



# CERTIFICATION CONTRACT & APPLICATION FORM

- ☐ PRINCIPAL CERTIFIER ☐ CONSTRUCTION CERTIFICATE & OCCUPATION CERTIFICATE  
☐ COMPLYING DEVELOPMENT CERTIFICATE & OCCUPATION CERTIFICATE

## THE APPLICATION

DATE OF APPLICATION:

## LAND TO BE DEVELOPED

Lot No.:	<input type="text"/>	Deposited Plan:	<input type="text"/>
House No.:	<input type="text"/>	Street Name:	<input type="text"/>
Suburb:	<input type="text"/>	Post Code:	<input type="text"/>
Area (m <sup>2</sup> ):	<input type="text"/>	Section/Folio:	<input type="text"/>

## THE DEVELOPMENT

Proposed Building Work:	Residential <input type="checkbox"/> Commercial <input type="checkbox"/> Industrial <input type="checkbox"/>
Description of Development:	<input type="text"/>
Value of Work:	\$ <input type="text"/>
Type of work:	Building <input type="text"/>
Building Classification:	<input type="text"/>

## CONSENTS

Development Consent No.:	<input type="text"/>	Date of Issue:	<input type="text"/>
Complying Development Code:	<input type="text"/>		

## BUILDER / OWNER BUILDER

Name:	<input type="text"/>		
Postal Address:	<input type="text"/>		
Licence No.:	<input type="text"/>		
Contact No.:	<input type="text"/>	Fax / E-mail:	<input type="text"/>

## THE APPLICANT/OWNERS

	Owner 1 / Applicant	Owner 2	Owner 3
First Name:	<input type="text"/>	<input type="text"/>	<input type="text"/>
Surname:	<input type="text"/>	<input type="text"/>	<input type="text"/>
Street:	<input type="text"/>	<input type="text"/>	<input type="text"/>
Suburb:	<input type="text"/>	<input type="text"/>	<input type="text"/>
Contact No.:	<input type="text"/>	<input type="text"/>	<input type="text"/>
E-mail:	<input type="text"/>	<input type="text"/>	<input type="text"/>

## BILLING DETAILS

<input type="checkbox"/> Applicant	Company Name:	<input type="text"/>
<input type="checkbox"/> Builder	Address:	<input type="text"/>
<input type="checkbox"/> Other (Please provide details)	Phone:	<input type="text"/>



# LETTER OF CONSENT

## OWNERS CONSENT

I/we the owners of the subject property hereby give consent for the lodgement of all relevant applications (i.e. for Construction Certificate/s, Complying Development Certificate/s, Occupation Certificate/s, Compliance Certificate/s) and associated documentation to Local Certification Services Unit Trust or a Registered Certifier employed by Local Certification Services Unit Trust for consideration.

I/we also declare that all documentation presented as part of an application for a Construction Certificate has remained unaltered from that issued with any Development Consent or that any changes have been documented and Local Certification Services Unit Trust have been advised accordingly in writing.

I/we consent to the any applicable employee of Local Certification Services Unit Trust to enter the subject property at any reasonable time for carrying out inspections and assessment in connection with the applications and associated building works. We acknowledge that these inspections may necessitate Local Certification Services Unit Trust inspecting parts of the building and property outside that directly associated with the work. I/we undertake to take all necessary steps make access available to the property to enable the inspection to be carried out.

## PRINCIPAL CERTIFIER APPOINTMENT

With reference to this proposed development I/we the owners of the subject property hereby advise of our decision to appoint:

- |  |         |  |         |  |         |
|--|---------|--|---------|--|---------|
| <input type="checkbox"/> Local Certification Services Pty Ltd (RBC7) | or      |  |         |  |         |
| <input type="checkbox"/> Andrew Dean                                 | BDC0087 | <input type="checkbox"/> James King      | BDC2869 | <input type="checkbox"/> Mitchell Whitticker | BDC2933 |
| <input type="checkbox"/> Aydin Sertlioglu                            | BDC2916 | <input type="checkbox"/> Luke Gearin     | BDC1819 | <input type="checkbox"/> Rod Steet           | BDC1787 |
| <input type="checkbox"/> Chris Hawkins                               | BDC4553 | <input type="checkbox"/> Matthew Riordan | BDC4743 | <input type="checkbox"/> Scott Reid          | BDC4824 |
| <input type="checkbox"/> Craig Hardy                                 | BDC0167 | <input type="checkbox"/> Mitchell Barnes | BDC2223 |  |         |
| <input type="checkbox"/> Corey Wheeler                               | BDC2742 | <input type="checkbox"/> Michael Hardy   | BDC0772 |  |         |
| <input type="checkbox"/> David Giltinan                              | BDC4625 | <input type="checkbox"/> Mitchell Hardy  | BDC2372 |  |         |

