TERMS AND CONDITIONS OF MAINTENANCE SERVICES

These Terms and Conditions (**Terms**) govern the provision of Services by Autolift Op Co Pty Ltd (ABN 89 692 006 661) (**Autolift**) to a Customer from time to time. Each Service Agreement accepted by Autolift constitutes a separate agreement between Autolift and the Customer, incorporating these Terms together with that Service Agreement (the **Agreement**).

1. Definitions

In these Terms, unless the contrary intention appears, the following words and expressions have the meanings given to them below:

"ACL" means the Australian Consumer Law set out in Schedule 2 to the *Competition and Consumer Act 2010* (Cth).

"Autolift" means Autolift Op Co Pty Ltd (ABN 89 692 006 661) and includes its employees, agents and subcontractors.

"Building Manager" means a person engaged to manage, caretake or maintain the Site or the building or complex of which it forms part, including a facilities manager, caretaker, building manager and building management committee.

"Business Day" means a day other than a Saturday, Sunday or public holiday in New South Wales.

"Call-Out" means an attendance by Autolift at the Site at the Customer's request in response to a reported fault, breakdown, malfunction or other issue with the Equipment, and which is not a Service.

"Call-Out Fee" means the fee payable for a Call-Out at the rate stated in the Service Agreement or, if no rate is stated, at the rate notified by Autolift to the Customer before Autolift attends the Site.

"Common Property" means common property or association property within the meaning of the Strata Legislation, and includes any driveway, car park, access way, lobby, gate or entry serving more than one lot or tenancy at the Site.

"Consumer" means a person who acquires the Services as a consumer within the meaning of section 3 of the ACL.

"Customer" means the person or entity named as the customer in the Service Agreement, and includes an individual, an Owners Corporation, a company, a trustee of a trust in its personal capacity and as trustee, a partnership, an incorporated association, a government agency and any other entity, together with any servant, agent, partner, contractor or employee of that person or entity, and, in the case of two or more persons, refers to each of them jointly and severally. Where a person enters into the Service Agreement as agent for another person, clause 2.3 applies.

"Equipment" means the doors, gates, roller shutters, motors, operators, controls, safety devices and associated equipment identified in the Service Agreement, and any other equipment at the Site that Autolift agrees in writing to service, whether located on Common Property, within a lot or tenancy, or at residential or commercial premises.

"Excluded Cause" means any of the following: misuse, abuse or improper operation of the Equipment; vandalism, malicious damage, theft or forced entry; impact damage, including damage caused by a vehicle; fair wear and tear; any pre-existing or latent defect in the Equipment or the Site; any work carried out on the Equipment by a person other than Autolift; any act or omission of an owner, occupier, tenant, invitee or contractor at the Site; failure, fluctuation or surge in the power supply; water ingress, corrosion or infestation; a Force Majeure Event; the Customer failing to approve or carry

out a repair, replacement or upgrade recommended by Autolift; and the Customer failing to comply with clause 9.

"Force Majeure Event" has the meaning given in clause 12.1.

"GST" has the meaning given in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

"Initial Term" has the meaning given in clause 11.1.

"**Insolvency Event**" means in respect of a person, any one or more of the following events:

(a) the person is or becomes insolvent or is unable to pay its debts as and when they fall due;
(b) if the person is an individual, the person becomes bankrupt or commits an act of bankruptcy;
(c) if the person is a corporation or other entity, an application, order or resolution is made for its winding up, dissolution, administration, liquidation or deregistration, other than for the purposes of a solvent reconstruction;
(d) a receiver, receiver and manager, administrator, controller, liquidator, provisional liquidator or similar external administrator is appointed to the person or any of its assets or undertaking;
(e) the person enters into, proposes, resolves to enter into, or takes any step towards entering into any arrangement, compromise, composition, restructuring or other arrangement with any of its creditors; or
(f) the person ceases, or threatens to cease, carrying on business.

"Intellectual Property Rights" means all rights in relation to patents, copyright (including moral rights), designs, registered and unregistered trade marks, trade secrets, know-how, confidential information and all other intellectual property, and any right to register those rights, whether created before or after the date of this Agreement.

"Labour Rate" means Autolift's hourly labour rate stated in the Service Agreement or, if no rate is stated, Autolift's standard hourly labour rate current at the time the work is performed, which Autolift will notify to the Customer on request.

"Loss" means any loss, damage, liability, cost, charge, expense, outgoing, compensation, penalty, fine, judgment, claim, demand, action or proceeding of any kind, whether arising in contract, tort (including negligence), under statute, in equity or otherwise, and includes all legal and other professional costs and expenses (on a full indemnity basis).

