

EFFECT OF AGREEMENT

- 1.1 The client has engaged BuildCert Consultants Pty Ltd (the Certifier) to perform certification work as per the terms and conditions set out in this agreement.
- 1.2 This agreement supersedes and overrides any other documents or oral representations upon which the parties may seek to rely to generate any legal effect or to imply any contractual obligation.
- 1.3 The Certifier is an accredited Body Corporate certifier and is authorised to carry out the certification work which is the subject of this Agreement.

OBLIGATIONS OF THE CERTIFIER

Issuing of Construction Certificates or Complying Development Certificates:

- 2.1 The PCA or Certifier shall issue a Construction Certificate or Complying Development Certificate and endorse plans, specifications and other documentation used to determine the application:-
 - a) Once the Client pays the PCA any money owed for work associated with the issuing of a Construction Certificate or Complying Development Certificate;
 - b) Once design and construction of the Building complies with the Development Consent and the Regulations or any prescribed Complying Development criteria by either the State Government or local Council; and
 - c) The design is capable of complying with the BCA.
- 2.2 The PCA shall provide to Council a copy of the Notice of Determination within 2 days of the date of determination.
- 2.3 When the PCA issues a Construction Certificate or Complying Development Certificate, the PCA may request as many Certificates or statements from any Certifying Authority or any other party that the PCA considers necessary in addition to any Certificates listed in the Inspection Schedule.
- 2.4 The PCA shall carry out as many inspections as the PCA considers necessary in addition to those nominated in the Inspection Schedule.
- 2.5 The PCA shall issue an Occupation Certificate for the Building Works when the PCA is satisfied that:-
 - a) A Development Consent has been complied with or a Complying Development Certificate is in force for the Building Works; and
 - b) The Building Works are suitable for occupation or use in accordance with their classification under the BCA; and
 - c) The Building does not pose any danger for the occupants in the case of an Interim Occupation Certificate.
- 2.6 The PCA shall maintain an insurance policy in accordance with the Act and shall provide a copy of that policy to the client upon request.

OBLIGATIONS OF THE CLIENT

3. The client shall:-
 - 3.1 Not engage any other PCA after the PCA appointed pursuant to this contract has been engaged. Breach of this condition will entitle the PCA to recover any losses or costs of whatsoever nature that flow from such breach.
 - 3.2 Provide all relevant drawings, plans, statutory plans and documentation associated with, but not limited to, the Development Consent, the Construction Certificate or Complying Development Certificate or any Occupation Certificate, at the request of the PCA.
 - 3.3 Provide all information that the client reasonably can obtain to enable the PCA to fulfil its obligations under this agreement.
 - 3.4 Pay to the Certifier the agreed fees for determination of a Construction Certificate or Complying Development Certificate, and/or PCA services at the time an application is lodged with the certifier.
 - 3.5 Ensure that a Construction Certificate or Complying Development Certificate has been issued prior to the commencement of any works.
 - 3.6 Provide the PCA with all requested Pre-Commencement items to allow PCA appointment at least 2 days prior to commencement of any works.
 - 3.7 Ensure that all critical stage inspections are booked as specified in the Inspection Schedule.
 - 3.8 Ensure that the site is available for the PCA to carry out its contractual obligations.
 - 3.9 Use suitably qualified or experienced contractors for all aspects of the Building Work.
 - 3.10 Attend any site meetings if requested by the PCA.
 - 3.11 Comply with any Notices that the PCA issues.
 - 3.12 Ensure compliance with all conditions of any Development Consent relating to any demolition works.
 - 3.13 Provide Compliance Certificates if requested by the PCA.
 - 3.14 Provide the PCA with the date of Practicable Completion.
 - 3.15 Act in good faith, in accordance with the Act, and in a cooperative manner.

VARIATIONS TO THIS AGREEMENT

- 4.1 If the Building Works do not commence within 60 days from the date of the execution of this agreement; or
- 4.2 If any suitably qualified person used by the Client in respect of the Building Works causes a delay in the progress of the Building Works for more than 21 days; or
- 4.3 If any part of the Building Works are re-designed by the Client or the client's representative;
- 4.4 If any part of the Building is designed pursuant to a Deemed To Satisfy Provision of the BCA, and is subsequently changed by way of an Alternate Solution; or