to fulfil the role of Principal Certifier as outlined in the *Environmental Planning and Assessment Act, 1979 (as amended)* (the Act).

I/we understand that this engagement shall be subject to the terms and conditions outlined in the Building and Development Certification Services Agreement and I/we further understand that the critical stage inspections required by the Act will be carried out during the course of construction along with any others that are deemed to be necessary by the Principal Certifier during construction.

I/we are not aware of any existing conflict of interest with the nominated Principal Certifier as defined by the *Building and Development Certifiers Act 2018*.

In the event that the nominated Registered Certifier cannot fulfil the obligations of their role, my signature provided below will serve as the authorisation for the transfer of the role and responsibilities of the Registered Certifier from the initially nominated person to:

- |   |                                      |                                      |
|---|--------------------------------------|--------------------------------------|
| <input type="checkbox"/> Local Certification Services Pty Ltd | <input type="checkbox"/> Andrew Dean | <input type="checkbox"/> Craig Hardy |
|---|--------------------------------------|--------------------------------------|

*This transfer may be due to the resignation of the nominated Registered Certifier from his/her employment position; because he/she is unavailable due to a period of leave of any description; the existence of a Conflict of Interest that was not initially apparent or due to workflow reasons to ensure the efficient processing of the application. Any transfer is subject to the replacement Registered Certifier having the appropriate registration required to provide the certification work identified in the Application*

## OWNERS DECLARATION

In signing this document, I/we declare that:

- |   |
|---|
| <input type="checkbox"/> I/we have freely chosen to engage the Registered Certifier nominated above as the Principal Certifier for the proposed development;  |
| <input type="checkbox"/> I/we have read and accept the conditions outlined in the Building and Development Certification Service Agreement and understand that this document forms the basis of the Certification Contract; |
| <input type="checkbox"/> I/we understand the roles and responsibilities of the Owner and the Registered Certifier.  |

## SIGNATURES

### THE APPLICANT/OWNERS

Owner 1 / Applicant

Signed: _____
Name (Please Print): _____ Date: _____

Owner 2

Signed: _____
Name (Please Print): _____ Date: _____

Owner 3

Signed: _____
Name (Please Print): _____ Date: _____

## ALL NEW BUILDINGS

(Please complete the following)

How many storeys (incl. underground floors) will the proposed building consist of ?;

☐ 1 ☐ 2 ☐ \_\_\_\_\_

What is the gross area of the new building ? \_\_\_\_\_

m<sup>2</sup>

What is the gross area of the site on which the proposal will be constructed ? \_\_\_\_\_

m<sup>2</sup>

## RESIDENTIAL BUILDINGS ONLY

(Please complete the following for residential buildings)

How many dwellings will be constructed ? \_\_\_\_\_

☐ 0 ☐ 1 ☐ 2

How many pre-existing dwellings are there on the site already ? \_\_\_\_\_

☐ 0 ☐ 1 ☐ 2

How many dwellings will be demolished ? \_\_\_\_\_

☐ 0 ☐ 1 ☐ 2

If the proposal includes a new dwelling/s will it be attached to another new building ?

☐ Yes ☐ No

Does the site contain a Dual Occupancy ?

