasonable additional costs as a result of any delay, disruption or varied work resulting from the Client Inputs not being Accurate.

3 Variations and Additional Fees

3.1 **Variations:** If the Client directs a reasonable Variation to the Services in writing, JCA will comply with that direction to the extent it is reasonably able.

3.2 **Pricing Variations**: All Variations shall be assessed as follows:
(a) the Client must pay JCA for:
(i) any additional time spent by JCA in relation to the Variation at JCA's usual hourly rates;
(ii) all disbursements incurred by JCA in respect of the Variation; and
(iii) a reasonable percentage of not less than 15% for profit and overheads on the above amounts (save to the extent that JCA's rates are indicated as including profit and overheads), with the Fee then being increased by the total of the above amounts.
(b) JCA will allow a credit to the Client to the extent that any cost is saved as a result of the Variation (but without deducting any amount for profit and overheads from the amount that JCA is entitled to); and
(c) the Client must grant JCA a reasonable extension of time for the performance of the Services, to the extent that completion of the Services is delayed by the Variation.

3.3 **Adjustments to Services and Fee**: If the scope, duration or timing of Services increases due to an event outside of JCA's reasonable control, JCA will notify the Client of the additional time and expense that JCA reasonably requires to perform the Services, and the Client will pay that additional amount in accordance with the terms of this Contract.

4 Third Party Contracts

4.1 **Generally**: The Client acknowledges and agrees that:
(a) JCA may recommend that a Third Party be engaged on the Project, in which case the Client must act reasonably in considering that recommendation;
(b) where the Client wishes to engage a Third Party on the Project (whether recommended by JCA or otherwise), that third party must be suitably experienced, qualified and otherwise appropriate for the Project;
(c) the Client must give JCA reasonable notice of all Third Party engagements that affect the Services (together with such details of the engagements as are reasonably required by JCA), and ensure that the Third Party fully cooperates and coordinates with JCA;
(d) to the extent that JCA is provided with designs from Third Parties that need to be integrated with JCA's design, JCA will make best endeavours to integrate those Third Party designs;
(e) JCA will endeavour to cooperate and coordinate with Third Parties to the extent reasonably necessary for the Services, and the Client gives JCA such authority as is necessary for JCA to fulfil that obligation; and
(f) JCA will not be responsible for reviewing or checking the work, services or goods provided by Third Parties, or for any other acts or omissions of Third Parties.

4.2 **Claims**: The Client will have No Claim against JCA as a result of or in any way connected with:
(a) any Ambiguity in any document, design, specification, information or other thing provided by a Third Party (or the Client, an Authority or other person not being a subconsultant of JCA), including to the extent that it results in the Services being non-compliant with the requirements of the Contract;
(b) any services or work performed by a Third Party, or any other act or omission of a Third Party in respect of the Project. For the avoidance of doubt, the Client agrees that JCA cannot and does not warrant any services or work provided or omitted to be provided by any Third Party in respect of the Project.

4.3 **Superintendence and Administration**: Where the Services require JCA to superintend or administer any contracts between the Client and Third Parties, the Client agrees that:
(a) JCA acts as the Client's agent in respect of any Agreements that JCA is required to Superintend, and the administration and performance of same;
(b) any Directions given by JCA to Third Parties under any Agreements that JCA is required to Superintend are given by JCA in its capacity as agent for the Client;
(c) the Client will have No Claim against JCA as a result of or in any way connected with:
(i) any Direction that JCA gives to a Third Party, which JCA honestly believes it was authorised to; or
(ii) any assessment, act or other matter that JCA does in good faith and acting honestly; or
(iii) any amount claimed by or owed to any Third Party in respect of the Project.

4.4 **Inspection Services**: Where the Services require JCA to inspect works performed by Third Parties, JCA shall make limited inspections of the relevant works monthly (unless otherwise indicated). Those inspections will not be invasive (unless JCA becomes aware of something that justifies the works being opened up), and are essentially limited visual inspections. Should the Client require more

4.5 frequent or rigorous inspection or supervision of the relevant works, then it should retain a building consultant, quantity surveyor, clerk of works or other specialist third party.

