

Terms of Engagement Appointment of Relevant Building Surveyor

This agreement is for the provision of professional building surveying and other services whereby the following:

Owner/s: _____

Insert names of all owners as they appear on the title

Address: _____

Contact Person: _____ **Phone:** _____

Email: _____

Description of Building Work: _____

Project Address: _____

Appoints Andrew Black, registration no. BS-L 34029 to act as the Relevant Building Surveyor pursuant to the provisions of the Building Act 1993 and Building Regulations 2018.

I/We hereby confirm that the attached Conditions of Engagement on pages 2-5 have been read and understood.

Where a deposit is payable it is non-refundable.

Please ensure that all registered owners on the title sign this form.

Signed _____

Name _____

Date: ____ / ____ / ____

Signed _____

Name _____

Date: ____ / ____ / ____

Signed _____

Name _____

Date: ____ / ____ / ____

Signed _____

Name _____

Date: ____ / ____ / ____

Rev - September 2023

DANDENONG SOUTH

GEELONG

CONDITIONS OF ENGAGEMENT

1. PRIVATE BUILDING SURVEYOR FUNCTIONS

1.1 The Private Building Surveyor (PBS) functions include, as relevant for the Project:

- 1.1.1 assessing the building permit application;
- 1.1.2 the issuing of a building permit;
- 1.1.3 the carrying out of building inspections under Part 4 of the Act
- 1.1.4 the issuing of an occupancy permit under Part 5 of the Act or certificate of final inspection.

1.2 The Private Building Surveyor Functions exclude:

- 1.2.1 preparation of the design of the Project;
- 1.2.2 matters pertaining to Building Quality
- 1.2.3 any guarantee by the Building Surveyor that the Project will be granted a building permit or occupancy permit or that it will be considered compliant in any inspections undertaken.
- 1.2.4 any act or activity deemed by the Building Surveyor to be contrary to the requirements of the Act, the Building Regulations 2018 or the National Construction Code, as relevant.
- 1.3 The Client acknowledges that the Building Surveyor is subject to the requirements of the Act. As a result, the Client understands that the Building Surveyor may be required to refuse the Client's application or otherwise not grant a permit sought by the Client.
- 1.4 The Client acknowledges that the Building Surveyor may engage in any other business, occupation or activity during the Term, provided that does not detrimentally affect the performance of the Private Building Surveyor Functions.
- 1.5 If the Client engages another person to provide services substantially the same as the Private Building Surveyor Functions in respect of the Project, then the Building Surveyor may terminate this agreement.
- 1.6 Inspections carried out will be the minimum required to ensure compliance with the Act and Regulations and not supervision of all the work. Inspections will not be measured against the Guide to Standards and Tolerances. It is the responsibility of the builder to construct the building fully in accordance with the approved permit documents, good practice, guide to standards and tolerances, and the NCC
- 1.7 It is the client's responsibility to ensure that all mandatory inspections are called for and approved prior to proceeding to the next stage. Mandatory inspections are listed on the building permit and Part 12, Division 1 of the Building Regulations 2018. Additional inspections over and above those referenced in the fee proposal will be charged a minimum of \$200.00 plus GST per inspection. Inspections are priced on the basis of it being carried out by a qualified building inspector in the employ of Samuel Perna and Associates Pty Ltd. The PBS may sub-contract out Building Inspections. Inspections carried out by sub-contractors may incur additional fees. Inspections carried out specifically by the RBS will be charged out at an hourly rate of \$400.00/hr plus GST. Note: For multi-unit developments, a site visit for "x" no. of units is counted as "x" no. of mandatory inspections.
- 1.8 The Client is NOT permitted to engage a contractor or Engineer to carry out mandatory inspections. All mandatory inspections must be booked through the office of SP Building Surveyors. Where we are reliant on contract inspectors to carry out inspections, we will not be held responsible for any delays caused by the contractors.
- 1.9 The Client acknowledges and agrees that they accept the terms and conditions contained in this agreement.

2. DELIVERY OF THE PRIVATE BUILDING SURVEYOR FUNCTIONS

- 2.1 The delivery of the Private Building Surveyor Functions will occur when any Private Building Surveyor Functions are exercised for the Client.
- 2.2 The Building Surveyor may subcontract or licence all or part of its obligations under this agreement without prior notice to the Client.