(A dual occupancy is defined as two dwellings on the one site) \_\_\_\_\_

☐ Yes ☐ No

## MATERIALS

Please indicate the materials to be used in the construction of the new building/s

### Walls

### Code

Brick (Double) \_\_\_\_\_  
 Brick (Veneer) \_\_\_\_\_  
 Concrete or Stone \_\_\_\_\_  
 Fibre Cement \_\_\_\_\_  
 Timber \_\_\_\_\_  
 Curtain (Glass) \_\_\_\_\_  
 Steel \_\_\_\_\_  
 Aluminium \_\_\_\_\_  
 Other \_\_\_\_\_  
 Not Specified \_\_\_\_\_

☐ 11  
☐ 12  
☐ 20  
☐ 30  
☐ 40  
☐ 50  
☐ 60  
☐ 70  
☐ 80  
☐ 90

### Floor

Concrete or Slate \_\_\_\_\_  
 Timber \_\_\_\_\_  
 Other \_\_\_\_\_  
 Not Specified \_\_\_\_\_

### Code

☐ 20  
☐ 40  
☐ 80  
☐ 90

### Roof

### Code

Tiles \_\_\_\_\_  
 Concrete or Slate \_\_\_\_\_  
 Fibre Cement \_\_\_\_\_  
 Steel \_\_\_\_\_  
 Aluminium \_\_\_\_\_  
 Other \_\_\_\_\_  
 Not Specified \_\_\_\_\_

☐ 10  
☐ 20  
☐ 30  
☐ 60  
☐ 70  
☐ 80  
☐ 90

### Frame

Timber \_\_\_\_\_  
 Steel \_\_\_\_\_  
 Aluminium \_\_\_\_\_  
 Other \_\_\_\_\_  
 Not Specified \_\_\_\_\_

### Code

☐ 40  
☐ 60  
☐ 70  
☐ 80  
☐ 90

## 1. SERVICES

- 1.1 The Certifier agrees to perform the Services with Due Care and Skill, and in accordance with all requirements of the BDC Act and BDC Regulations, including the Code of Conduct prescribed therein.
- 1.2 The Services will be performed by one of the Registered Certifiers specified in this agreement.
- 1.3 The Client acknowledges that any Approval is at the Certifier's discretion, subject to the Certifier exercising its discretion in good faith and in compliance with all Applicable Laws. Entry into, or performance of any act or obligation under, this Agreement must not be construed as confirmation that any Approval that may be granted or made by the Certifier, will be made.

## 2. CLIENT OBLIGATIONS

- 2.1 The Client must, at its own cost, promptly:
  1. Give the Certifier safe access to the Site as and when the Certifier requires, to enable the Certifier to perform the Services (and notify the Certifier of any changes to that access); and
  2. Provide the Client Deliverables to the Certifier;
  3. Ensure that no works commence on site until a Development Certificate relevant to those works has been issued and the necessary notification period to the relevant Consent Authority and/or Council has been completed;
  4. Coordinating other contractors or persons involved in the Project so as not to impede the Certifier's performance of the Services;
  5. Display signage as required by the EP&A (Development Certification & Fire Safety) Regulation and provided by the Certifier, in a prominent location visible from the street.
  6. Provide the Certifier with at least forty-eight (48) hours' notice of the required critical stage inspections;
  7. Notify the Certifier of anything which the Client is aware of or becomes aware of which could materially affect the Certifier's performance of the Services, including any Authority requirements, any design changes, or any defects in the works the subject of the Services;
  8. Comply with all of the Client's obligations under the WHS Legislation;
  9. Notify the Certifier if the Client anticipates that there is a material risk of it being the subject of an Insolvency Event, or otherwise being unable to perform this Agreement; and
  10. Otherwise cooperate with the Certifier and do all other things reasonably necessary so that the Certifier is able to perform the Services.
- 2.2 The Certifier is not liable for any Loss or delay that may result from the Client's failure to comply with this clause.

## 3. CLIENT DELIVERABLES

- 3.1 The Client:

1. Acknowledges that the Certifier, in performing the Services, is relying upon the Client Deliverables being Accurate;
2. Warrants to the Certifier that the Client Deliverables are Accurate;
3. Has No Claim against the Certifier (or any employee of the Certifier), in relation to or connection with any risks, Losses and delays suffered or incurred by the Client as a result of the Client Deliverables not being Accurate, including where that inaccuracy results in some defect or non-compliance in the Services;
4. Accepts all risks, Losses and delays associated with any Ambiguity in relation to the Client Deliverables.