5 Payment

5.1 **Fee**: pay JCA the Fee, plus any applicable GST, as and when required by the Contract.

5.2 **Payment Claims**: JCA is entitled to issue a payment claim from time to time (but not more frequently than weekly) for the Progress Fee.

5.3 **Authority Approvals**: Payment of services which involve an Authority Approval shall not be contingent upon that Approval being granted.

5.4 **Payment**: Within 14 Business Days of receiving a payment claim from JCA, the Client must pay the Progress Fee to JCA without set off, deduction or withholding.

5.5 **Tax invoices**: JCA will issue tax invoices to the Client in respect of amounts to be paid to JCA.

5.6 **GST**: Except where express provision is made to the contrary, any amount that may be payable under this Contract is exclusive of any GST, and the Client must also pay GST on such amounts.

5.7 **Overdue payments**: If the Client does not pay JCA any amount which JCA is entitled to under the Contract (or under any other contracts between the parties) by the time stated in the Contract (or if no time is stated, then within a reasonable time), then, without prejudice to any other rights or remedies JCA has or may have, JCA may

(a) charge the Client interest from the day after the relevant invoice's payment due date, until payment is made, at the Interest Rate;
(b) indemnify JCA for all costs (including any legal costs on a solicitor-client basis) arising from or in any way related to recovering any moneys due and payable to JCA;
(c) suspend and/or terminate the Services as set out in clause 7.2 and 7.3 of the Contract;
(d) revoke any licence with respect to Intellectual Property Rights that it has granted to the Client, by notice to the Client; and/or
(e) refuse to allow the Client to refer to JCA in its Marketing Material (in which case the Client must not do so).

6 Intellectual Property, Confidentiality and Publications

6.1 **Generally**: JCA does not grant to the Client any Intellectual Property Rights, except as provided for in this clause 6.

6.2 **Vesting**: Intellectual Property Rights in JCA Deliverables vests in JCA upon creation. Without limiting the foregoing, JCA retains all Intellectual Property Rights in drawings, specifications and documents provided by JCA to the Client.

6.3 **License**: Subject to the Client complying with all of its obligations under the Contract (including with respect to payment), JCA:

(a) grants to the Client a non-exclusive, royalty-free, revocable license to use the Intellectual Property Rights in any JCA Deliverables, but only for the purpose of completing the Project (and not for the purpose of any other Project). For the avoidance of doubt, JCA may terminate that license by giving notice that the Client is in breach of its obligations under the Contract (including with respect to payment); and
(b) warrants that all JCA Deliverables will not infringe any Intellectual Property Rights of any person, as far as JCA is reasonably aware. JCA indemnifies and holds harmless the Client against any Loss arising from a breach of the warranty in this clause.

6.4 **Client Obligations**: The Client:

(a) grants JCA an unrestricted, royalty free license to use the Intellectual Property Rights in any Client Inputs to the extent reasonably necessary for JCA to perform the Services; and
(b) warrants that all information contained in the Client Inputs will not infringe any Intellectual Property Rights of any person. The Client indemnifies and holds harmless JCA against any Loss arising from a breach of the warranty in this clause.

6.5 **Confidentiality:** Each party agrees to keep the other party's confidential information confidential, except to the extent that disclosure is required for the purpose of the Services, is compelled at law or occurs with the approval of the other party.

6.6 **Non disparagement:** Each party agrees, to the extent permitted at law, to not disparage the other party.

6.7 **Drawing Format**: Any drawings forming part of JCA Deliverables, will only be issued in PDF format, unless otherwise indicated.

6.8 **Attribution**: JCA has a right of attribution in respect of its involvement on the project, and to that end, JCA may:

(a) refer to and provide details of its involvement on the project in Marketing Material; and
(b) may photograph the works and use those images, or other models and images that JCA creates in relation to the Project, for use in JCA's Marketing Material.

