



# CERTIFICATION CONTRACT & APPLICATION FORM

<input type="checkbox"/> Principal Certifier	<input type="checkbox"/> Construction Certificate & <input type="checkbox"/> Occupation Certificate	<input type="checkbox"/> Complying Development Certificate & <input type="checkbox"/> Occupation Certificate
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## 1. APPLICANT, OWNER AND CONSTRUCTION DETAILS Date Received (Office Use Only):

**APPLICANT DETAILS** (NOTE: Applicant name and telephone are required to be listed on Neighbour Notification Letters for CDC applications)

First Name		Surname	
Street Address			
Suburb		Postcode	
Telephone		Email	

### OWNER'S DETAILS

	Owner 1	Owner 2	Owner 3	Owner 4
First Name				
Surname				
Street Address				
Suburb				
Post Code				
Telephone				
Email				

### CONSTRUCTION LOCATION

Lot No.:	Deposited Plan (DP):
House No.:	Street Name:
Suburb:	Post Code:

### THE DEVELOPMENT

Describe the proposed building works:	
Estimated cost of works:	
BCA Classification:	<input type="checkbox"/> Class 1a – Single Dwelling, Duplex, Granny Flat
	<input type="checkbox"/> Class 10a – Garage, Carport, Shed, Cabana, Awning, Deck
	<input type="checkbox"/> Class 10b – Swimming Pools, Retaining Walls, Fences

### DEVELOPMENT CONSENT

Council:	
Development Consent (DA) No.:	S4.55 Mod. No. (if applicable):
Date of Determination:	Date of Determination:

### NOMINATED BUILDER OR OWNER BUILDER

Company Name:		
Contact Person:	Telephone:	
Address:		
Suburb:	Post Code:	Mobile:
Fax:	Email:	
Builders License No.:	Owner Builder Permit No.:	

INVOICE DETAILS	
<input type="radio"/> Applicant	
<input type="radio"/> Owner	
<input type="radio"/> Other	Company Name: <span style="float: right;">ABN:</span>
	Address:
	Email: <span style="float: right;">Mobile:</span>

## 2. LETTER OF CONSENT

### PRIVACY STATEMENT

By completing this form you are enabling Alpha Building Certification Pty Ltd to collect personal information that is required by the *Environmental Planning and Assessment Act 1979*. Failure to provide this information may lead to rejection or delays in the determination of your application. At any time you have the right to access, view or correct the personal information that you have provided. This information will be stored in our records system and will be used only for the purposes for which it has been collected.

### 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 Alpha Building Certification Pty Ltd or a Registered Certifier employed by Alpha Building Certification P/L 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 Alpha Building Certification have been advised accordingly in writing.

I/we consent to the any applicable employee of Alpha Building Certification P/L to enter the subject property at any reasonable time to carry out inspections and assessments in connection with the application and associated building works. We acknowledge that these inspections may necessitate Alpha Building Certification P/L inspecting parts of the building and property outside that directly associated with the work. I/we undertake to take all necessary steps to make access available to the property to enable the inspection to be carried out.

## 2. PRINCIPAL CERTIFYING AUTHORITY APPOINTMENT AND OWNERS/APPLICANT DECLARATION

With reference to this proposed development, I/we the owners of the subject property hereby advise of our decision to appoint: Rebecca Baillie 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 this Building and Development Certification Agreement and any Annexures 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 also advise that I/we are aware of the conditions attached to all Development Consents (i.e. Local Development Consent or Complying Development Consent) applying to this project and understand our responsibilities in relation to those conditions. I/we agree to undertake any works that may be required or to provide any information requested by the Principal Certifier in order that he/she may fulfil their statutory obligations under the Act.

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 a conflict of interest becomes apparent during the assessment stage of the application my signature provided below serves as my authorisation for the transfer of the role and responsibilities of the Principal Certifier from the nominated person to one of the Registered Certifiers noted in this application form.

## HOME BUILDING ACT 1989

In signing this document, I/we confirm that *undue influence* as defined in *Section 11C (2) of the Home Building Act 1989* has not been placed on me/us by the holder of a contractor licence to appoint Alpha Building Certification Pty Ltd or any Registered Certifier listed in this Application as the Registered Certifier to carry out certification work with respect to work to be carried in relation to this project. I/we have read the contract and any documentation accompanying the contract including Fair Trading Summary and understand the roles and responsibilities of the owner and the Registered Certifier.

Applicant Signature:	X	Name:	Date:
Owner 1 Signature:	Owner 2 Signature:	Owner 3 Signature:	Owner 3 Signature:
X	X	X	X
Name:	Name:	Name:	Name:
Date:	Date:	Date:	Date:

## 4. CONSTRUCTION DATA COLLECTED FOR AUSTRALIAN BUREAU OF STATISTICS

Please complete this ABS data sheet if you are constructing a new building with a floor, wall, frame and roof. Not applicable for swimming pools and other small unenclosed structures.

### ALL NEW BUILDINGS (Please complete the following)

How many storeys (incl. underground floors) will the proposed building consist of?	<input type="radio"/> 1 <input type="radio"/> 2 <input type="radio"/> ____
What is the gross floor area of the new building?	m <sup>2</sup>
What is the gross site area 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?	<input type="radio"/> 0 <input type="radio"/> 1 <input type="radio"/> 2
How many pre-existing dwellings are there on the site already?	<input type="radio"/> 0 <input type="radio"/> 1 <input type="radio"/> 2
How many dwellings will be demolished?	<input type="radio"/> 0 <input type="radio"/> 1 <input type="radio"/> 2
If the proposal includes a new dwelling/s will it be attached to another new building?	<input type="radio"/> Yes <input type="radio"/> No
Does the site contain a Dual Occupancy? (A dual occupancy is defined as two dwellings on the one site)	<input type="radio"/> Yes <input type="radio"/> No

### MATERIALS (Please indicate the materials to be used in the construction of the new building/s)

Walls		Roof	Code	Floor	Code
Brick (Double)	<input type="radio"/> 11	Tiles	<input type="radio"/> 10	Concrete or Slate	<input type="radio"/> 20
Brick (Veneer)	<input type="radio"/> 12	Concrete or Slate	<input type="radio"/> 20	Timber	<input type="radio"/> 40
Concrete or Stone	<input type="radio"/> 20	Fibre Cement	<input type="radio"/> 30	Other	<input type="radio"/> 80
Fibre Cement	<input type="radio"/> 30	Steel	<input type="radio"/> 60	Not Specified	<input type="radio"/> 90
Timber	<input type="radio"/> 40	Aluminium	<input type="radio"/> 70	<b>Frame</b>	<b>Code</b>
Curtain (Glass)	<input type="radio"/> 50	Other	<input type="radio"/> 80	Timber	<input type="radio"/> 40
Steel	<input type="radio"/> 60	Not specified	<input type="radio"/> 90	Steel	<input type="radio"/> 60
Aluminium	<input type="radio"/> 70			Aluminium	<input type="radio"/> 70
Other	<input type="radio"/> 80			Other	<input type="radio"/> 80
Not Specified	<input type="radio"/> 90			Not Specified	<input type="radio"/> 90

# CERTIFYING AUTHORITY CONTRACT TERMS & CONDITIONS

## 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 the Registered Certifier (or Registered Body Corporate and Registered Individual) 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:
  - a. 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
  - b. Provide the Client Deliverables to the Certifier;
  - c. 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;
  - d. Coordinating other contractors or persons involved in the Project so as not to impede the Certifier's performance of the Services;
  - e. 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.
  - f. Provide the Certifier with at least forty-eight (48) hours' notice of the required critical stage inspections;
  - g. 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;
  - h. Comply with all of the Client's obligations under the WHS Legislation;
  - i. 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
  - j. 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:
  - a. Acknowledges that the Certifier, in performing the Services, is relying upon the Client Deliverables being Accurate;
  - b. Warrants to the Certifier that the Client Deliverables are Accurate;
  - c. 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;
  - d. 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:
  - a. The order of precedence set out in the definition of "Agreement" will apply;
  - b. 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:
  - a. 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
  - b. Once the Client pays the Variation Sum referred to in the previous sub-paragraph, the Certifier will perform the Variation;
  - c. 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:
  - a. 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.
  - b. 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:
  - a. 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.
  - b. 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(2).
- 6.3 Each party agrees:
  - a. To keep the other party's confidential information confidential; and
  - b. 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
- Conceptual design changes made subsequent to the issue of the Fee Proposal;
  - Allowances reasonably estimated in the Fee Proposal for particular parts of the Services being significantly exceeded;
  - Design amendments necessary subsequent to the issue of the Development Certificate. Requiring a revised Development Certificate to be assessed and issued;).
  - Staging of Development Certificates or Occupation Certificates not already allowed for as part of the Fee Proposal
  - Re-inspection's arising from non-compliant work
  - 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
  - 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. 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:

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

## **11. Time and Completion**

- 11.1 The Certifier must commence the Services by 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:
- An act, default, or omission of the Client, its agents, employees, or any other party associated with the Project (including a suspension or Variation);
  - Any change in Applicable Laws;
  - Any Client Deliverable not being Accurate; or
  - 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:
- The amount of the Contract Sum; and
  - \$100,0000
  - 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:
- The supplying of the relevant Services again; or
  - 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:
- Liability which cannot be limited at law;
  - Fraudulent or criminal conduct; or

- c. The Client has not paid any amount by the time that it is due;
  - d. 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:

- a. Breaches a material term of this Agreement;
- b. Breaches a term of this Agreement and fails to remedy that breach within a reasonable period of time not to of the Certifier's notice to so rectify;
- c. Becomes or is likely to become subject to any Insolvency Event, and fails to provide proof of its ability to comply with all of its future obligations under the 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;
- d. Fails to pay any amount owing by the date due; or
- e. Does not commence building works within 60 days from the date the approval is issued;
- f. 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;
- g. Commences building works prior to the issuing of an approval; or
- h. 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
- i. Ceases to carry on business, or if the Certifier:
- j. Is prevented from lawfully completing the Services in accordance with this Agreement due to a change in the Applicable Laws; or
- k. Deems it necessary for the Agreement to be terminated in accordance with the provisions of any Applicable Laws.
- l. 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
- m. Receives a suspension, cancellation or modification to the Certifier's Registration that disenables the Certifier to complete the Services; or
- n. Gives the Client 30 days notice that the Certifier wishes to terminate for the Certifier's convenience.
- o. Is not capable of issuing the approval within 180 days or six (6) months (whichever is the lesser) from the date of application; or
- p. 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:

- a. 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;
- b. 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:

- a. 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;
- b. If the termination is effected under clauses 14.1(1) – 14.1(9), the Certifier is entitled to its usual common law damages in respect of termination, including damages for breach and lost profit; and
- c. 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):

- a. 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
- b. 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 6.

16.2 If a Dispute arises, any party may give the other(s) a notice (Dispute Notice) specifying:

- a. Particulars of the Dispute; and
- b. The position which the party believes is correct.

16.3 If a Dispute Notice is given, the parties must procure that their respective nominated representative holding the position specified in Item 12 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: BN0007TG01MIQ

Liberty Specialty Markets

Policy Period: 16/12/2024 to 16/12/2025

## **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:

- a. 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
- b. 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:

- a. Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by law or under this 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;
- b. 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
- c. 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 specified 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.

19.12 In the event that any Occupation Certificate is requested following a period greater than 12 months after the undertaking of the first Final Inspection an additional charge will be applied and charged to the Owner of the premises, as determined by the Registered Certifier in accordance with Alpha Building Certification Pty Ltd current Management Plan in place at the time of the request of any Occupation Certificate.

19.13 Additional Fees only if required:

Additional OC inspection \$200 + GST

Additional OC \$400 + GST

Amended CC/CDC Approval \$500 – \$1500 + GST

Additional assessment of documents (hourly rate) \$250 + GST

Extra Critical stage inspection \$200 + GST

Missed Inspection \$400 + GST

Written direction (hourly rate) \$250 + GST

Compliant Investigation (hourly rate) \$250 + GST

Staged CC/CDC (per Certificate) \$250 + GST

OC issued after 2 years of approval (includes an extension to original contract expiry up to 2 years) \$1000 + GST

Updated List of Requirements \$150 + GST

## **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, semigovernmental, quasi-governmental, administrative, fiscal or judicial body, department, commission, author 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).

**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 the 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;
- (c) 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.

--END OF CONDITIONS--



## Information about registered certifiers – building surveyors and building inspectors

**Important: this is a summary document only.**

Before signing any contract for certification work, make sure you understand your obligations and what you are agreeing to. The Fair Trading website has more information about certifiers.

Under section 31(2) of the *Building and Development Certifiers Act 2018* and clause 31 of the *Building and Development Certifiers Regulation 2020*, a contract to carry out certification work must be accompanied by an applicable document made available on the website of the Department of Customer Service (which includes NSW Fair Trading)<sup>1</sup>. This is the applicable document for certification work involving a certifier registered in the classes of **building surveyor** or **building inspector**, working in either the private sector or for a local council.