3. FEE

- 3.1 The Fee payable for the Private Building Surveyor Functions is, at the Building Surveyor's discretion, either:
 - 3.1.1 as indicated on invoices provided by the Building Surveyor to the Client in respect of Private Building Surveyor Functions supplied; or
 - 3.1.2 the Building Surveyor's quoted Fee (subject to clause 3.2) which is binding upon the Building Surveyor provided that the Client shall accept the quote in writing within 60 days of receipt.
- 3.2 The Building Surveyor reserves the right to change the Fee in the event of a variation to the scope of work for the Private Building Surveyor Functions. Any variation from the plan of scheduled works or specifications (including, but not limited to, any variation due to unforeseen circumstances, or as a result of increases to the Building Surveyor in the cost of materials and labour) will be charged for on the basis of the Building Surveyor's fee proposal and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.
- 3.3 Payment of an invoice is required within 14 days of issue.
- 3.4 Payment will be made by cash, or by cheque, or by bank cheque, or by direct credit, or by any other method as agreed to between the Client and the Building Surveyor.
- 3.5 Receipt by the Building Surveyor of any form of payment other than cash does not constitute payment until that payment has been honoured, cleared or recognised by the building surveyor.
- 3.6 GST, other taxes, duties, disbursements and applicable government and council fees and charges will be added to the Fee other than where they are expressly included in the Fee.
- 3.7 Additional Services: Refer item 16 below for additional services not allowed for in the fee proposal.
- 3.8 Where fees are not paid by the client within 14 days of invoice, the PBS reserves the right to charge 10% penalty/annum which is calculated cumulatively until paid. All debt recovery fees must be borne by the client.

4. INTELLECTUAL PROPERTY AND DATA

- 4.1 Nothing in this agreement affects the Intellectual Property Rights of either party, except as set out in this clause.
- 4.2 The Client grants the Building Surveyor an unrestricted, royalty free licence to use and manipulate all Intellectual Property Rights in any Data which the Client provides to the Building Surveyor to the extent reasonably necessary for the Building Surveyor to perform the Private Building Surveyor Functions.
- 4.3 The Client warrants that any Data provided by it to the Building Surveyor will not infringe the Intellectual Property Rights of any person. The Client indemnifies the Building Surveyor against any direct loss, costs, expenses, demands or liability arising out of a claim by a third party against the Surveyor alleging that such Data infringes any such Intellectual Property Rights.

5. INDEMNITY AND EXCLUSION OF LIABILITY

- 5.1 The Building Surveyor must indemnify the Client and its employees, officers and contractors against all claims, demands, expenses, loss or damage in respect of loss or damage to any property, or the death of or personal injury to any person, caused or contributed to by the Building Surveyor, a breach by the Building Surveyor of this agreement, a wilful unlawful or negligent act or omission of the Building Surveyor, and any claim action or proceeding by a third party against the Client or its employees officers and contractors caused or contributed to by the Building Surveyor.
- 5.2 This indemnity is reduced by the extent to which the Client contributes to the event giving rise to the claim for the indemnity.
- 5.3 The Building Surveyor must perform the Private Building Surveyor Functions at its own risk in all things and releases the Client and its employees, officers, members and contractors from all claims, actions, proceedings, costs, expenses, losses, suffering, illness and liabilities incurred by the Building Surveyor or its employees, agents, subcontractors, third parties, and customers which arise from the performance of the Private Building Surveyor Functions.
- 5.4 Notwithstanding any other provision in this agreement, the Building Surveyor is not liable to the Client, nor is it required to indemnify the Client, for any loss or damage suffered by the Client or for any claim against the Client (howsoever arising) for economic, indirect or consequential losses of any kind whatsoever.
- 5.5 The Client indemnifies the Building Surveyor and its employees, officers and contractors against all claims, demands, expenses, loss or damage in respect of loss or damage to any property, or the death of or personal injury to any person, caused or contributed to by the Client, a breach by the Client of this agreement, a wilful unlawful or negligent act or omission of the Client, and any claim action or proceeding by a third party against the Building Surveyor or its employees officers and contractors caused or contributed to by the Client.
- 5.6 The Client releases and holds harmless the Building Surveyor against all claims, demands, expenses, loss or damage arising in connection with the Client's reliance on, or use of, any Private Building Surveyor Functions, including advice, given to the Client by the Building Surveyor in a manner which is not contemplated or authorised by the Act or otherwise not in accordance with any exclusions or assumptions given by the Building Surveyor.