7 Suspension and Termination of Contract

7.1 **Termination by Client**: The Client may only terminate this Contract by giving JCA written notice to that effect if JCA fails to remedy a substantial breach of a material term of this Contract within a reasonable period (being not less than 10 days) after being requested by notice in writing to do so by the Client.

7.2 **Suspension**: JCA may suspend the Services for so long as the Client is in breach of the Agreement, and thereafter will recommence the Services within a reasonable period of time (allowing for remobilisation of resources), unless the Contract is terminated beforehand.

The Client indemnifies and holds harmless JCA for any additional costs or expenses JCA incurs in relation to a suspension permitted under this clause.

7.3 **Termination by JCA**: JCA may terminate this Contract if the Client:

(a) is in substantial breach of the Contract (including by failing to pay any amount owing by the date due or to provide any Client Input to JCA in a timely manner);
(b) fails to remedy a breach that is not substantial within a reasonable period of time;
(c) becomes or is likely to become subject to any Insolvency Event, and fails to provide proof of its ability to comply with all of its future obligations under the Contract including with respect to payment (which proof shall include a current asset liability statement, profit loss statement and declaration of ability to pay by a current director or other officer), or is unable to pay its debts when they fall due; or
(d) ceases to carry on business,

or if JCA:

(e) is prevented from lawfully completing the Services in accordance with this Contract due to a change in Laws;
(f) becomes aware of any conflict of interest, which conflict may prevent JCA from complying with relevant Laws if JCA continues to perform the Services, irrespective whether such conflict existed before or after entry into this Contract; or
(g) gives the Client 15 Business Days' notice that JCA wishes to terminate the Contract, which JCA may do at any time in its absolute discretion (including for JCA's convenience or where there has been no default or insolvency of the Client).

7.4 **Consequences of Termination**: On termination of this Contract:

(a) any amounts owing to JCA in respect of the Services up to and including the date of termination (together with any other amounts which JCA would be entitled to, but for the termination, for work performed up to and including the date of termination) become immediately due and owing;
(b) to the extent that there are any milestones, a pro-rata payment for Services completed in relation to that milestone, according to the proportion in which that milestone is complete;
(c) any accrued rights of JCA (including those arising from breaches by the Client prior to termination) are not affected by the termination, and JCA may enforce those rights in any manner permitted at law; and
(d) each party must return or destroy any confidential information provided by the other party in respect of the Services, except to the extent that a party is required to retain a copy by law or for its record keeping purposes (in which case the confidential information will be held in confidence and safeguarded in a prudent manner); and
(e) if the termination is effected under clauses 7.3(a) - 7.3(d), JCA is entitled to its usual common law damages in respect of termination, including damages for breach, together with an amount of not less than 7.5% for lost profit and lost overheads.

7.5 **Survival:** If the Contract is terminated, whether pursuant to this clause or otherwise, then clauses 2, 6, 7.4, 9, 9.6 and 11 survive termination.

8 Dispute Resolution

8.1 **Generally:** All Disputes must be determined in accordance with the procedure in this clause 8.

8.2 **Process:** Within 10 Business Days after receiving a notice of dispute, the parties shall confer at least once to resolve the Dispute or to agree on methods of doing so. At every such conference each party shall be represented by a person having authority to agree to such resolution or methods. All aspects of every such conference except the fact of occurrence shall be privileged. If the Dispute has not been resolved within 20 Business Days of the notice of dispute (or such longer period as the parties may agree in writing), the Dispute may be referred to litigation or such other form of dispute resolution as the parties may agree.

8.3 **Injunctive or urgent relief:** Nothing herein shall prejudice the right of a party to institute proceedings to enforce payment due under the Contract or to seek injunctive or urgent declaratory relief.