"Minor Parts" means minor parts and consumables replaced in the course of a Service, including lubricants, fixings, rollers, hinges, bearings, cables, remote control batteries and photo-electric beam components.

"Non-Excludable Right" means a guarantee, condition, warranty, right or remedy conferred by the ACL or by any other law that cannot lawfully be excluded, restricted or modified.

"Out of Scope Works" means any work carried out by Autolift that is not a Service, including repairs, fault rectification, replacement of parts other than Minor Parts, Call-Outs, emergency attendances, modifications, upgrades and any work arising from an Excluded Cause.

"Owners Corporation" means an owners corporation, community association, precinct association, neighbourhood association or body corporate constituted under the Strata Legislation, and includes a company title company and any corresponding entity constituted under the law of another State or Territory.

"Payment Terms" means the payment terms specified in the Service Agreement or an invoice issued by Autolift and, where no payment terms are specified, the payment terms set out in clause 6.1.

"Residential Customer" means a Customer who is an individual and who acquires the Services wholly or predominantly for personal, domestic or household purposes.

"Service" means the scheduled maintenance, inspection, testing and servicing of the Equipment described in clause 3 and the Service Schedule, performed at the frequency stated in the Service Agreement, and **Services** has a corresponding meaning and does not include fees for the use of Minor Parts, Out of Scope Works and Call-Outs.

"Service Agreement" means the service maintenance agreement completed and signed by the Customer and accepted by Autolift, which records the Site, the Equipment, the frequency of Service, the Service Fee, the Payment Terms and the Initial Term, and into which these Terms are incorporated.

"Service Fee" means the fee payable for each Service as stated in the Service Agreement.

"Service Report" means the report issued by Autolift to the Customer after each Service recording the work performed, the condition of the Equipment observed and any Out of Scope Works that Autolift recommends.

"Service Schedule" means the service inspection checklist forming part of the Service Agreement for the relevant type of Equipment.

"Site" means the premises at which the Equipment is located, as stated in the Service Agreement, and includes any Common Property, driveway, car park, lobby, access way and entry through which access to the Equipment must be obtained.

"Strata Legislation" means the *Strata Schemes Management Act 2015* (NSW), the *Strata Schemes Development Act 2015* (NSW), the *Community Land Management Act 2021* (NSW) and the *Community Land Development Act 2021* (NSW), and any legislation of another State or Territory that corresponds to them.

"Strata Manager" means a strata managing agent, community association managing agent or other managing agent appointed by an Owners Corporation.

"Term" has the meaning given in clause 11.1.

"WHS Laws" means the *Work Health and Safety Act 2011* (NSW), the *Work Health and Safety Regulation 2017* (NSW) and any other applicable work health and safety legislation.

2. Customer type, capacity and authority

2.1 These Terms apply to every Customer, whether the Customer is an individual, an Owners Corporation, a person contracting on behalf of an Owners Corporation, or a company, trust, partnership or other entity. Where applicable, provisions of these Terms are expressed to apply only to particular categories of Customer. The Customer acknowledges and agrees that these Terms apply and will be deemed accepted by the Customer upon the earlier of:

(a) the Customer signing or otherwise accepting the Service Agreement;
(b) the Customer placing an order for Services;
(c) Autolift supplying, delivering, installing or commencing the provision of Services at the Customer's request; or
(d) the Customer doing any act consistent with acceptance of the Services, the Service Agreement or these Terms,

whether or not the Customer has signed any document acknowledging these Terms. Autolift will provide these Terms to the Customer, or make them available on its website, with each Service Agreement.

2.2 The Customer warrants that it has full power and authority to enter into this agreement and to perform its obligations under it, and that the person who signs the Service Agreement is authorised to sign it on the Customer's behalf.

2.3 Where a person signs the Service Agreement, submits a work order, or gives an instruction or approval to Autolift as agent for another person, whether as a Strata Manager, Building Manager, managing agent, facilities manager, lessee, lessor or otherwise:

(a) that person warrants that it holds a current appointment, delegation or instrument of authority permitting it to do so, and that any approval it gives is within the monetary limit of that authority;

(b) that person must disclose the identity of its principal in the Service Agreement or work order, and that principal is the Customer; and

(c) Autolift may rely on the warranty in clause 2.3(a) without making any further enquiry, and if that warranty is breached, the person giving the warranty indemnifies Autolift against any Loss suffered or incurred by Autolift as a result of the breach.