## 4. AMBIGUITIES

- 4.1 In the event of any Ambiguity in or between the documents forming part of the Agreement or comprised in the Client Deliverables:
  1. The order of precedence set out in the definition of "Agreement" will apply;
  2. Otherwise, the Certifier may resolve the Ambiguity in whichever way the Certifier considers appropriate in its absolute discretion, and notify the Client accordingly, in which case:
    - (i) To the maximum extent permitted at law, the Client will have No Claim in relation to the resolution of the ambiguity referred to in subclause (b) above; and
    - (ii) The Certifier will be entitled to a deemed Variation to the extent that the resolution of the Ambiguity results in any increase, decrease, amendment, or modification to the Services which the Contractor did not anticipate as at the date of this Agreement.

## 5. LEGISLATIVE CHANGES

- 5.1 Each party must perform its obligations under this Agreement in compliance with all Applicable Laws.
- 5.2 Subject to clause 5.3, if there is a change in Applicable Laws on or after the date of this Agreement, and that change requires a Variation in order for the Services to be performed in accordance with this Agreement, then:
  1. The Certifier is entitled to a deemed Variation and shall notify the Client of the additional Variation Sum which the Client must then pay; and
  2. Once the Client pays the Variation Sum referred to in the previous subparagraph, the Certifier will perform the Variation;
  3. To the maximum extent permitted at law, the Client will have No Claim in relation to the change in Applicable Laws other for breach of the obligation referred to in subclause (2) above.
- 5.3 The Client will have No Claim against the Certifier as a result of or in any way connected with any change in Applicable Laws, which occurs after the Certifier has ceased to perform the Services.

## 6. INTELLECTUAL PROPERTY AND CONFIDENTIALITY

### 6.1 Certifier's intellectual property:

1. Subject to the Client complying with its obligations under the Agreement, the Certifier grants to the Client a non-exclusive, royalty-free, revocable license to use the intellectual property in any document which the Certifier gives to the Client (that was prepared by the Certifier created solely for the benefit of, or solely and specifically in relation to, the Services) for the purpose of completing the Project.
2. Ownership of the intellectual property rights in the documents referenced under clause 6.1(1) vests in the Certifier.

### 6.2 Client's intellectual property:

1. The Client grants the Certifier an unrestricted, royalty free license to use the intellectual property in any Client Deliverables to the extent reasonably necessary for the Certifier to perform the Services.
2. The Client warrants that all information contained in the Client Deliverables is Accurate will not infringe any intellectual property rights of any person. The Client indemnifies and holds harmless the Certifier against any Loss arising from a breach of the warranty in clause 6.2(b).

### 6.3 Each party agrees:

1. To keep the other party's confidential information confidential; and
2. To not disparage the other party.

## 7. PAYMENT

### 7.1 The Client must pay the Certifier the Contract Sum prior to the Certifier commencing the Services.

### 7.2 The Certifier must issue a valid tax invoice to the Client in respect of the Contract Sum.

### 7.3 The Certifier reserves the right to withhold the issue of any certificates until such time as all outstanding invoices have been paid in full.

### 7.4 The Client acknowledges that payment of the Contract Sum does not guarantee or imply that any certification will be issued by the Certifier; rather the Certifier can only provide certifications to the extent the conditions for certification are satisfied.

## 8. VARIATIONS AND VARIATION SUM

### 8.1 The following circumstances may result in a variation under the Agreement:

1. Conceptual design changes made subsequent to the issue of the Fee Proposal;
2. Allowances reasonably estimated in the Fee Proposal for particular parts of the Services being significantly exceeded;
3. Design amendments necessary subsequent to the issue of the Development Certificate. Requiring a revised Development Certificate to be assessed and issued;

### 4. Staging of Development Certificates or Occupation Certificates not already allowed for as part of the Fee Proposal;

### 5. Reinspection's arising from non-compliant work;

### 6. Time associated with any correspondence or other communications required by the Certifier in relation to any queries or complaints which may be made by neighbours or other members of the public to the Certifier in the Certifier's capacity as Principal Certifier;

### 7. Time associated with the review of documentation, communications and the carrying out of any inspections that relate to a missed critical stage inspection, and the preparation and issue of the required records,

### 8. An Occupation Certificate sought more than 12 months from the date the services were completed.

### 8.2 The Contract Sum is provided on the understanding that the works will be completed within two (2) years from the date of issue of the Construction Certificate/Complying Development. Should works proceed beyond this time then a variation may be applicable.