9 Limitations on JCA's Liability

9.1 **Generally**: To the full extent permissible by the law, and notwithstanding any other provision of this Contract to the contrary:

(a) JCA is not liable to the Client in respect of:
(i) any Consequential Loss (or Claims relating to same) arising out of or in connection with this Contract;
(ii) any delays, damages, costs, expenses or losses caused by an act or omission of the Client, any person for whom the

Client is responsible (including other consultants, contractors, subcontractors, suppliers or other persons, engaged by the Client) or any other cause beyond JCA's reasonable control;

(iii) any Directions which are issued (or maintained) by the Client against JCA's reasonable objections or warnings;

(iv) any Claims associated with contamination or hazardous materials (including waste and asbestos) or the removal, encapsulation or containment of same;

(v) any liability or Claims associated with the work, services or goods provided by Third Parties (including any failure by JCA to detect any Ambiguity in such work, services or goods); or

(vi) any normal natural variation in structure, colour or appearance of any natural materials provided as part of the Services (including any stone, tiling, rock or plants);

(b) the total liability of JCA arising out of any alleged performance or non-performance of the Services, howsoever claimed shall be limited to:

(i) 20% of the Fee paid by the Client to JCA; and

(ii) (in respect of Claim relating to personal injury, death or third party property damage) such higher amount (if any) as is received by JCA from its insurer in respect of that Claim pursuant to JCA's policies of insurance;

(c) the Client shall have No Claim as against JCA arising from, or in any way connected with, this Contract, to the extent that the Claim is received by JCA from the Client more than 12 months after the date upon which the Services were last carried out; and

(d) JCA does not give any warranty nor accept any liability in relation to the performance or non-performance of the Services except to the extent, required by law or specifically provided for in this Contract. Without limiting the foregoing, all warranties and terms which (but for this clause) would be implied into the Contract (whether by law, custom, usage or otherwise) are excluded.

9.2 **Warranties that cannot be excluded**: JCA may have liability and the Client may have rights under the provisions of the ACL, CCA and/or similar state legislation, which imply warranties into some contracts and which cannot be excluded or modified. Nothing herein contained shall be read or applied so as to purport to exclude, restrict or modify or have the effect of excluding, restricting or modifying such rights and liabilities in relation to the supply of any goods or services pursuant to this Contract.

9.3 **ACL**: If, and to the extent that, clause 9.1 is void as a result of section 64A of the ACL, then JCA's liability for a breach of a condition or warranty is limited to: the supplying of the relevant Services again; or paying the cost of having the Services supplied again.

9.4 **Competency**: The Client acknowledges and agrees that:

(a) JCA is not a legal practitioner and is not able to provide legal advice. The Client should obtain its own legal advice in relation to any contracts that it enters into in relation to the Project;

(b) JCA not a builder, engineer, quantity surveyor, land surveyor or accountant. As such, JCA cannot provide construction, engineering, quantity surveying, land surveying or accounting advice or other services (rather the Client must engage appropriate Third Parties to perform such work or provide such advice or services);

(c) JCA is not an expert in the area of Authority levies, charges and contributions. Development applications, modifications other actions may attract significant Authority levies, charges and contributions, particularly if the applications exceed council controls or are otherwise non-standard. The Client should engage a planning expert (such as an urban planner or planning lawyer), or conduct its own investigations, if it requires further information about the quantum, timing and other details of those levies, charges and contributions, as well as the Client's rights and entitlements in relation to them. The Client agrees that it will have No Claim against JCA in relation to such levies, charges and contributions; and

(d) JCA is not able to provide accurate Cost Estimates in relation to design, construction, engineering or related goods, work or services. If the Client requires an accurate Cost Estimate, it must obtain it from a suitably qualified third party, such as a quantity surveyor. Any Cost Estimate provided by JCA is at best an indicative and rough approximation, which is not suitable to be relied upon by the Client. The Client will have No Claim against JCA as a result of any difference between a Cost Estimate provided by JCA, and the actual costs of the goods, works or services the subject of that cost estimate.

9.5 **Extension**: All limitations of liability under this Contract shall apply:

(a) for the benefit of the directors, officers, employees, agents and subconsultants of JCA to the same extent as they apply for the benefit of JCA; and

(b) as against the Client or anyone claiming on behalf of, through or under the Client.