2.4 Where the Customer is a company, trust, partnership, incorporated association or other entity:

(a) if the Customer enters into this agreement as trustee of a trust, the Customer warrants that:

(i) it has full power and authority to enter into and perform its obligations under this Agreement in its capacity as trustee of the trust; and

(ii) it has access to sufficient assets of the trust to meet its obligations under this Agreement;

(b) if the Customer is a partnership, each partner is liable jointly and severally; and

(c) where the Customer is not the owner of the Site or of the Equipment, the Customer warrants that it has the owner's authority to have the Services performed and indemnifies Autolift against any claim by the owner arising from the performance of the Services.

2.5 Where the Customer is a Residential Customer:

(a) nothing in this Agreement excludes, restricts or modifies any Non-Excludable Right; and

(b) the Customer must ensure that a person aged 18 years or over is present at the Site for the duration of any Service or Call-Out that requires access to the interior of a residence.

2.6 Where two or more persons are named as the Customer, each is liable jointly and severally, and Autolift may act on an instruction or approval given by any one of them.

3. Scope of Services

3.1 Autolift will perform the Services in respect of the Equipment at the Site at the frequency stated in the Service Agreement.

3.2 Each Service comprises the inspection, testing, lubrication, adjustment and reporting items listed in the Service Schedule for the relevant type of Equipment. All items are checked for damage and fatigue.

3.3 The Services do not include, and Autolift is not obliged to perform, any of the following except as a Call-Out under clause 3.7 or as Out of Scope Works approved under clause 4.5:

(a) repair, replacement or overhaul of the Equipment or any part of it, other than Minor Parts during a Service (which are charged separately under clause 4.5);

(b) fault rectification, breakdown attendance or emergency attendance;

(c) rectification of any pre-existing or latent defect, or of any damage or malfunction arising from an Excluded Cause;

(d) any work required by reason of the age, obsolescence or condition of the Equipment;

(e) upgrades, modifications or works required to bring the Equipment into compliance with any law, standard or code that has changed since the Equipment was installed;

(f) building, structural, electrical, civil or builder's work, or any work requiring a licence, accreditation or permit that Autolift does not hold;

(g) cleaning, painting or cosmetic restoration of the Equipment;

(h) supply or programming of remote controls, transmitters, fobs or other access devices;

(i) any work on equipment that is not identified in the Service Agreement;

(j) work to Common Property, to the building or to any other part of the Site, other than work on the Equipment; and

(k) any work requiring an approval, permit, by-law consent or authorisation under the Strata Legislation, or from a landlord, an Owners Corporation or an authority, that has not been obtained.

3.4 Autolift may vary the items listed in the Service Schedule where necessary to reflect a change in the Equipment, a manufacturer's requirement or a change in any applicable law or standard, by giving the Customer written notice.

3.5 After each Service, Autolift will issue a Service Report to the Customer. A Service Report records the condition of the Equipment observed at the time of the Service. It is not a certificate of compliance with any law, standard or code, and it is not a warranty as to the condition, safety or remaining service life of the Equipment.

3.6 Where a Service Report or a Call-Out identifies work that Autolift recommends be carried out, Autolift will provide a quotation for that work. Autolift will not carry out that work until the Customer approves it in writing. If the Customer does not approve the recommended work then, subject to any Non-Excludable Right, Autolift is not liable for any Loss arising from the condition or failure of the Equipment to the extent that the Loss would have been avoided had the work been carried out.

3.7 Autolift may attend the Site at the Customer's request for a Call-Out. Autolift will notify the Customer of the Call-Out Fee before it attends. Where Autolift is able to do so, it will make the Equipment operational and safe during the Call-Out. Where the fault cannot be rectified at the time of attendance, Autolift will make the Equipment safe so far as is reasonably practicable and provide a quotation for the further work required. A Call-Out is not a Service and is charged under clause 4.5 in addition to the Service Fee.

4. Pricing and charges

4.1 This Agreement and the Service Fee are made subject to the type, number, location and condition of the Equipment found at the Site remaining constant with the particulars recorded

in the Service Agreement. Where the Equipment at the Site differs from those particulars, or where access to the Equipment requires arrangements or equipment that were not disclosed, Autolift may adjust the Service Fee by giving the Customer written notice. If the Customer does not accept the adjustment, the Customer may terminate this Agreement under clause 11.5.

4.2 Any variation to the Service Agreement is not recognised unless it is agreed by Autolift in writing.

4.3 All amounts stated in the Service Agreement are inclusive of GST unless expressly stated to be exclusive of GST. Where an amount is stated exclusive of GST, the Customer must pay GST on that amount in addition. Autolift will issue a tax invoice for each taxable supply.