6. MUTUAL WARRANTIES

Each party represents and warrants to the other that as at the date of this agreement:

- 6.1 all actions, conditions and things required to be taken, fulfilled and done by it in order to enable it to enter into, exercise its rights and perform its obligations under this agreement have been done; and
- 6.2 all Authorisations required for its entry into, exercise of its rights under, and performance of its obligations under this agreement have been obtained.

7. CLIENT WARRANTIES AND OBLIGATIONS

7.1 The Client warrants:

- 7.1.1 that any Data provided to the Building Surveyor is accurate and complete in all respects;
- 7.1.2 that, in performing the Private Building Surveyor Functions, the Surveyor acts with the Client's authority;
- 7.1.3 that no other person has been appointed to perform the Private Building Surveyor Functions in relation to the Project.

7.2 The Client must:

- 7.2.1 provide all information required by the Building Surveyor within the time specified by the Building Surveyor to enable the Building Surveyor to perform the Private Building Surveyor Functions;
 - 7.2.2 provide all information required by the Building Surveyor within the time specified by the Building Surveyor to enable the Building Surveyor to perform the Private Building Surveyor Functions;
 - 7.2.3 give the Building Surveyor such access to the Project and any relevant site as is required by the Building Surveyor to perform the Private Building Surveyor Functions.
 - 7.2.4 advise SP Building Surveyors in writing of any termination of any builder or building contract, pause in construction, change of builder's details within 7 days of becoming aware of such a change.
- 7.2 The client is deemed to have consented to the termination of the functions of the private building surveyor where the client has not met its obligations under clause 7.1.

8. FORCE MAJEURE

8.1 If a Force Majeure Event causes delay or failure by a party to perform its obligations under this agreement:

- 8.1.1 neither party is liable for such delay or failure; and
 - 8.1.2 all obligations of a party under this agreement are suspended until the Force Majeure Event ceases to apply.
- 8.2 A party which is, by reason of a Force Majeure Event, unable to perform any obligation or condition required by this agreement must:
- 8.2.1 notify the other party as soon as possible giving:
 - 8.2.1.1 reasonably full particulars of the Force Majeure Event;
 - 8.2.1.2 the date of commencement of the Force Majeure Event and an estimate of the time required to enable it to resume full performance of its obligations; and
 - 8.2.1.3 where possible, the means proposed to be adopted to remedy or abate the Force Majeure Event;
 - 8.2.2 use all reasonable diligence and employ all reasonable means to remedy or abate the Force Majeure Event as soon as possible;
 - 8.2.3 resume performance as soon as possible after termination of the Force Majeure Event or after the Force Majeure Event abates to an extent which permits resumption of performance;
 - 8.2.4 notify the other party when the Force Majeure Event terminates or abates to an extent which permits resumption of performance; and
 - 8.2.5 notify the other party when resumption of performance occurs.
- 8.3 If a delay or failure under this clause exceeds 60 days, either party may immediately terminate this agreement by notice to the other party.

9. TERMINATION

9.1 Pursuant to section 81 of the Act, the appointment of the PBS cannot be terminated without the prior written consent of the Victorian Building Authority. Notwithstanding, the PBS reserves the right to suspend building surveying services until such time that all outstanding fees are paid. Outstanding fees include:

- 9.1.1 All additional works contained under item 16 of this agreement.
- 9.2 Notwithstanding any other provision of this agreement, the Client must pay the Building Surveyor all outstanding fees prior to termination of this agreement, or such part of the Fee which is, at that time, unpaid.
- 9.3 Termination under this clause affects the accrued right for the Client to claim damages against the Private Building Surveyor.

10. CONFIDENTIAL INFORMATION

10.1 Subject to the Act, each party agrees that it will not use any Confidential Information of the other party or allow any Confidential Information of the other party to be used for any purpose, except for the purposes of and in the manner contemplated by this agreement, and agrees that it will:

- 10.1.1 keep confidential;
- 10.1.2 take reasonable steps to ensure that the party's officers and employees do not disclose to a third party;
- 10.1.3 maintain proper and secure custody of; and
- 10.1.4 not use or reproduce in any form, any Confidential Information belonging to the other party.

11. INSURANCE

- 11.1 The Building Surveyor must maintain at all times during the Term all insurances required by Law or this agreement.

12. DISPUTE RESOLUTION

12.1 General

- 12.1.1 A party must not commence arbitration or court proceedings (except for urgent equitable or injunctive relief) in respect of a dispute under this agreement, unless it first attempts to resolve the dispute by negotiation and mediation under this clause.
- 12.1.2 A party claiming that a dispute has arisen under this agreement must give written notice to the other party specifying the nature and details of the dispute.

12.2 Negotiation

- 12.2.1 On receipt of that notice by the other party, the parties must negotiate in good faith to resolve the dispute.
- 12.2.2 If the parties are unable to resolve the dispute within 10 Business Days, they must promptly refer the dispute:
 - 12.2.2.1 in the case of the Client to the Client's Representative; and
 - 12.2.2.2 in the case of the Building Surveyor to the Building Surveyor's Representative (where the building surveyor chooses not to represent himself).
- 12.2.3 Those persons must meet to resolve the dispute and must be authorised to resolve the dispute.

12.3 Mediation

- 12.3.1 If those persons are unable to resolve the dispute within 10 Business days of referral, a party may refer the dispute for mediation under the mediation rules of the Resolution Institute to:

- 12.3.1.1 a mediator agreed by the parties; or
- 12.3.1.2 if the parties are unable to agree a mediator within five Business Days, a mediator nominated by the Resolution Institute.
- 12.3.2 The role of a mediator is to assist in negotiating a resolution of the dispute. A mediator may not make a decision that is binding on a party unless that party has agreed in writing.
- 12.3.3 Any information or documents disclosed by a party under this clause:
 - 12.3.3.1 must be kept confidential; and
 - 12.3.3.2 may not be used except to attempt to resolve the dispute.
- 12.3.4 Each party must bear its own mediation costs. The parties must bear equally the costs of any mediator.

12.4 Performance

- If possible, each party must perform its obligations under this agreement during negotiations, mediation and arbitration proceedings.

13. MISCELLANEOUS

13.1 Entire agreement

This agreement:

- 13.1.1 constitutes the entire agreement between the parties about its subject matter;
- 13.1.2 supersedes any prior understanding, agreement, condition, warranty, indemnity or representation about its subject matter.

13.2 Waiver

A waiver of a provision of or right under this agreement must be in writing signed by the party giving the waiver and is effective only to the extent set out in the written waiver.

13.3 Exercise of power

- 13.3.1 The failure, delay, relaxation or indulgence by a party in exercising a power or right under this agreement is not a waiver of that power or right.
- 13.3.2 An exercise of a power or right under this agreement does not preclude a further exercise of it or the exercise of another right or power.

13.4 Survival

Each indemnity, obligation of confidence and other term capable of taking effect after the expiration or termination of this agreement, remains in force after the expiration or termination of this agreement.

13.5 Governing law

This agreement is governed by the law in Victoria and is subject to the jurisdiction of the Courts in Victoria.

13.6 Consumer Law

- 13.6.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the *Competition and Consumer Act 2010* (Cth) or the

Australian Consumer Law and Fair Trading Act 2012 (Vic) (including any substitute to those Acts or re-enactment thereof), except to the extent permitted by those Acts where applicable.

13.6.1 Where the Client buys Private Building Surveyor Functions as a consumer these terms and conditions shall be subject to any laws or legislation governing the rights of consumers and shall not affect the consumer's statutory rights.

14. NOTICES

14.1A notice, demand, consent, approval or communication under this agreement (Notice) must be:

14.1.1 in writing, in English and signed by a person authorised by the sender; and

14.1.2 hand delivered or sent by prepaid post or email to the recipient's address or email address specified in the Schedule, as varied by any Notice given by the recipient to the sender.

14.2A Notice is deemed to be received:

14.2.1 if hand delivered, on delivery;

14.2.2 if sent by prepaid post, two Business Days after posting (or seven Business Days after posting if posting to or from a place outside Australia);

14.2.3 if sent by email, at the time deemed to be the time of receipt under the *Electronic Transactions (Victoria) Act 2000 (Vic)* or the *Electronic Transactions Act 1999 (Cth)* if the notice was being given under a law of the Commonwealth of Australia.

However, if the Notice is deemed to be received on a day that is not a Business Day or after 5:00pm, the Notice is deemed to be received at 9:00am on the next Business Day.

15. PRIVATE BUILDING SURVEYOR'S HOURS OF OPERATION

15.1 Hours of operation are between 9.00am and 5.00pm Monday to Friday. Closed on Public Holidays and between Friday closest to 20 December - Monday closest to 10 January each year. (Dates which change depending upon year)

16. ADDITIONAL SERVICES BY PRIVATE BUILDING SURVEYOR

The PBS shall not be obliged to proceed with additional services which are not described in the fee proposal until a request is received from the client and agreed to by the PBS. Our hourly rate of \$400.00 plus GST per hour will apply for any additional work requested. A surcharge of 5% per annum applies to all hourly rates where invoices are generated after the date of signing this agreement. Additional services include those services requested by the client and also additional services described below:

16.1 The following additional services do not form part of this fee proposal and will be subject to an hourly rate of \$400.00/hr plus GST:

16.1.1 The change in scope of the services specified in the fee proposal, and/or

16.1.2 Changes to the design of the building, and/or

16.1.3 Circumstances where requested information is presented to the RBS in a manner which requires more than one re-assessment of documents, and/or

16.1.4 Instances where the Act or Regulations require the RBS to proceed with such further work in order to complete the obligations and functions of the RBS, the RBS shall be entitled to deliver an account to the client for such additional work, and/or

16.1.5 General advice during construction phase, and/or

16.1.6 Matters relating to protection of adjoining properties, and/or

16.1.7 Assessment and acceptance of Codemark, Certmark and other accredited products, and/or

16.1.8 Certification or advice in relation to alternative design solutions, dispensations, modifications, and/or

16.1.9 Matters relating to written directions to fix building work, building notices, building orders or other enforcement provisions, and/or

16.1.10 Attendance at the Building Appeals Board and/or

16.1.11 Certification of structural design, and/or

16.1.12 Review of performance assessments charged at an hourly rate of \$400.00/hr plus GST per regulation, at a minimum of 2 hours. Performance Assessments must be carried out by a third-party building consultant unless otherwise approved in writing by the PBS, and/or

16.1.13 Complaints from neighbours or general public in connection with the building works whether prior, during or after the completion of the building works. In the event that SP Building Surveyors has proven the building permit has been issued strictly in compliance with the Act and relevant Regulations, and a third-party lodges a complaint against our professional standards, we reserve the right to claim costs for time taken to settle the complainant and/or the responsible authority. Under these circumstances, the client is required to pay for time incurred by SP Building Surveyors in justifying to this 3rd party or the responsible authority that we have carried out our professional duties in accordance with the Act and relevant Regulations. Time will be charged at our hourly rate of \$400.00 plus GST per hour, and/or

16.1.14 Disputes between a builder and client which require input from the RBS, and/or

16.1.15 Matters relating to the change of use of the building subject to Regulation 229 (including inspections) is a minimum \$1,500.00 plus GST minimum or hourly rate.

16.1.16 Matters relating to works being more than 50% subject to Regulation 233 (including inspections) is a minimum \$1,500.00 plus GST minimum or hourly rate.

16.1.17 Stage building permit fees are a minimum of \$1,500.00 plus GST per stage.

16.1.18 Combined allotment statement is a minimum of \$1,200.00 plus GST or an hourly rate.

16.1.19 Notice of imminent lapse of building permit is \$300.00 plus GST.

16.1.20 Extension of time for a building permit is \$800.00 plus GST for a period of 6 months.

16.1.21 Referral of written direction to fix building work to Victorian Building Authority (VBA) is \$600.00 plus GST minimum or hourly rate

16.1.22 Transfer of functions. Completion of form \$80.00 plus GST.

16.1.23 Building Notices and Building Orders will be charged a minimum fee of \$1,500 plus GST. In the case of refusal of a mandatory building Inspection, a written direction to fix building work will be sent to the owner and builder and in the event of no response within an appropriate time (7, 14 or 30 days) the written direction to fix building will be referred to the VBA as per the requirements of the Act. At this time a Building Notice will also be issued by the PBS. The PBS reserves the right to charge an hourly rate for all work directions and subsequent correspondence relating to a written direction to fix building work. The hourly rate charged for following up of written directions will be \$400/hr plus GST. This includes preparation and attendance at the Building Appeals Board or other Board, Panel, or Courtroom or any other enforcement meeting or procedure.