9.6 **Trustee**:

(a) Despite any other provision of this Contract, if JCA is identified in this Contract as being the trustee of a trust, then JCA enters into this Contract only in its capacity as the trustee of that trust. Subject to paragraph (b) but despite any other provision of this Contract:

(i) references to JCA in this Contract are to JCA in its capacity as trustee of the trust unless otherwise expressly stated;

(ii) any liability of JCA arising under or in connection with this Contract is strictly limited, and can be enforced against JCA, only to the extent to which it is actually indemnified out of the assets of the trust in respect of that liability;

(iii) the limitation of JCA's liability contained in paragraph (a)(ii) applies despite any other provision of this Contract and extends to all liabilities and obligations of JCA in any way connected with any representation, warranty, conduct, omission, contract or transaction related to this Contract; and

(iv) the Client may not sue the JCA in any capacity other than as trustee of the trust, including seeking the appointment of a receiver or receiver and manager (except in relation to assets of the trust), a liquidator, an administrator or any similar person to JCA or prove in any liquidation, administration or arrangement of or affecting JCA (except in relation to assets of the trust).

(b) Paragraphs (a)(ii) and (a)(iv) will not apply to any obligation or liability of JCA to the extent it is not so satisfied because under the trust agreement relating to the trust or by operation of law there is a reduction in the extent of JCA's indemnification out of the assets of the trust, or that indemnification is extinguished, as a result of JCA's fraud, gross negligence or breach of trust.

(c) No attorney, agent, receiver or receiver and manager appointed in accordance with this Contract has authority to act on behalf of JCA in a way which exposes JCA to any personal liability and no act or omission of any such person will be considered to constitute fraud, gross negligence or breach of trust of the Client for the purpose of paragraph (b).

(d) JCA is not obliged to do or refrain from doing anything under this Contract (including incurring any liability) unless JCA's liability is limited in the same manner as set out in paragraphs (a), (b) and (c) above.

9.7 **Lift Consultant**:

(a) JCA is a lift consultant, not a lift contractor. JCA can provide its opinions to assist with the evaluation of tenders, but is not responsible for the selection or performance of any lift contractor that the Client engages.

(b) JCA may assist the Client with defining the project scope, reviewing tender documents, and evaluating tender submissions, but all final decisions regarding the scope of works, acceptance of any tender, and engagement of any contractor remain the Client's responsibility.

(c) Where JCA reviews drawings, programmes, payment claims, variations, testing results, the performance of works, defect rectification or completion of the works, JCA does so without liability and in the exercise of its professional opinion only (and without detracting from the liability of the Client or Third Party responsible for the item being reviewed).

(d) JCA is not responsible for the means, methods, sequencing, safety, supervision, management or execution of the lift works, which remain solely the responsibility of the lift contractor and other relevant project parties.

(e) To the extent that JCA's services rely on records, reports or other information provided by the Client, the incumbent lift contractor or any other third party, including call-out history and maintenance records, JCA is entitled to rely on that information as accurate and complete and is not responsible for any error, omission or inaccuracy in that information.

(f) Any comments by JCA in relation to compliance with applicable codes, standards, regulations or work health and safety requirements are provided as consultant advice only based on the condition of the lift installation observed at the time of inspection, and do not constitute certification, approval or a guarantee of compliance.

10 General

10.1 **Notices**: Any notice required to be given by JCA or the Client under this Contract must be in writing and given by email to the email address indicated in the Contract for receipt of communications (unless a different form of communication is indicated in the Proposal as being preferred by JCA). JCA and the Client shall each notify the other of any change of their respective contact details

10.2 **Entire Agreement**: This Contract constitutes the entire agreement between the parties in relation to its subject matter and supersedes all previous agreements and understandings between the parties in relation to its subject matter.

10.3 **Prior Representations**: The Client agrees that, other than is expressly stated in this Contract, in entering into the Contract it has not relied upon any representation, warranty, or inducement by JCA nor is any representation, warranty or thing made or done by JCA to be inferred, incorporated or implied into the Contract.