- 4.5 If the PCA determines that additional Construction Certificates or Complying Development Certificates are required to be issued; or
- 4.6 If an amendment to the Act, the BCA or any other law that requires any aspect of the Building Works or the PCA's work to be varied; or
- 4.7 If the PCA is required to undertake more inspections than those nominated in the fee agreement or invoice; or
- 4.8 If the Client does anything that causes a delay to the Building Works or does anything that delays the ability of the PCA to carry out its obligations under this contract; or
- 4.9 If any notice is issued by the PCA, then the PCA may:-
 - a) Vary this agreement to the extent that the PCA will be able to carry out its contractual obligations; and
 - b) Increase the contract price, such increase to be made by way of Notice to the Client stating the reason/s for the increase and the amount of the increase.
- 4.10 The variation will permit the PCA to claim all costs associated with that delay as reasonably determined by the PCA.
- 4.11 The PCA reserves the right to charge the Client, based on an hourly rate, for the management of complaints where the Client has acted outside the scope of the conditions of the development consent.
- 4.11 Notice must be given to the Client in writing when the PCA becomes aware that a variation or unforeseen contingencies occur, within 21 days after the completion of that work.

TERMINATION OF AGREEMENT

- 5.1 If the Client fails to pay any money owing to the PCA after 7 days of that money becoming payable; or
- 5.2 If the Client has an execution levied against it, assigns or attempts to assign its estate for the benefit of its creditors, intends to or attempts to or makes a composition or Scheme of Arrangement with creditors, has a winding up order made against it, intends to or attempts to pass a resolution for winding up, goes into liquidation, has an Official Manager or Receiver appointed, has a Mortgagee taking possession of any part of its property, has an Administrator or a Provisional Liquidator appointed, becomes insolvent or bankrupt; or
- 5.3 If the Client breaches the contract in any respect; or
- 5.4 If it is not possible to issue the Construction Certificate or Complying Development Certificate 6 months from the date of execution of this contract; or
- 5.5 If the Building Works do not commence within 60 days from the date the Construction Certificate or Complying Development Certificate was issued; or
- 5.6 If the Client does not permit the accredited certifier to issue the Occupation Certificate within 60 days from the date of Practicable Completion; or
- 5.7 If the Building Works have commenced without the issuing of a Construction Certificate or Complying Development Certificate, then:-
 - a) The PCA may terminate this contract by sending a written Notice of Termination, stating the breach/s, to the Client. Termination will take effect as soon as the client receives the Notice of Termination.
 - b) The PCA terminates the contract, then the PCA is entitled to payment of Termination Money.
 - c) Unless the Client disputes the Notice of Termination, the Client must pay all Termination Money to the PCA within 14 days of receiving a Notice of Termination.
 - d) 5.11 If the PCA terminates the contract, the PCA is entitled to carry out a final inspection, at the owners' expense, prior to termination.
 - e) 5.12 As from the date of final inspection, the Client must indemnify the PCA for any liabilities, including but not limited to professional liability and public liability, of whatsoever nature that emanate from:-
 - a) The need to terminate this contract or the Building Contract;
 - b) Any matters of non-compliance with the Act on the part of the Client or any other contractors.

DISPUTE RESOLUTION

- 6.1 Any dispute of whatever nature to do with this contract must be referred to mediation.
- 6.2 If either party believes there is a dispute under this contract it must give Notice of the dispute to the other party.
- 6.3 The mediator must be appointed by the AAC..
- 6.4 The mediation will be invoked by either party serving Notice on the AAC and the other party within 7 days of a party being notified of a dispute.
- 6.5 Both parties must attend the mediation and must cooperate with the mediator and each other and shall give the mediator whatever the mediator requests.
- 6.6 If the mediator resolves the dispute, the resolution must be evidenced by a written agreement that is signed by the mediator and the parties.
- 6.7 If the mediation fails, then either party may take action to resolve the dispute in a court of competent jurisdiction.
- 6.8 Both parties will remunerate the mediator on a 50 / 50 % basis, regardless of any alleged fault and regardless of the outcome.
- 6.9 The AAC may request mediation funds to be placed into an AAC trust account before the mediation commences and may request payment of additional moneys from time to time until the mediation is concluded.

MISCELLANEOUS

7. Occupation Certificates
 - 7.1 A Final Occupation Certificate must be applied for, and issued, within two years of the date of the construction approval. Failure to comply with this requirement shall entitle the PCA to terminate the contract, or to charge additional fees for any inspections, including the Final inspection and issue of any Occupation Certificate.
 - 7.2 If, for whatever reason, an Occupation Certificate is not issued whether it be on account of the insolvency of the Client, the disappearance of the Client or the termination of the Contract, the PCA's responsibilities under the Contract cease forthwith. With respect to any liabilities that may be occasioned under Part 4 of the Act, the PCA will be able to give evidence that no action can be brought 10 years after the date upon which the act that evidenced the ending of the Contract occurred.
 - 7.3 Upon an application being made for a Construction Certificate or Complying Development Certificate, the Applicant (not being entitled to copyright) is taken to have indemnified all persons using the application and any accompanying documents in accordance with the Act against any claim or action in respect of breach of copyright.