### 8.3 If, in the Certifier's reasonable opinion, a Variation has occurred or is required, the Certifier must provide the Client written notice of such Variation.

### 8.4 Within 2 Business Days of the date the Certifier provides notice under the previous subclause, the Client must provide written notice to the Certifier if it disputes the Variation, and the reasons for that dispute.

### 8.5 If there is any dispute about the Variation, then the Client may either approve the Variation pending the outcome of any dispute resolution process, or the Certifier may suspend the Services under clause 14.

### 8.6 If, in the Client's reasonable opinion, a Variation is required, the Client must provide the Certifier with written notice providing details of the proposed Variation to the Certifier, at least 5 Business Days prior to the Certifier being required to perform work in relation to the Variation. If the Certifier agrees that a Variation is required, the work required in relation to the Variation is deemed to form part of the Services.

### 8.7 The Certifier is entitled to charge the Client the Variation Sum for work performed under any Variation and shall issue an invoice in respect of the Variation Sum to the Client.

### 8.8 The Client must pay invoices issued for a Variation Sum within the time specified on the relevant invoice or if no such time is stated, within 7 days from the invoice date.

## 9. DISBURSEMENTS

### 9.1 The Certifier may invoice the Client for the cost of any disbursements, plus a reasonable margin for profit and overheads.

### 9.2 The Client must pay invoices issued for a disbursement within the time specified on the relevant invoice or if no such time is stated, within 7 days from the invoice date.

## 10. OVERDUE AMOUNTS

If the Client does not pay the Certifier in accordance with this Agreement then, without prejudice to any other rights or remedies the Certifier may have:

1. The Certifier may charge the Client interest from the day after the relevant invoice's payment due date, until payment is made;
2. The Client indemnifies the Certifier for its costs and expenses in recovering.

## 11. TIME AND COMPLETION

11.1 The Certifier will commence the Services on the Commencement Date and complete them within a reasonable period of time.

11.2 The Certifier is entitled to an extension of time for completing the Services, if the Certifier is delayed in performing the Services by:

1. An act, default, or omission of the Client, its agents, employees, or any other party associated with the Project (including a suspension or Variation);
2. Any change in Applicable Laws;
3. Any Client Deliverable not being Accurate; or
4. Any other act, matter, event or thing beyond the Certifier's reasonable Control.

11.3 The Certifier is not liable for any delay to the Project caused by the Certifier completing the Services in accordance with this clause 11.2.

## 12. LIABILITY LIMIT

12.1 The Certifier's aggregate liability to the Client arising in connection with this Agreement, whether based in contract, tort (including negligence), equity, statute, by way of indemnity or contributions, warranty, guarantee or otherwise, is limited to the lesser of:

1. The amount of the Contract Sum; or
2. \$100,000; or
3. The amount nominated by a Professional Standards Scheme to which the certifier is a member.

12.2 If, and to the extent that, clause 12.1 is void as a result of section 64A of the Australian Consumer Law under Schedule 2 of the *Competition and Consumer Act 2010* (Cth), then the Certifier's liability for a breach of a condition or warranty is limited to:

1. The supplying of the relevant Services again; or
2. Paying the cost of having the Services supplied again.

12.3 The Certifier's liability to the Client is excluded in relation to any loss of profit, loss of any contract, loss of revenue, loss of use, loss of business opportunities, loss of anticipated savings, damage to goodwill, loss of customers or any other indirect or consequential losses or damages arising in connection with the Agreement.

12.4 Clauses 12.1 and 12.3 do not limit or exclude the Certifier's liability in respect of claims, actions, costs, losses, damages or liability arising due to:

1. liability which cannot be limited at law, or
2. fraudulent or criminal conduct.

## 13. SUSPENSION

13.1 The Certifier may suspend the Services for so long as:

1. The Certifier considers that there is any risk to health or safety in providing the Services or entering any areas of the Site required to perform the Services

(including because any persons on the Site are abusive or threatening);

2. The Client fails to provide any Client Deliverables required by the Certifier;
3. The Client has not paid any amount by the time that it is due;
4. The parties are in dispute in relation to a Variation (and that dispute has not resolved by a final and binding form of dispute resolution).

13.2 The Client indemnifies and holds harmless the Certifier for any additional costs or expenses the Certifier incurs in relation to a suspension under this clause 13, if the suspension was not caused solely by an act or omission of the Certifier.

## 14. TERMINATION

14.1 The Certifier may terminate this Agreement if the Client:

1. Breaches a material term of this Agreement;
2. Breaches a term of this Agreement and fails to remedy that breach within a reasonable period of time of the Certifier's notice to so rectify;
3. 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 Agreement 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;
4. Fails to pay any amount owing by the date due;
5. Does not commence building works within 60 days from the date the approval is issued;
6. Does not permit the Registered Certifier to issue the Occupation Certificate within 60 days from the date of practicable completion, occupation or use of the proposed development;
7. Commences building works prior to the issuing of an approval; or
8. Does not advise the Certifier that the building works have been completed or if an Occupation Certificate has not been issued by the Registered Certifier within 2 years of the date of issue of the approval or
9. Ceases to carry on business,

or if the Certifier:

10. Is prevented from lawfully completing the Services in accordance with this Agreement due to a change in the Applicable Laws; or
11. Deems it necessary for the Agreement to be terminated in accordance with the provisions of any Applicable Laws.
12. Becomes aware of any conflict of interest, which conflict may prevent the Certifier from complying with relevant laws or regulations if the Certifier continues to perform the Services, irrespective whether such conflict existed before or after entry into this Agreement; or



# BUILDING AND DEVELOPMENT CERTIFICATION SERVICES AGREEMENT

13. Receives a suspension, cancellation or modification to the Certifier's Registration that disenables the Certifier to complete the Services; or
  14. Gives the Client 30 days notice that the Certifier wishes to terminate for the Certifier's convenience;
  15. Is not capable of issuing the approval within 180 days or six (6) months (whichever is the lesser) from the date of application; or
  16. Has not issued a Whole Occupation Certificate more than 5 years since the date of issue of the Partial Occupation Certificate.
- 14.2 The Client may terminate this Agreement by giving the Certifier written notice to that effect if the Certifier fails to remedy a substantial breach of a material term of this Agreement within 30 days of being requested by notice in writing to do so by the Client.
- 14.3 If the Certifier has an entitlement to terminate the agreement it may exercise that right with or without notice, in the Certifier's absolute discretion.
- 14.4 If the Client receives a notice from the Certifier that:
1. The Certifier has terminated the Agreement - the Client must as soon as possible: appoint a replacement certifier to take over the certification role comprised in the Services; advise the Certifier of that replacement; and notify all relevant Authorities of that replacement;
  2. The Certifier will terminate the Agreement - the Client must, as soon as possible and in any event prior to the termination taking effect: appoint a replacement certifier to take over the certification role comprised in the Services from the date of termination of the Agreement; advise the Certifier of that replacement; and notify all relevant Authorities of that replacement.
- 14.5 On termination of this Agreement:
1. Any amounts owing to the Certifier in respect of the Services up to and including the date of termination (together with any other amounts which the Certifier would be entitled to, but for the termination, for work performed up to and including the date of termination) become immediately due and owing;
  2. If the termination is effected under clauses 14.1 (1) – (6), the Certifier is entitled to its usual common law damages in respect of termination, including damages for breach and lost profit; and
  3. Both parties must return or destroy (at the relevant discloser's request) any confidential information held by the other party.
- 15. FORCE MAJEURE**
- 15.1 The Services may be totally or partially suspended by the Certifier during any period in which the Certifier may be prevented or hindered from performing the Services (or any part of the Services) through any circumstances outside the Certifier's reasonable control or where such performance is rendered materially more expensive by such circumstances.
- 15.2 Circumstances beyond the Certifier's reasonable control include strikes, lockouts or other labour difficulty, inability to obtain any necessary materials or services on usual terms, failure of software, hardware or communication network, or pandemic.
- 15.3 The Certifier incurs no liability to the Client in respect of such suspension.
- 16. DISPUTE RESOLUTION**
- 16.1 If a dispute or difference (Dispute):
1. Arises in respect of any fact, matter or thing arising out of, or in any way in connection with, this agreement, or the conduct of a party in relation to the subject matter of this agreement at any time; and
  2. Is not required to be determined in accordance with a procedure in another clause in this agreement, the Dispute must be determined in accordance with the procedure in this clause 16.
- 16.2 If a Dispute arises, any party may give the other(s) a notice (Dispute Notice) specifying:
1. Particulars of the Dispute; and
  2. The position which the party believes is correct.
- 16.3 If a Dispute Notice is given, the parties must procure that their respective nominated Dispute Resolution Representative meet and undertake genuine and good faith negotiations with a view to resolving the Dispute specified in that Dispute Notice.
- 16.4 If the Dispute specified in a Dispute Notice is not resolved within 10 Business Days after the date on which the parties receive that Dispute Notice, the Certifier may elect that the Dispute must be referred to mediation in which case:
1. The mediation will be in accordance with, and subject to, the Mediation Rules of the Resolution Institute;
  2. The parties must participate in the mediation genuinely and in good faith.
- 16.5 This clause 16 will survive termination, completion, or expiration of this Agreement.
- 17. GST**
- 17.1 "GST Law" has the meaning in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).
- 17.2 Words or expressions used in this clause 18 which are defined in GST Law have that defined meaning unless otherwise provided.
- 17.3 Except where express provision is made to the contrary, any amount that may be payable for the Contract Sum (and Variation Sum, if relevant) under this Agreement is exclusive of any GST. The applicable GST amount payable must be added to the Contract Sum (and the Variation Sum, if relevant).
- 18. INSURANCE**
- 18.1 The Registered Certifier shall maintain an insurance policy in accordance with *Division 1 of Part 3 of the Building and Development Certifiers Act 2018* and shall provide a copy of that policy to the Owner upon request:
- Current Policy Details:  
Professional Indemnity Insurance Policy No:  
PL-SY-23-167815  
Liberty Mutual Insurance Company and Swisse RE International SE  
Policy Period: 28 March 2023 to 28 March 2024

## 19. GENERAL

- 19.1 To the extent permitted by law, this Agreement 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.
- 19.2 The Client agrees that, other than is expressly stated in this Agreement, in entering into the Agreement it has not relied upon any representation, warranty, or inducement by the Certifier nor is any representation, warranty or thing made or done by the Certifier to be inferred, incorporated or implied into the Agreement.
- 19.3 This Agreement may only be varied by a document signed by or on behalf of each party.
- 19.4 The Client must not assign or novate this Agreement without the Certifier's prior written consent.
- 19.5 This Agreement may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes an original of this Agreement, and all together constitute one Agreement.
- 19.6 This Agreement may be executed electronically and in a number of counterparts and by the parties on separate counterparts. Each counterpart comprises the Agreement of each party who has executed and delivered that counterpart.
- 19.7 A party's rights and obligations do not merge on completion of any transaction under this agreement.
- 19.8 If any provision or part of a provision of this agreement is held or found to be void, invalid or otherwise unenforceable (whether in respect of a particular party or generally), it will be deemed to be severed to the extent that it is void or to the extent of voidability, invalidity or unenforceability, but the remainder of that provision will remain in full force and effect.
- 19.9 Without limiting any other provision of this Agreement, the parties agree that:
1. Each indemnity in this Agreement is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of this Agreement; and
  2. It is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity conferred by this Agreement.
- 19.10 Without limiting any other provision of this Agreement, the parties agree that:
1. 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 Agreement 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 Agreement;
  2. A waiver given by a party under this Agreement is only effective and binding on that party if it is given or confirmed in writing by that party; and
  3. No waiver of a breach of a term of this Agreement operates as a waiver of another breach of that term or of a breach of any other term of this Agreement.

- 19.11 This Agreement is governed by the law in the state or territory where the development is situated. Each party irrevocably submits to the non-exclusive jurisdiction of the courts having jurisdiction in that state or territory 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 Agreement, and waives any objection it may have now or in the future to the venue of any proceedings, and any claim it may have now or in the future that any proceedings have been brought in an inconvenient forum, if that venue is in accordance with the provisions of this clause 19.11.