10.4 **Assignment and Novation**: The Client must not assign or novate this Contract without JCA's prior written consent, which may be given conditionally.

10.5 **Counterparts**: This Contract may be executed electronically and/or in counterparts.

10.6 **Merger**: A party's rights and obligations do not merge on completion of any transaction under this agreement.

10.7 **Waiver**: Without limiting any other provision of this Contract, the parties agree that:

(a) failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by law or under this Contract by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this Contract;

(b) a waiver given by a party under this Contract is only effective and binding on that party if it is given or confirmed in writing by that party; and

(c) no waiver of a breach of a term of this Contract operates as a waiver of another breach of that term or of a breach of any other term of this Contract.

10.8 **Severance**: If any provision of this Contract is illegal, void, invalid or unenforceable for any reason, all other provisions which are self-sustaining and capable of separate enforcement shall, to the maximum extent permitted by law, be and continue to be valid and enforceable.

10.9 **Jurisdiction**: This Contract is governed by the laws of New South Wales. Each party irrevocably submits to the non-exclusive jurisdiction of the courts having jurisdiction in New South Wales and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this Contract.

11 Definitions and Interpretation

11.1 Definitions

In this Contract:

Accurate means:

(a) accurate, complete, correct and suitable for use by JCA;

(b) free from any Ambiguity and compliant with all Laws; and

(c) prepared and issued by suitable, competent, experienced and qualified person(s);

ACL means the Australian Consumer Law under Schedule 2 of the CCA;

Ambiguity means non-compliance, error, fault, omission, inconsistency, ambiguity, discrepancy or other defect;

Approvals means certificates, licences, consents, permits, approvals and requirements of Authorities, including any construction certificates and development approvals issued by Council;

Authority means a municipal, statutory, governmental or other authority or organisation having jurisdiction in relation to the Project, including a utilities provider;

Business Day means a day other than a Saturday, Sunday or a public holiday in the state of New South Wales, or 27-31 December inclusive;

CCA means the Competition and Consumer Act 2010 (Cth);

Claim means any right, claim , demand, debt, or cause of action on any basis whatsoever including contract, statute, negligence, tort, restitution, quantum meruit or unjust enrichment, or otherwise at law or in equity and irrespective of the cause;

Client means the person or entity who engages JCA to perform the Services;

Client Inputs means all information, documents, and other particulars which JCA requires the Client to provide (or which the Client provides, or which is provided to JCA on behalf of the Client by any person) which are necessary for JCA to carry out the Services, including:

(i) information about the Site required by JCA for the performance of the Services, including details of existing structures, services and features, sub-surface conditions and adjoining sites and structures;

(ii) details of any designs and specifications that interface with the Services, to the extent that those designs and specifications are not being performed by JCA;

Consequential Loss means: (a) loss of opportunity, use, productivity, sales, revenue, anticipated savings, profit, contract, customers, goodwill or reputation; or (b) any other indirect or consequential loss other than a loss which may fairly and reasonably be considered as arising naturally (that is, according to the usual course of things) from the event;

Contract means the agreement between JCA and the Client comprised by (in order of precedence): these terms; and the Proposal; and any other documents indicated in the Proposal as forming part of the Contract;

Construction Cost means the total cost of constructing, commissioning and handing over the Project as initially determined by the financier's quantity surveyor (or, at the election of JCA, as otherwise reasonably determined by JCA) subject to any changes to that cost that occur during the Project, including as a result of variations, latent conditions, delay costs and other causes;

Cost Estimate means a estimate or opinion as to costs, whether in relation to design costs, construction costs, budgets, projections or otherwise;

COVID-19 means the infectious disease known as Coronavirus disease 2019 and any variations or mutations thereof;

date of this Contract means the date the Client Indicates Acceptance;

Direction includes any written or oral agreement, approval, assessment, authorisation, certificate, decision, demand, determination, direction, explanation, instruction, notice, order, permission, rejection, request or requirement;