16.1.24 Method of calculation

i. Receipt of written material by email

a. First page (including copy of 1st page) \$15.00 plus GST

b. Subsequent pages \$2.00 plus GST

ii. Perusal of emails

a. Hourly rate as per fee schedule calculated in 10 minute blocks

iii. Acknowledgment of email or reply

a. Hourly rate as per fee schedule or \$30 minimum plus GST

iv. Site inspection

a. Hourly rate as per fee schedule

b. Time is based upon travel from Dandenong South office to site and back to Dandenong South office from site.

c. A minimum fee of \$400.00 plus GST

17. THE BUILDING PERMIT & THE PBS

17.1 The building permit issued will be an assessment of the drawings for compliance with the Act and Regulations and not the serviceability, quality or functionality of the work approved by the permit. One (1) electronic copy of the building permit and stamped plans will be provided in lieu of 2 hard copies unless 3 hard copies are provided by the client to the PBS. This appointment of a PBS is limited to ensuring the work carried out complies with the Act and Regulations that are applicable at the time of engagement or as otherwise agreed in writing. The PBS is responsible for the carrying out of mandatory inspections that will be listed on the building permit. The client is responsible to ensure that the PBS is given adequate notification for inspection and shall ensure that works do not continue beyond the notification stage until the inspection is approved. It is the responsibility of the client to ensure that the building permit remains valid. Full building permit fees will be payable for any building permit which lapses. Note: Fees will be calculated at the time of renewal or where the works are complete and no certificate of occupancy or certificate of final inspection has been issued. The following fees will be payable:

17.1.1 Review of file - Hourly rate of \$400/hr plus GST

17.1.2 \$2,500.00 plus GST fixed fee to issue the occupancy permit or certificate of final inspection plus,

17.1.3 A minimum of \$1,000.00 plus GST per year since the date of lapse of the building permit.

17.1.4 Payment of any outstanding fees plus a penalty rate of 10% per year calculated cumulatively.

17.2 It is an offence under Section 16 of the Building Act 1993 to carry out building works without first having obtained a building permit. It is the owner's responsibility to ensure that no works are commenced until a building permit has been issued by this office. Samuel Perna and Associates Pty Ltd accept no

responsibility for any building works which have commenced prior to a building permit being issued.

17.3 The PBS reserves the right to refuse to issue an Occupancy permit or certificate of final inspection where the building permit was issued in excess of 4 years from the date of request of issue of certificate of final inspection or Occupancy permit.

17.4 The Client agrees to complete all building works authorised under the Building Permit within the prescribed timeframe permitted.

17.5 The Client accepts responsibility for non-completion of building works within the prescribed timeframe as authorised by the building permit.

17.6 The Client is responsible to ensure that the Certificate of final inspection or Occupancy permit is issued by the PBS within the timeframe authorised by the validity of building works on the building permit.

17.7 It is a requirement of the Building Regulations that documents be prepared by a registered building practitioner (RBP). When calculating our fees, we have assumed that all documents are to be prepared by suitably qualified RBP's in the correct category and class. Acceptance of documents prepared by owner builders or builders dramatically increases the exposure and risk of SP Building Surveyors. As such, we will not accept a building permit application where the working drawings have not been prepared by a RBP unless specifically requested in writing by the applicant and agreed to in writing by SP Building Surveyors. A substantial increase in fees will be payable for acceptance of any documents prepared by an owner or builder who is not a RBP in the correct category or class.

17.8 In the event that a builder enters into Liquidation, Samuel Perna and Associates and the relevant building surveyor:

17.8.1 Accept no responsibility for matters or costs resulting from the inability to obtain insurance for unfinished works, and

17.8.2 Will not be held liable for the failure to provide a final list of items required in order to issue a Certificate of final inspection or Occupancy permit.

17.9. In the event that the building works are not completed within the mandatory time frame as authorised by the building permit and where the applicant has failed to extend the building permit, Samuel Perna and Associates Pty Ltd as the Relevant Building Surveyor will not be liable for any loss in value of the asset as a result of inability to obtain a certificate of final inspection, occupancy permit or warranty Insurance (in the event of owner builders).

18. DEFINITIONS AND INTERPRETATION

18.1 Definitions

In this agreement:

18.1.1 **Act** means the *Building Act 1993* (Vic)

18.1.2 **Authorisation** means any authorisation, agreement approval, licence, permit, consent, qualification, accreditation, filing, registration, certificate, resolution, direction, declaration or exemption and any renewal and variation of them by or with a Governmental Agency.