This document summarises the statutory obligations of the registered certifier who will assess your development and your obligations as the applicant for the development. It also sets out the types of information that can be found on Fair Trading's online register of registrations and approvals.

### Obligations of registered certifiers

The general obligations of registered certifiers include compliance with their conditions of registration, to hold professional indemnity insurance, comply with a code of conduct and avoid conflicts of interest.

### Who does a registered certifier work for?

A registered certifier is a public official and independent regulator, registered by the Commissioner for Fair Trading.

Certifiers must carry out work in a manner that is impartial and in the public interest, even if this is not in the interests of the applicant, developer, or builder. Receiving a certificate is not guaranteed – the applicant is paying for the certifier to assess the application and determine *whether or not* a certificate can be issued.

It is a serious offence to attempt to bribe or influence a certifier, attracting a maximum penalty of \$110,000 and/or two years imprisonment.

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<sup>1</sup> Visit [www.fairtrading.nsw.gov.au](http://www.fairtrading.nsw.gov.au) and search 'certification contracts'.

## Obligations of the applicant

An applicant is the person seeking a certificate, or engaging a certifier for other certification work, under the *Environmental Planning and Assessment Act 1979*.

As an applicant, you have the following obligations:

- Appoint, and enter into a contract with, your chosen certifier.
- Pay the certifier's fees before any certification work is carried out.
- Communicate with your builder to ensure the certifier is notified when work reaches each stage. If a mandatory inspection is missed, the certifier may have to refuse to issue an occupation certificate.
- Follow any written direction issued by the certifier and provide any requested additional information to assess an application.
- Meet the conditions of any development consent and ensure the development is carried out in accordance with the approved plans.

## What does a registered building surveyor do?

Registered **building surveyors** issue certificates under the *Environmental Planning and Assessment Act 1979* (construction certificates, complying development certificates and occupation certificates), act as the **principal certifier** for development, and inspect building work.

The principal certifier will attend the site to carry out mandatory inspections at certain stages. When construction is complete, the certifier may issue an occupation certificate, which signifies that the work:

- is 'suitable for occupation' – this does not necessarily mean all building work is complete
- is consistent with the approved plans and specifications
- meets all applicable conditions of the approval.

The certifier does not manage or supervise builders or tradespeople or certify that the builder has met all requirements of the applicant's contract with the builder.

## What does a registered building inspector do?

Registered **building inspectors** carry out inspections of building work<sup>2</sup> with the approval and agreement of the principal certifier. Building inspectors are not authorised to issue certificates or be appointed as the principal certifier.

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<sup>2</sup> Building inspectors may inspect class 1 and 10 buildings under the Building Code of Australia; that is, houses, duplexes and the like; garages and sheds; and structures such as swimming pools, retaining walls and fences.

## Principal certifier enforcement powers

If the principal certifier becomes aware of a non-compliance with the development approval, the certifier must, by law, issue a direction to you and/or the builder, requiring the non-compliance to be addressed. If it is not, the certifier must notify the council which may take further action.

The certifier is also required to respond appropriately if a complaint is made about the development.

## Finding more information on certifiers

Details of the class of registration each certifier holds, their period of registration, professional indemnity insurance and disciplinary history can be found at [www.fairtrading.nsw.gov.au](http://www.fairtrading.nsw.gov.au):

- [Details of registered certifiers](#) (or search 'appointing a certifier' from the homepage)
- [Disciplinary actions against certifiers](#) (or search 'certifier disciplinary register' from the homepage).

## Questions?

The Fair Trading website [www.fairtrading.nsw.gov.au](http://www.fairtrading.nsw.gov.au) has information about certifiers, enforcement powers, how to replace a certifier and resolving concerns about a certifier:

- Search '[what certifiers do](#)' for information about a certifier's role and responsibilities.
- Search '[concerns with development](#)' for information about enforcement powers of certifiers, councils and Fair Trading, and how to resolve concerns about a certifier.

The NSW Planning Portal at [www.planningportal.nsw.gov.au](http://www.planningportal.nsw.gov.au) provides information on the NSW planning and development certification system.

Note, although Fair Trading regulates certifiers, it does not mediate in contract disputes and does not regulate the actions of councils. Visit the Fair Trading website for more information.