Dispute means a dispute or difference in respect of any fact, matter or thing arising out of, or in any way in connection with, the Services or the Contract;

Fee means the fee for the Services stated in the Proposal, together with any other amounts which the Client is required to pay JCA pursuant to the Contract whether for Variations or otherwise;

Force Majeure Event means an earthquake, landslide, flood, fire, meteor, war (declared or undeclared), invasion, act of a foreign enemy, hostilities between nations, civil insurrection or military usurped power, act of public enemy, terrorism, civil unrest or revolution, ionising radiation or contamination by radioactivity from any nuclear waste or from combustion of nuclear fuel, epidemic (including COVID-19);

GST means a tax, levy, duty, charge or deduction, together with any related additional tax, interest, penalty or other charge, imposed by or under including under the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

Insolvency Event means:

(a) the Client informs JCA in writing, or creditors generally, that the Client is insolvent or is financially unable to proceed with the Contract;

(b) execution is levied against the Client by a creditor;

(c) if the Client is an individual person or a partnership including an individual person, and if that person:

(i) commits an act of bankruptcy;

(ii) has a bankruptcy petition presented against him or her or presents his or her own petition;

(iii) is made bankrupt;

(iv) makes a proposal for a scheme of arrangement or a composition; or

(v) has a deed of assignment or deed of arrangement made, accepts a composition, is required to present a debtor's petition, or has a sequestration order made, under Part X of the Bankruptcy Act 1966 (Cth) or like provision under the law governing the Contract; or

(d) if the Client is a corporation and if:

(i) notice is given of a meeting of creditors with a view to the corporation entering a deed of company arrangement;

(ii) it enters a deed of company arrangement with creditors;

(iii) a controller or administrator is appointed;

(iv) an application is made to a court for its winding up and not stayed within 14 days;

(v) a winding up order is made in respect of it;

(vi) it resolves by special resolution that it be wound up voluntarily (other than for a member's voluntary winding up); or

(vii) a mortgagee of any of its property takes possession of that property;

Indicates Acceptance occurs if the Client: signs the Proposal; instructs, authorises or permits JCA to perform any Services; or otherwise indicates that it agrees to the terms of this Contract,

Intellectual Property Right includes all beneficial and legal ownership and intellectual and industrial protection rights throughout the world, both present and future, including rights in respect of or in connection with any confidential information, copyright (including future copyright) moral right, trade secrets, innovations, inventions (including patents), trademarks, service marks, utility models, circuit layout, mask rights, know-how and designs (whether or not now existing and whether or not registered or registrable) and includes any right to apply for the registration of such rights and all renewals and extensions;

Interest Rate means the rate of 20% per annum, or JCA's overdraft rate, whichever be higher;

Laws means:

(a) acts, ordinances, regulations, by-laws, orders, awards and proclamations of the jurisdiction where the Services or the particular part thereof is being carried out;

(b) Approvals;

(c) applicable standards issued by Standards Australia (whether voluntary or mandatory) and the National Construction Code (including the Building Code of Australia);
(d) requirements of any government, statutory or other Authority having jurisdiction over the Services or the Site;
(e) any regulations and other instruments under, and any updates, consolidations, amendments, re-enactments or replacements of the above paragraphs (a)-(d);

Loss means any liabilities, losses, damages, expenses, and costs (including legal costs on a full indemnity basis and whether incurred or awarded) of any kind or nature;
Lump sum and **lump sums amounts** means any amount indicated as a lump sum amount in the Proposal;
Marketing Material means any marketing, advertising, sales or related materials, whether published online, in hard-copy or otherwise and including social media, websites and trade publications;
milestone and **milestone amounts** means any amount indicated as a milestone amount in the Proposal;
No Claim means no claim pursuant to law, statute or equity or on any basis whatsoever (including in negligence, or for breach of contract) for any moneys or for any adjustment to JCA's Fee or for any costs, expenses, loss or damage whatsoever and howsoever claimed;
party means JCA or the Client;
Policies and Procedures means any policies or procedures of JCA specified in the Proposal, as amended from time to time;
Progress Fee means, as at the date of a payment claim, the aggregate of the following:

(a) in respect of all milestones that have been completed (save for any minor defects or omissions) - the total of the milestone amounts for those milestones;
(b) for Services which are the subject of lump sum amounts - the portion of any lump sum amounts corresponding to the proportion of the Services completed;
(c) for Services which are not the subject of milestone or lump sum amounts, but which are the subject of rates - the amount calculated by applying the rates in the Proposal (or if no rates are specified in the Proposal, then by applying JCA's usual rates);
(d) for Services which are the subject of a payment on a percentage basis, an amount corresponding to the relevant percentage;
(e) JCA's reasonable disbursements plus a margin of 20% for profit and overheads;
(f) for Services which are not the subject of milestone, lump sum, rate or disbursement amounts - a reasonable and fair amount;
(g) any other amounts that JCA is entitled to be paid under the Contract including amounts progressively for Variations as they are performed,

less any amount of the Fee paid prior to the date of that payment claim;

Project means the project in respect of which the Services are being performed;
Proposal means the latest Proposal for the Services provided by JCA to the Client, including any cover letter, fee estimate, assumptions, exclusions, inclusions, additional terms, scope of services and schedule of rates;
rates has the meaning given in the Proposal (or if no rates are specified in the Proposal, means JCA's usual rates). Where the services are provided for more than a year, the rates will increase by 5% every 12 months after the Proposal was sent to the Client (or such greater amount as is provided for in the Proposal);
Services means the services to be provided by JCA in respect of the Project as set out in the Proposal;
Site means the location of the Project, and any other area or location that JCA may reasonably require access to in order to perform the Services;
Third Party means any persons (other than JCA) engaged or to be engaged by the Client to provide work, goods or services in connection with the Project including in relation to the design (if applicable), construction and completion of the Project;
Variation means any increase, decrease, amendment, or modification to the Services determined by JCA to be necessary for completing the Services, or arising from any delay or disruption to the Services, and whether directed or deemed;
Variation Sum means the amount JCA charges the Client for work performed as a result of a Variation, calculated at the hourly rates specified in the Proposal where applicable, plus Disbursements and any other amounts as otherwise reasonably determined by JCA (and including a reasonable amount of at least 15% for profit and overheads in respect of any Variations which increase the amount payable by the Client, and no amount for profit and overheads for any Variations which decrease the amount payable by the Client);
WHS Legislation means the *Work Health and Safety Act 2011* (NSW), *Work Health and Safety Regulation 2017* (NSW), and any codes of practice approved under that legislation;
JCA means JCA Lifts Pty Ltd ACN 124 779 406 as trustee for Jim Campbell & Associates Unit Trust trading as JCA Lift Consultants ABN 15 789 870 993 and
JCA Deliverables means all documents which JCA is required by the Contract to create and provide to the Client as part of the Services.

11.2 Interpretation

In this **Contract**:

(a) all headings are inserted for convenience of reference only and shall be ignored in the interpretation of this Contract;
(b) references to a clause shall be construed as references to a clause of this Contract;
(c) if an act must be done on a specified day which is not a Business Day, it must be done instead on the next Business Day;
(d) references to (or to any specified provision of) this Contract shall be construed as references to (or to that provision of) this Contract as amended or substituted with the Contract of the relevant parties and in force at any relevant time;
(e) words importing the singular shall include the plural and vice versa; words importing a gender shall include other genders and vice versa and references to an person, shall include an incorporated or unincorporated legal entity);
(f) "including" and similar words are not words of limitation and shall be read as if followed by the words "but not limited to";
(g) communications between JCA and the Client shall be in the English language;
(h) measurements of physical quantities shall be in metric units of measurement;
(i) unless otherwise provided, prices are in Australian Dollars and payments must be made in that currency;
(j) a provision of the Contract must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of the Contract or the inclusion of the provision in the Contract;
(k) an amendment to the Contract is not effective unless it is in writing and signed by the parties; and
(l) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning.