

TERMS AND CONDITIONS

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement unless the context indicates otherwise, the following words have the following meanings:

Approved Claim means the amount or scope of a Claim that is approved by the Insurer.

Agreement means the Authority to Act, Engagement Letter and these Terms and Conditions, both jointly and severally.

Authority to Act means the Authority to Act document entered between the Owner and the Representative that is ancillary to this Agreement.

Business Day means a day that is not a Saturday, Sunday, or public holiday and on which banks are not generally open for trading in Queensland.

Claim means the insurance claim between the Owner and the Insurer relating to the proposed Scope of Claim specified in this Agreement.

Engagement Letter means the Representative's engagement letter the Owner is required to sign to be bound to these Terms and Conditions.

Force Majeure Event means any act of God, government order, earthquake, flood, fire, riot, war, embargo, pandemic (including the COVID-19 Virus), or any other cause or event, unforeseeable and beyond the reasonable control of a Party.

Insurer means the insurer specified in this Agreement.

Owner means the owner specified in the Authority to Act and Engagement Letter.

Parties means the Owner and the Representative, and **Party** means either one of them.

PPSA means the *Personal Property Securities Act 2009* (Cth).

PPS Law means:

- (a) the PPSA and any regulation made at any time under the PPSA, including the PPS Regulations (each as amended from time to time); and
- (b) any amendment made at any time to any other legislation as a consequence of a law or regulation referred to in paragraph (a) above.

PPS Register means the Personal Property Securities Register established under the PPSA.

PPS Regulations means the *Personal Property Securities Regulations 2010* (Cth).

Privacy Act means the *Privacy Act 1988* (Cth).

Representative AquaSure Australia Pty Ltd ACN 688 212 295.

Scope of Claim means the anticipated scope of the works required as part of and to complete the Claim.

Security Interest means a security interest under the PPSA.

Services means the services rendered by the Representative to and for the Owner in accordance with the terms of this Agreement and as listed at clause 2 of these Terms and Conditions.

1.2 Interpretation

In the interpretation of this Agreement:

- (a) references to legislation or provisions of legislation include changes or re-enactments of the legislation and statutory instruments and regulations issued under the legislation;
- (b) words denoting the singular include the plural and vice versa, words denoting individuals or persons include bodies corporate and vice versa, references to documents or Agreements also mean those documents or Agreements as changed, novated or replaced, and words denoting one gender include all genders;

- (c) grammatical forms of defined words or phrases have corresponding meanings;
- (d) the Parties must perform their obligations on the dates and times fixed by reference to the Gold Coast, Queensland;
- (e) reference to an amount of money is a reference to Australian Dollars;
- (f) if the day on or by which anything is to be done is a Saturday, a Sunday or a public holiday in the place in which it is to be done, then it must be done on the next business day;
- (g) references to a Party are intended to bind their executors, administrators and permitted transferees; and
- (h) obligations under this Agreement affecting more than one Party bind them jointly and each of them severally.

2. SERVICES

- 2.1 The Representative agrees to provide the services to the Owner as described in this clause 2 ("**Services**").
- 2.2 The Representative will:
 - (a) Represent the Owner in the Claim with the Insurer; and
 - (b) Review any assessments, reports, descriptions or scopes of work compiled by the insurer to ensure the most appropriate materials and procedures are approved by the Insurer for the Claim; and
 - (c) Liaise with the Insurer and the Owner and offer guidance to the Owner throughout the Claim; and
 - (d) Use its best endeavours to have the proposed Scope of Claim approved by the Insurer and achieve a fair and reasonable settlement of the Claim; and
 - (e) Cause the Works to be completed as approved by the Insurer if the Owner instructs them to.
- 2.3 In the event the Claim is accepted by the Insurer, the Owner must instruct the Representative in one of the following options: (a) That the Owner will engage a verified pontoon builder recommend by the Representative ("**Nominated Builder**") that will enter into a Pontoon Building Contract with the Owner to conduct the works approved by the Approved Claim ("**Works**"); or
 - (b) That the Owner will engage a builder that is not a Nominated Builder to complete the Works; or
 - (c) That the Owner will accept a monetary payout from the Insurer for the Claim.
- 2.4 In the event the Claim is not accepted by the Insurer, no fee is payable by the Owner to the Representative.

3. PAYMENT

- 3.1 In exchange for performing the Services, the Owner agrees to pay the Representative the following consideration:
 - (a) If the Owner selects the Service option at clause 2.3(a), then no fee is payable to the Representative and the Nominated Builder will contribute up to \$500.00 towards the Owner's insurance policy excess; or
 - (b) If the Owner selects the Service options at clause 2.3(b) or 2.3(c), then the Owner must pay the Representative 15% of the total value of the Approved Claim, inclusive of GST.
- 3.2 Any amounts payable by the Owner pursuant to this Agreement are payable within seven (7) days of the receipt of the Representative's invoice.
- 3.3 All payments to be made under this Agreement by the Owner must be made by electronic transfer in clear funds to an account nominated by the Representative, on or before the relevant due date, without any setoff, counterclaim or deduction for or on account of any income or other taxes, imposts, deductions or other withholdings of any kind.