## 20. DEFINITIONS AND INTERPRETATION

Accurate means:

- Accurate, complete, correct and suitable for use by the Certifier;
- Free from any Ambiguity and compliant with all Applicable Laws; and
- Prepared and issued by a person or persons competent, experienced, qualified and suitable;

Agreement means the following documents, in order of precedence:

- The relevant Fee Proposal, in its entirety relating to the application;
- The completed Application Form & Letter of Consent;
- The Development Certificate issued by the Registered Certifier.

Ambiguity means error, omission, inconsistency, ambiguity, discrepancy or other defect;

Applicable Laws means:

- (a) Acts, ordinances, regulations, by-laws, orders, awards and proclamations of the jurisdiction where the Works or the particular part thereof is being carried out;
- (b) Certificates, licences, consents, permits, approvals and requirements of organisations having jurisdiction in connection with the carrying out of the Works, including any construction certificates and development approvals issued by Council;
- (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 Works or the Site;

Approval means any approval, certification, decision, or determination that the Certifier may grant or make, as part of, or as a consequence of, performing the Services in accordance with the Certifier's professional duties;

Authority means any government or governmental, semi-governmental, quasi-governmental, administrative, fiscal or judicial body, department, commission, authority, statutory authority, local authority, tribunal or agency;

BCA means the Building Code of Australia in effect at the time of the issue of the Approval.



BDC Act means the *Building and Development Certifiers Act 2018* (NSW), and BDC Regulations means the *Building and Development Certifiers Regulation 2020* (NSW);

Business Day means any day other than: a Saturday, Sunday or public holiday in New South Wales, or 27, 28, 29, 30 or 31 December;

Client Deliverables means all information, documents, and other particulars which the Certifier requires the Client to provide (or which the Client provides, or which is provided to the Certifier on behalf of the Client by any person) which are necessary for the Certifier to carry out the Services including third party inspection reports and other documents as requested by, or provided by or on behalf of the Client to, the Certifier from time to time;

Commencement Date means the date of acceptance of the relevant Fee Proposal;

Contract Sum means the amount specified in the fee proposal – Remuneration of the relevant Fee Proposal;

Due Care and Skill means such skill, care, and diligence as is generally exercised by competent members of the consulting profession performing services of a similar nature to the Services, at the time the Services are provided;

Fee Proposal means any proposal of services and associated costs, that may be broken down into the service components that the Certifier provides to the Client which forms the basis of the Certification Contract.

Insolvency Event means:

- (a) The Client informs the Certifier in writing, or creditors generally, that the Client is insolvent or is financially unable to proceed with the Agreement;
- (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 Agreement; 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;

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;

NCC means the National Construction Code in effect at the time of the issue of the Approval.

No Claim means no claim on any basis whatsoever, whether contractual, tortious (including in negligence), statutory or pursuant to any other principle of law or equity, and includes any claim for moneys (including under quantum meruit);

PC means the Client certifier under the BDC Act and the EP&A Act as applicable.

Project means the project as specified in the Fee Proposal;

Registered Body Corporate, Registered Certifier and Registered Individual each have the same meanings as are given to those terms under the BDC Act;

Services means all of the work to be performed by the Certifier identified in the Scope of Services in A, as varied in accordance with these conditions;

Site means the location specified in the completed Application Form and includes any other area or location that the Certifier may reasonably require access to in order to perform the Services;

Variation means any increase, decrease, amendment, or modification to the Services determined by the Certifier to be necessary for completing the Services (or any delay or disruption to the Services due to an event for which the Certifier is entitled to an extension of time), including those identified as potential variations under;

Variation Sum means the amount the Certifier charges the Client for work performed as a result of a Variation, calculated at the hourly rate specified in the fee proposal - Remuneration where applicable, plus Disbursements and any other amounts as otherwise reasonably determined by the Certifier (and including a reasonable amount of at least 10% 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 all law relating to work health and safety (including the *Work Health and Safety Act 2011* (NSW) (WHS Act), *Work Health and Safety Regulation 2011* (NSW) ("WHS Regulations") and any code of practice approved under the WHS Act.

In this Contract:

- (a) Words herein denoting persons shall also denote companies, and words denoting the singular shall include the plural;
- (b) Where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- (d) A reference to "includes", "including" and "include" is to be read as if followed by the words "without limitation". A reference to a person includes an individual, firm or a body, corporate or unincorporated. A reference to a party is a reference to a party to this Contract.