18.1.2 **Building Quality** means any matter that could or might be a defective item with respect to any contract between the Client and another party which defines the standards of work to be achieved pursuant to that contract with respect to the Project but does not include matters which relate to conformance by the Project to technical standards including the National Construction Code.

18.1.3 **Building Surveyor** means the person identified as such on the front page of this agreement.

18.1.4 **Business Day** means a day which is not a weekend or public holiday in Victoria.

18.1.5 **Confidential Information** means any documentation or information of a confidential nature supplied by either party to the other in connection with this agreement and includes all scientific, technical, manufacturing, performance, sales, financial, commercial, contractual or marketing information possessed by a party but excludes any documentation or information which has been previously published or otherwise disclosed to the general public or is required to be disclosed by law.

18.1.6 **Data** means information directly or indirectly relating to this agreement and/or the Private Building Surveyor Functions and includes software (including source code and object code versions) manuals, diagrams, graphs, charts, projections, specifications, estimates, records, concepts, documents, accounts, plans, formulae, designs, methods, techniques, processes, supplier lists, price lists, market research, information, correspondence, letters, warranties and manufacturer's information and data sheets, personal identification numbers (PINS) and access codes for security and alarm systems, and papers of every description including all copies of and extracts from them.

18.1.7 **Fee** is defined in clause 3.

18.1.8 **Force Majeure Event** means an event beyond the reasonable control of the parties which precludes a party from performing on time an obligation under this agreement. Such circumstances include:

18.1.8.1 acts of God, lightning strikes, earthquakes, floods, storms, explosions, fires and any natural disaster; and

18.1.8.2 acts of war, acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage and revolution.

18.1.9 **Intellectual Property Rights** includes property and rights in respect of or in connection with copyright (including future copyright and rights in the nature of or analogous to copyright), know-how, trade mark, service mark, design, inventions (including patents), semi-conductor or circuit layout rights, trade, business or company names, or other proprietary rights, or any rights to registration of such rights (including all renewals and extensions) whether created before or on or after this agreement.

18.1.10 **law** means any statute, regulation, order, rule, subordinate legislation or other document enforceable under any statute, regulation, order, rule or subordinate legislation.

18.1.11 **Private Building Surveyor Functions** is defined in Clause 1 to this agreement.

18.1.12 **Term** means the period starting on the date that the client accepts the terms and conditions of this agreement as per clause 1 and concluding upon the completion of the Private Building Surveyor Functions or termination of this agreement, whichever occurs first.

18.2 Interpretation

In this agreement, unless the context otherwise requires:

18.2.1 headings do not affect interpretation;

18.2.2 singular includes plural and plural includes singular;

18.2.3 words of one gender include any gender;

18.2.4 a reference to a party includes its executors, administrators, successors and permitted assigns;

18.2.5 a reference to a person includes a partnership, corporation, association, government body and any other entity;

18.2.6 a reference to this agreement includes any schedules and annexures to this agreement;

18.2.7 an agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;

18.2.8 an agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;

18.2.9 a reference to legislation includes any amendment to it, any legislation substituted for it, and any subordinate legislation made under it;

18.2.10 a provision is not construed against a party only because that party drafted it;

18.2.11 an unenforceable provision or part of a provision may be severed, and the remainder of this agreement continues in force, unless this would materially change the intended effect of this agreement;

18.2.12 the meaning of general words is not limited by specific examples introduced by 'including', 'for example' or similar expressions;

18.2.13 an expression defined in the Act has the meaning given by that Act at the date of this agreement;

18.2.14 an expression defined in the *Corporations Act 2001* (Cth) has the meaning given by the Act at the date of this agreement; and

18.2.15 an expression defined in the *A New Tax System (Goods and Service Tax) Act 1999* (Cth) has the meaning given by that Act at the date of this agreement. (Cth) has the meaning given by that Act at the date of this agreement.

18.2.14 an expression defined in the *Corporations Act 2001* (Cth) has the meaning given by the Act at the date of this agreement; and

18.2.15 an expression defined in the *A New Tax System (Goods and Service Tax) Act 1999* (Cth) has the meaning given by that Act at the date of this agreement. (Cth) has the meaning given by that Act at the date of this agreement.