- 3.4 For the avoidance of doubt, the Representative may agree to accept payment in an alternative method.
- 3.5 If this Agreement is Terminated pursuant to clause 8 then the Owner must pay the Representative's reasonable costs for any work completed or expenses incurred by the Representative in relation to the Claim.

4. INTEREST AND COSTS

- 4.1 The Owner agrees to pay interest on any amounts that remain owing after the due date for payment at a rate of two percent (2%) per month calculated daily on the balance of any overdue amounts on a compounding basis.
- 4.2 The Owner will pay to the Representative any commissions, legal costs or expenses incurred by the Representative in relation to the collection of any moneys owed to the Representative that are not paid within the terms of credit provided

5. OWNER OBLIGATIONS

- 5.1 The Owner agrees to:
- (a) Promptly provide all documentation relating to the Claim to the Representative as requested; and
 - (b) Confirm with the Representative before signing any paperwork, allowing any Works to commence, or paying any excess in relation to the Claim; and
 - (c) Instruct and respond to the Representative promptly; and
 - (d) Allow any reasonably required access to the Claim property to the Representatives employees, agents, contractors, Nominated Builder or otherwise required to complete the Claim or the Works; and
 - (e) Otherwise do anything reasonably required by the Representative in order to progress or complete the Claim or the Works.

6. DEFAULT

- 6.1 A Default Event occurs when:
- (a) The Owner fails to promptly undertake any of the Owner's obligations listed at clause 5.1 of this Agreement; or
 - (b) any amounts are unpaid after they fall due; or
 - (c) the Owner is unable to pay its debts as they fall due.
- 6.2 If a Default Event occurs:
- (a) the Representative may, at its sole discretion, suspend the Services and/or the Works and may further terminate this Agreement;
 - (b) all unpaid amounts become immediately due and payable by the Owner to the Representative;
 - (c) the Representative may, at its sole discretion, register a Security Interest in the Charged Property; and
 - (d) the Owner is liable to pay to the Representative and the Representative may recover in full from the Owner all legal costs and disbursements on a full indemnity basis incurred by the Representative arising from or as a result of the Representative exercising or enforcing or seeking to exercise or enforce a right under these Terms and Conditions.

7. PPS Law

- 7.1 This clause applies to the extent that this Agreement provides for a Security Interest for the purposes of the PPSA.
- 7.2 The Owner hereby charges and creates in favour of the Representative a security interest in all of the Owner's present and future beneficial interests in real property and all of the Owner's present and after-acquired property (**Charged Property**).
- 7.3 The Owner undertakes to promptly sign any documents and/or provide any information (such information to be complete, accurate and up to date in all respects) which the Representative may reasonably require to:
- (a) register its Security Interest the PPS Register;

- (b) register any other document required to be registered by the PPSA; or
- (c) correct a defect in a statement referred to in this clause, and if the Owner fails to do so within a reasonable time, the Owner hereby appoints the Representative's solicitor to act as its true and lawful attorney to execute and register such security instrument.

- 7.4 The Owner hereby waives any rights it may otherwise have to:
- (a) receive any notices it would otherwise be entitled to receive under sections 95, 118, 121, 130, 132 or 135 of the PPSA;
 - (b) apply to a Court for an order concerning the removal of an accession under section 97 of the PPSA;
 - (c) object to a proposal of the Licensee to purchase or retain any collateral under sections 130 and 135 of the PPSA;
 - (d) receive a copy of a verification statement confirming registration of a financing statement, or a financing change statement, relating to any security interest the Licensor may have in the Device supplied to the Licensee from time to time.
- 7.5 The Owner waives its rights under section 157 of the PPSA to receive notice of a Verification Statement (as that term is defined under PPSA).
- 7.6 The Owner indemnifies the Representative for all costs, losses and damages (including legal fees and registration fees) associated with registering a Security Interest under this clause.
- 7.7 For the Avoidance of doubt, the Representative will only register a Security Interest on the PPS Register if a Default Event occurs.

8. TERMINATION AND COOLING OFF

- 8.1 The Owner is entitled to a 10 Business Day cooling off period from the date they sign this Agreement ("**Cooling Off Period**").
- 8.2 The Owner may terminate this Agreement for any reason and without penalty during the Cooling Off Period provided notice is received the Representative during the Cooling Off Period in the notice form required by clause 16 of these Terms and Conditions.
- 8.3 For the avoidance of doubt, the Owner may also terminate this Agreement during the Cooling Off Period by telephoning the Representative and advising same.
- 8.3 Either Party may terminate this Agreement on 7 days' written notice to the other Party.
- 8.4 The Representative may terminate this Agreement immediately if a Default Event occurs.
- 8.5 Should this Agreement be terminated for any reason other than under the Cooling Off Period, the Owner remains liable for all fees and costs incurred by the Representative up until and including the date termination.
- 8.6 If the Owner does not pay any moneys in accordance with this Agreement, the Representative may suspend the Services or the Works.