ADDRESS FOR NOTICES

- 8.1 Where any Notice is to be forwarded to the client, the address for such Notice shall be the applicant address stated in the Application for a Construction Certificate or Complying Development Certificate, or to any other address that is notified in writing by the Client to the PCA.

DEFINITIONS

- The Act** means the Environmental Planning and Assessment Act 1979 (NSW). All amendments and references to the Act also mean amendment and references to the Regulations.
- AAC** means the Australian Association of Accredited Certifiers.
- Alternate Solution** has the same meaning as the term in the Building Code of Australia.
- Applicable environmental planning instrument** means the State Environmental Planning Policy or the Local Environmental Plan nominated by the Client as the instrument against which an application for a Complying Development Certificate is to be assessed.
- BCA** means the Building Code of Australia including all applicable amendments..
- Building Contract** means the contract to construct the Building Works that the client enters into with the builder.
- Building Works** means the building works for which a Construction Certificate or Complying Development Certificate is to be issued in accordance with this contract and is referred to in the Address of the Building Works and the Title Particulars of the site.
- Certificates** mean statutory and non-statutory certificates.
- Certification work** means:
 - a) the determining of an application for a development certificate.
 - b) the issue of a development certificate.
 - c) carrying out the functions of a PCA.
 - d) carrying out inspections for the purposes of Section 109E(3)(d) of the EP&A Act.
 - e) carrying out inspections under Section 22 Swimming Pools Act 1992 and issuing certificates of compliance under that Act.
- Complying Development Certificate** means a Complying Development Certificate within the meaning of the Act.
- Construction Certificate** means a Construction Certificate within the meaning of the Act.
- Contractor licence** means a licence issued under the Home Building Act 1989.
- Development Consent** means a Development Consent within the meaning of the Act.
- Inspection Schedule** means the Inspection Schedule provided in the Notice of Inspections within the meaning of the Act.
- Notice** includes any notice issued under the Act or this contract.
- Occupation Certificate** means an Occupation Certificate within the meaning of the Act.
- Owner-builder permit** has the meaning given to it by the Home Building Act 1989
- PCA** means a principal certifying authority appointed under Section 109E of the EP&A Act
- Practicable Completion** means the date the builder has completed the Building Works in accordance with the Building Contract.
- Regulations** means the Environmental Planning and Assessment Regulation 2000 (NSW) and all applicable amendments.
- Residential building work** has the meaning given to it by the Home Building Act 1989
- Termination Money** means the money owing to the PCA if the PCA terminates the contract in accordance with this contract, being money for work done (with interest if applicable) and for cost incurred (with interest if applicable) and any money that the Client would have been bound to pay to the PCA if the contract had been totally completed.

END OF TERMS AND CONDITIONS
Contract in force as at 1 September 2017

SECTION A. Type of Occupation Certificate applied for (*Cross one*)

Interim Occupation Certificate Final Occupation Certificate

SECTION B. Details of the applicant

*An application for an Occupation Certificate may only be made by a person who is eligible to appoint a PCA for the development. An application may not be made by person who will carry out the building work unless that person owns the land on which the work is to be carried out.

Name/Company

Unit/Street no. Street

Suburb or town State Postcode

Phone Mobile Email

SECTION C. Details of the Building Works

Unit/Street no. Street

Suburb or town State Postcode

Lot Section no. DP no.

Description of the building or part of the building which the application relates

If the application relates to a new use of the building or part of the building, also describe the new use.

Building classification under the Building Code of Australia, as identified by the DA or CDC

Existing classification New classification (if changed)

SECTION D. Attachments relating to the proposed development

Applicants must provide the documents listed below that are relevant to the type of development that is proposed.

Compliance Certificates (if applicable) BASIX Completion Certificate (if applicable) Fire Safety Certificate (if applicable)

SECTION E. Signature of applicant(s)

Signature of applicant(s)

Name(s)

Date

SECTION F. Delivery of application

Applications for occupation certificates must be delivered by hand, by post or transmitted electronically to the principal office of the certifying authority. Applications MAY NOT be sent by fax.

SECTION G. Date of Receipt of Application (*Office Use Only*)

This Application was received on (Insert date).