4.4 A travel fee applies to Sites outside the Sydney metropolitan area, at the rate stated in the Service Agreement.

4.5 Out of Scope Works and Call-Out Fees are charged at the Labour Rate, together with Autolift's Call-Out charges and parts prices current at the time the work is performed, or as stated in Autolift's quotation. Autolift must not carry out Out of Scope Works without the Customer's written approval, except where clause 4.6 applies. Emergency and after-hours attendances attract Autolift's standard emergency and after-hours rates. For the avoidance of doubt, Minor Parts are not included in the Service Fee. Minor Parts used in the course of a Service are charged in addition to the Service Fee at Autolift's parts prices current at the time of the Service and are itemised in the Service Report and invoice.

4.6 Autolift may carry out work without prior approval from the Customer where the work is immediately necessary to make the Equipment or the Site safe or to comply with WHS Laws. Autolift will notify the Customer as soon as reasonably practicable and the work is charged under clause 4.5.

4.7 Autolift may increase the Service Fee once in each 12-month period by giving the Customer not less than 30 days' written notice. Autolift will not increase the Service Fee during the first 12 months of the Initial Term. If the Customer does not agree to the increase, the Customer may terminate this Agreement under clause 11.5.

4.8 Where Autolift attends the Site at a scheduled or agreed time and is unable to carry out the Services because access is not provided, the Site or the Equipment is unsafe, or the Customer has not complied with clause 9, Autolift may charge the Service Fee for that attendance in full or an abortive attendance fee at the Labour Rate, and will reschedule the Service under clause 7.4. The same charge applies where the Customer cancels or reschedules a scheduled attendance with less than one Business Day's notice.

4.9 Where the Customer requires Autolift to quote, invoice or obtain approval through a purchase order, work order number, procurement portal or approval limit, the Customer must notify Autolift of that requirement in writing before the Service. Autolift is not required to comply with a requirement that has not been notified, and the absence of a purchase order or work order number does not affect the Customer's obligation to pay for Services, Call-Outs and Out of Scope Works performed by Autolift.

4.10 Where the Site is a strata scheme or a building containing more than one lot or tenancy, the Service Fee is charged for the Site and Autolift is not required to apportion it between lots, tenancies or occupiers.

4.11 Where a person engaged by Autolift to perform part of the Services charges Autolift for standing time or for an abortive attendance caused by an act or omission of the Customer, that cost is payable by the Customer in addition to the Service Fee. Autolift will provide evidence of the charge on request.

5. Liability and indemnity

5.1 The limitations of liability set out in this Agreement are subject to the consumer guarantees conferred by the ACL, to the extent that such guarantees cannot lawfully be excluded or limited.

5.2 Subject to clause 5.1:

(a) Autolift excludes all liability for consequential loss, however arising;

(b) all other conditions, warranties, guarantees and implied terms, whether statutory or otherwise, are excluded in relation to the Services to the maximum extent permitted by law; and

(c) Autolift is not liable to the Customer for any loss the Customer suffers, incurs or is liable for in connection with the provision of Services under this Agreement, except in accordance with clause 5.1.

5.3 The Customer releases and forever discharges Autolift, its related bodies corporate, employees, agents and contractors from any Loss arising from or in connection with the supply of the Services, except to the extent that the Loss is caused by the negligence or wilful misconduct of Autolift or its personnel, and except to the extent of any Non-Excludable Right.

5.4 Autolift is not liable for, and gives no warranty in respect of:

(a) the design, manufacture, supply or installation of any Equipment that Autolift did not both supply and install;

(b) any pre-existing defect, latent defect or non-compliance in the Equipment or the Site;

(c) the condition, remaining service life or continued operation of any Equipment that is beyond the manufacturer's recommended service life, is obsolete, or for which replacement parts are no longer available; or

(d) fair wear and tear.

5.5 The Customer indemnifies Autolift, its related bodies corporate, employees, agents and contractors against any Loss suffered or incurred arising from:

(a) any breach of this Agreement by the Customer, its employees, agents or contractors;

(b) any negligent or wilful act or omission of the Customer, its employees, agents or contractors; and

(c) any claim, demand or action resulting from Autolift accessing the Site to perform the Services in accordance with this Agreement. The indemnity in this clause is reduced proportionately to the extent that the Loss is caused or contributed to by Autolift or its personnel. Where the Customer is a Residential Customer, this clause applies only to Loss caused by that Customer's breach of this Agreement or by that Customer's negligent or wilful act or omission.

5.6 The Customer is responsible for the cost of repairing damage to the Equipment caused by the Customer, its occupants, invitees, contractors or any third party, including impact damage, forced entry, vandalism and misuse. Repair of that damage is Out of Scope Works and is not covered by the Service Fee or by any warranty given under clause 8.

6. Payment

6.1 The Customer must pay each invoice in accordance with the Payment Terms. Autolift may require payment on completion of the attendance where the Customer does not hold credit terms with Autolift, including on a first attendance or a Call-Out for a Customer that does not hold an account. Autolift will notify the Customer of the applicable Payment Terms in the Service Agreement or before the first attendance.

6.2 Autolift will invoice the Customer following each Service. Minor Parts, Call-Outs, Out of Scope Works and other charges are charged separately and are invoiced on completion of the relevant work.

6.3 If payment is not made in accordance with clause 6.1, Autolift is entitled to:

(a) require payment of the Service Fee and any other charges in advance of any further Service, Call-Out or Out of Scope Works;

(b) charge default interest at the rate of 1% per month calculated on a daily basis on any amount due but unpaid, accruing from the due date for payment, provided that interest is payable only where the amount remains unpaid 7 days after Autolift has given the Customer written notice that the amount is overdue;

(c) charge reasonable administration fees of $25 for each month or part of a month in which amounts remain overdue, which the parties agree is a reasonable estimate of Autolift's cost of administering an overdue account;

(d) suspend the Services and cease supply of any further Services, Call-Outs or Out of Scope Works, without liability to the Customer; and

(e) recover the costs of collection reasonably incurred by Autolift, including commission charged by a collection agent and legal costs, in addition to all other remedies Autolift has at law.

6.4 The Customer must pay all amounts due under this Agreement without set-off, counterclaim, deduction or withholding, except to the extent the Customer has a right of set-off that cannot be excluded at law. Where the Customer disputes an amount in good faith and has given notice under clause 13, the Customer must pay the undisputed portion of the invoice by the due date.

6.5 Autolift may vary these Terms by giving the Customer not less than 30 days' written notice of the variation. If the Customer does not accept the variation, the Customer may terminate this agreement by written notice given before the variation takes effect, and the variation will not apply to the Customer. A variation is not effective if it is contained only in an invoice.

6.6 Where the Customer is an Owners Corporation, the Customer must ensure that sufficient funds are available in its administrative fund or capital works fund, or are raised by levy, to meet the amounts payable under this agreement. A failure to levy, or to pass a resolution, is not a reason for non-payment.

6.7 A change in the Strata Manager, the Building Manager, or the owner or occupier of the Site does not affect the Customer's obligation to pay amounts already incurred.

7. Access, attendance, scheduling and subcontracting

7.1 The Customer must give Autolift safe, clear and unobstructed access to the Site and to the Equipment at the times scheduled for the Services. The Customer must notify Autolift of any hazard at the Site before Autolift attends, and indemnifies Autolift against any Loss arising from the condition of the Site, or from any hazard at the Site that was not disclosed to Autolift. The

indemnity in this clause 7.1 is reduced proportionately to the extent that the Loss is caused or contributed to by Autolift or its personnel.

7.2 Where Autolift's personnel are delayed at the Site for more than 30 minutes for a reason that is not the fault of Autolift, including waiting for access to the Site, the Customer must pay Autolift's waiting time at the Labour Rate, charged in 15-minute increments.

7.3 The Customer authorises Autolift to subcontract the performance of any part of the Services in its absolute discretion. Autolift remains responsible to the Customer for the performance of the Services by its subcontractors.

7.4 Autolift may reschedule, delay or suspend a Service where it is prevented or hindered by a Force Majeure Event, by unsafe conditions at the Site, by a failure by the Customer to provide access, or by the Customer's failure to pay an amount when due. Autolift will give the Customer reasonable notice where practicable and will reschedule the affected Service to the next reasonably available date.

7.5 Services are scheduled at any time during the month in which they fall due, based on the availability of Autolift's technicians. Autolift is unable to guarantee attendance on a specific date or at a specific time. Autolift will advise the Customer of the month in which the first Service will be carried out after it receives the completed and signed Service Agreement.

7.6 Autolift will contact the Site contact nominated in the Service Agreement before the first Service, and before subsequent Services on request.

7.7 If Autolift is unable to obtain safe, clear and reasonable access to the Site, the Equipment or the area in which the Services are to be performed, Autolift may refuse, suspend or defer the affected Services until such access is provided, and clause 4.8 applies.

7.8 The Customer must notify the occupiers, tenants and lot owners at the Site of a scheduled attendance where the Services will interrupt the operation of the Equipment or restrict access to or from the Site. Autolift is not liable for any Loss arising from that interruption or restriction.

8. Service standards and warranties

8.1 Autolift warrants that it will perform the Services:

(a) with due care and skill;

(b) using personnel who are appropriately trained, qualified and, where required by law, licensed; and

(c) so far as is reasonably practicable, in accordance with the manufacturer's recommendations for the Equipment.

8.2 Autolift warrants that any Out of Scope Works performed by it will be free from defects in workmanship for a period of 3 months from the date the relevant work is completed. If the Customer notifies Autolift of a defect in workmanship during that 3-month period, Autolift will, at its option, repair or re-perform the defective work at no charge to the Customer. This warranty does not apply to any defect caused or contributed to by an Excluded Cause.

8.3 Nothing in this clause 8 excludes, restricts or modifies any Non-Excludable Right. Where the Customer acquires the Services as a Consumer, the Customer has the benefit of statutory guarantees that the Services will be rendered with due care and skill, will be reasonably fit for any disclosed purpose, and will be supplied within a reasonable time.

8.4 The warranties in clauses 8.1 and 8.2 are given in addition to, and do not limit, the Customer's Non-Excludable Rights.

9. Customer obligations

9.1 The Customer must, at its own cost:

(a) provide access to the Site and the Equipment in accordance with clause 7;

(b) ensure that the Site complies with WHS Laws;

(c) provide Autolift with all information it reasonably requests about the Equipment, including its make, model, age, date of installation, service history and any known defects;

(d) notify Autolift promptly in writing of any fault, defect, damage or unsafe condition affecting the Equipment;

(e) operate and use the Equipment in accordance with the manufacturer's instructions, and take reasonable steps to ensure that occupants and invitees of the Site do the same;

(f) not permit any person other than Autolift to service, repair, modify or adjust the Equipment without Autolift's prior written consent;

(g) obtain and maintain all approvals, consents and authorisations required for the Equipment and for the Services, including any owners corporation, strata committee, landlord or authority approval, and provide evidence of them to Autolift on request;

(h) keep the Equipment and the area around it clear of vehicles, stored goods and other obstructions at the times scheduled for the Services; and

(i) cooperate with Autolift and comply with Autolift's reasonable directions relating to the performance of the Services.

9.2 The Customer must notify Autolift in writing within 14 days of any change in the ownership or management of the Site, in the Strata Manager or Building Manager, or in the Customer's contact or billing details.

9.3 The Customer must not represent to any person that Autolift is responsible for the condition of the Equipment or the Site beyond the Services actually performed, or that Autolift has certified the Equipment as compliant with any law or standard, unless Autolift has given a written certificate to that effect.

10. Work health and safety and insurance

10.1 Each party acknowledges that it may owe duties under the WHS Laws in relation to the Services and the Site. Where more than one person owes a duty in relation to the same matter, the parties must, so far as is reasonably practicable, consult, cooperate and coordinate activities with each other.

10.2 Nothing in this agreement operates to transfer, exclude, limit or otherwise affect a duty imposed by the WHS Laws, and no indemnity in this agreement extends to a penalty imposed under the WHS Laws.

10.3 The Customer must notify Autolift, before each Service or Call-Out, of any hazard at the Site relevant to the work, including asbestos or other hazardous material, confined spaces, live electrical work, work at height, vehicle and pedestrian movements, and any restricted or secured area.

10.4 Autolift may suspend or defer a Service or Call-Out where it reasonably considers that continuing would create a risk to the health or safety of any person. Autolift is not liable for any Loss arising from that suspension or deferral, and clause 4.8 applies where the risk arises from the condition of the Site or from a failure by the Customer to comply with clause 9.

10.5 The Customer must maintain:

(a) where the Customer is an Owners Corporation, the insurances required under the Strata Legislation and any other applicable legislation, including insurance of the building and of the Equipment;

(b) where the Customer is a company, trust, partnership or other business entity, public liability insurance of not less than $20 million and insurance of the Site and the Equipment against damage; and

(c) any other insurances required by law.

10.6 The Customer must not do or omit to do anything that prejudices a policy of insurance held by Autolift and must provide certificates of currency for its own insurances on Autolift's reasonable request.