9. PRIVACY PROTECTION

- 9.1 In the course of providing Services under this Agreement, the Representative may collect personal information about the Owner and the Owner's representatives and employees. This personal information will only be disclosed and used for the purposes of carrying out this Agreement or otherwise in accordance with the Owner's instructions.

10. WARRANTIES

- 10.1 The Owner warrants that:
- (a) They have the right and ability to enter this Agreement and that this Agreement will be legally binding on them;
 - (b) They are not currently bankrupt and are not insolvent or in receivership or under administration or has entered an arrangement with its creditors;

- (c) They are able to perform their obligations under this Agreement;
- (d) They have entered this Agreement:
 - (i) with full knowledge of the responsibilities of the Party under this Agreement;
 - (ii) with full knowledge of the effect of this Agreement on the affairs of the Party and its related parties;
 - (iii) after either obtaining or electing not to obtain independent legal and accounting and taxation advice on the subject matter of this Agreement; and
 - (iv) without any reliance on the other Party in respect thereof,

and that each of the above warranties will stay true and correct until this Agreement is terminated. The Owner must immediately notify the Representative if any of the representations or warranties made above cease to be true and correct at any time.

11. INDEMNITIES

11.1 To the full extent permitted by law, the Owner agrees to fully indemnify the Representative and its employees, agents from and against any Loss or Claim of and incidental to:

- (a) a breach by the Owner of this Agreement or any other agreement, arrangement or understanding between the Parties;
- (b) any act, neglect or default of the Owner or any agent, employee, contractor, or officer of theirs in connection with this Agreement;
- (c) the provision of the Services by the Representative under this Agreement;
- (d) any damage or loss suffered due to the action or inaction of the Representative's Nominated Builder.

except to the extent that it is caused or contributed to by any act, neglect or default of the Representative or any agent, employee or officer of theirs.

12. LIMITATION OF LIABILITY

12.1 To the full extent permitted by law, the Representative excludes all guarantees, terms, conditions, warranties, undertakings, inducements or representations whether express or implies statutory or otherwise, relating to this Agreement.

12.2 The maximum liability of the Representative for a breach of their obligations under this Agreement shall be limited to the cost of (at the Representative's sole discretion) the supplying of the Services again.

13. FORCE MAJEURE

13.1 Neither Party will be liable for any failure to perform solely caused by a Force Majeure Event. If either Party is prevented from performing or is unable to perform any of its obligations under this Agreement due to a Force Majeure Event, its performance shall be excused, and the time for performance shall be extended for the period of delay or inability to perform due to such Force Majeure Event, provided that such Party promptly notifies the other Party in writing of:

- (a) the Force Majeure Event;
 - (b) the obligations which it is unable to perform due to such Force Majeure Event; and
 - (c) its projection of the expected period of delay or inability to perform due to such Force Majeure Event,
- and such Party must use all reasonable endeavours to mitigate the effects of the Force Majeure Event and to cure any non-performance.

14. SEVERANCE

14.1 If any provision of this Agreement is prohibited by law or judged by a court to be unlawful, void, or unenforceable, the provision will, to the extent required, be severed from this Agreement, and rendered ineffective as far as possible without modifying the remaining provisions of this Agreement and will not in any way affect any other circumstances of or the validity or enforcement of this Agreement.

15. WAIVER

15.1 No delay or omission to exercise any right, power or remedy accruing to a Party under this Agreement will impair any right, power or remedy of that Party nor will it be construed to be a waiver of the right of the Party at a later time to enforce the right, power or remedy.

16. NOTICES

16.1 A communication required by this Agreement, by a Party to the other Party, must be in writing and may be given to them by being:

- (a) delivered personally; or
- (b) posted to their address specified in this Agreement, or as later notified by them, in which case it will be treated as having been received on the second (2nd) Business Day after posting; or
- (c) sent by email to their email address, when it will be treated as received when it enters the recipient's information system.

17. ASSIGNMENT

17.1 This Agreement is personal to the Parties and cannot be transferred, assigned, charged or otherwise dealt with by the Owner.

18. JURISDICTION

18.1 This Agreement is governed by the laws of Queensland, and the Parties submit to the non-exclusive jurisdiction of the Courts of Queensland and the Commonwealth of Australia.

19. ELECTRONIC SIGNATURES

19.1 The Parties agree that the Agreement may be signed pursuant to the requirements of section 14 of the Electronic Transactions (Queensland) Act 2001, namely via DocuSign or a similar electronic signing service