11. Term and termination

11.1 This Agreement commences on the date Autolift accepts the Service Agreement and continues for the initial term stated in the Service Agreement (**Initial Term**). If no initial term is stated, the Initial Term is 12 months. At the end of the Initial Term and of each subsequent term, this Agreement renews automatically for a further period equal to the Initial Term, unless either party gives the other not less than one month's written notice before the end of the then current term that it does not wish to renew. The Initial Term together with each renewal period is the **Term**.

11.2 Autolift will give the Customer written notice of the renewal, and of the Service Fee that will apply on renewal, not less than 60 days before the end of the then current term.

11.3 Autolift may terminate this Agreement immediately by written notice to the Customer if:

(a) the Customer fails to pay any amount due under this Agreement and does not remedy that failure within 7 days after receiving written notice from Autolift requiring payment;

(b) the Customer commits a material breach of this Agreement, other than a failure to pay, and fails to remedy that breach within 14 days after receiving written notice from Autolift requiring it to do so;

(c) the Customer suffers an **Insolvency Event**;

(d) the Customer uses the Services unlawfully or in a manner that causes, or could reasonably be expected to cause, harm to Autolift's business, reputation, or property; or

(e) the Customer ceases, or threatens to cease, to carry on business.

11.4 The Customer may terminate this Agreement immediately by written notice to Autolift if Autolift commits a material breach of this Agreement and fails to remedy that breach within 20 days after receiving written notice from the Customer requiring it to do so.

11.5 Where Autolift gives notice under clause 4.1, clause 4.7 or clause 6.5, the Customer may terminate this Agreement by written notice given at any time before the change takes effect, and the change will not apply to the Customer.

11.6 On termination of this Agreement:

(a) the Customer must pay for all Services, Call-Outs, Out of Scope Works and Minor Parts supplied up to the date of termination;

(b) Autolift must refund any amount paid by the Customer in advance for Services not performed, less any amount owing by the Customer to Autolift; and

(c) each party retains any right or remedy that accrued before termination.

11.7 Autolift is not liable to the Customer for any Loss suffered by the Customer as a result of Autolift exercising its rights under clause 11.3 or clause 12.4.

11.8 Clauses 5, 9.3, 11, 12, 13, 14, 15 and 16 survive termination of this Agreement.

12. Force majeure

12.1 Neither party is liable for any failure or delay in performing its obligations (other than an obligation to pay money) to the extent caused by an event beyond its reasonable control, including acts of God, fire, flood, storm, pandemic, epidemic, government action, embargo, strike or other labour dispute, shortage or unavailability of materials, transport delay, or failure of utilities (a **Force Majeure Event**).

12.2 The affected party must promptly notify the other party of the Force Majeure Event and use reasonable endeavours to mitigate its effects.

12.3 The affected party's obligations are suspended for the duration of the Force Majeure Event.

12.4 If the Force Majeure Event continues for more than 60 days, either party may terminate this agreement by written notice to the other, and on termination the Customer must pay for all Services and other work performed up to the date of termination.

13. Dispute resolution

13.1 A party must not commence court proceedings in respect of a dispute arising out of this Agreement (**Dispute**) unless it has complied with this clause 13.

13.2 A party claiming that a Dispute has arisen must notify the other party in writing, and within 10 Business Days of that notice the parties must meet in person or by video conference and use reasonable endeavours to resolve the Dispute in good faith.

13.3 If the Dispute is not resolved within 15 Business Days, or such longer period as the parties agree in writing, either party may refer the Dispute to mediation administered by the Resolution Institute in accordance with its Mediation Rules, conducted in Sydney. Each party bears its own costs of attending and the parties share the mediator's fees and expenses equally.

13.4 This clause 13 does not prevent a party from seeking urgent interlocutory or injunctive relief, does not prevent Autolift from commencing proceedings to recover an amount that the Customer has not disputed in good faith, and does not prevent a party from making an application to a tribunal where it is entitled to do so under the ACL or any other legislation.

14. Confidentiality, privacy and intellectual property

14.1 The Customer acknowledges that Autolift collects, uses and discloses personal information about the Customer and, where the Customer is a company about its directors and guarantors for the purposes of assessing the Customer's creditworthiness, supplying the Services, administering the account, and recovering amounts owing. Autolift handles personal information in accordance with the *Privacy Act 1988* (Cth) and Autolift's privacy policy, available at Privacy Policy. The Customer consents to Autolift disclosing personal information to its

professional advisers, to debt collection agencies, to any party to whom Autolift assigns or proposes to assign its rights, and, where Autolift provides the Customer with credit, to credit reporting bodies.

14.2 Autolift may disclose personal information to service providers located outside Australia, including in the Philippines, for the purpose of administering this Agreement and Autolift's customer records. Details of those disclosures are set out in Autolift's privacy policy.

14.3 Each Quotation, specification and drawing prepared by Autolift remains the property of Autolift and its Intellectual Property Rights remain with Autolift. The Customer must not use a quotation, specification or drawing for any purpose other than considering and accepting it and must not provide it to a competitor of Autolift. Nothing in this Agreement is to be construed as effecting a transfer of any Intellectual Property Rights from Autolift to the Customer.

14.4 Autolift may take photographs and video of the Equipment and of the Site for the purposes of recording their condition, preparing quotations and substantiating the work performed, and may retain them as part of its records. Autolift will not publish a photograph or video that identifies the Site or the Customer without the Customer's consent.

15. Security of Payment Act

15.1 The parties acknowledge that any payment claim issued under this agreement may constitute a payment claim for the purposes of the *Building and Construction Industry Security of Payment Act 1999* (NSW) (**SOP Act**).

15.2 Any payment claim intended to be made under the SOP Act must state prominently on its face:

> *"This payment claim is made under the Building and Construction Industry Security of Payment Act 1999 (NSW)."*

15.3 Where Autolift serves a payment claim under the SOP Act, the Customer must provide a payment schedule within the time required by the SOP Act if it disputes all or part of the amount claimed.

15.4 This clause does not apply where the SOP Act does not apply to the relevant work, including where the work is residential building work carried out on premises in which the Customer resides or proposes to reside.

15.5 Nothing in this Agreement operates to exclude, modify or restrict the operation of the SOP Act, and this Agreement does not contain a pay when paid provision.

16. General

16.1 The Services, Call-Outs and all Out of Scope Works are supplied subject to these Terms unless otherwise expressly agreed in writing by Autolift.

16.2 These Terms prevail over any terms and conditions put forward by the Customer, including any term contained in a work order, purchase order, procurement portal, contractor agreement, induction or site rules, to the extent of any inconsistency, and the Customer waives any such inconsistent terms. Autolift is not bound by any such term unless Autolift has agreed to it in a document signed by Autolift.

16.3 These Terms are governed by the laws of New South Wales, and the parties submit to the non-exclusive jurisdiction of the courts of that State.

16.4 Any variation of this agreement must be in writing and signed by both parties, except as otherwise provided in this Agreement.

16.5 Any notice under these Terms must be in writing and delivered by hand, by prepaid post, or by email to the address or email address last notified by the recipient to the sender. A notice is deemed to be received:

(a) if delivered by hand, on delivery;

(b) if sent by prepaid post within Australia, on the third Business Day after posting; and

(c) if sent by email, at the time the email enters the recipient's information system, unless the sender receives an automated message indicating that the email has not been delivered.

16.6 Where the Customer is an Owners Corporation, a notice given to the Strata Manager is taken to be given to the Customer.

16.7 The Customer must not assign, novate, transfer or otherwise deal with any of its rights or obligations under this Agreement without Autolift's prior written consent, which must not be unreasonably withheld. Autolift may assign or novate this Agreement to a related body corporate, or in connection with a sale of the whole or part of its business, by giving the Customer written notice. Autolift may subcontract in accordance with clause 7.3.

16.8 Autolift performs the Services as an independent contractor. Nothing in this agreement creates a partnership, joint venture, agency or employment relationship between the parties.

16.9 If any provision of this agreement is void, voidable, unenforceable or illegal, it is severed and the remaining provisions continue in full force and effect.

16.10 This Agreement, together with the Service Agreement and the Service Schedule, is the entire agreement between the parties in relation to the Services and supersedes all prior negotiations, representations and agreements. Where there is an inconsistency, the Service Agreement prevails over these Terms in relation to the Site, the Equipment, the frequency of Service, the Service Fee, the Payment Terms and the Initial Term, and these Terms prevail in all other respects. Nothing in this clause limits any liability of either party for misleading or deceptive conduct.

16.11 A right under this agreement may only be waived in writing signed by the party granting the waiver. A failure or delay in exercising a right is not a waiver of that right.

16.12 Nothing in these Terms excludes, restricts or modifies any Non-Excludable Right. Where the Customer is a Consumer, or a party to a small business contract within the meaning of the ACL, any provision of these Terms that is an unfair contract term within the meaning of the ACL is void, and the balance of these Terms continues to apply.

16.13 A Service Agreement may be accepted, and this Agreement may be signed, electronically and in counterparts. The parties consent to the use of electronic signatures and electronic communications for the purposes of the *Electronic Transactions Act 2000* (NSW).