

APPOINTMENT OF RELEVANT BUILDING SURVEYOR (RBS)



To (Building Surveyor) **iPermit Building Approvals Pty Ltd**

I/we: (insert below)

Owner(s)

Postal Address of Owner

Postcode

Email

Telephone

Being the title holders/ landowners of: (insert below)

Property details

Number	Street/Road	City/suburb/town	Postcode
Lot/s	LP/PS	Volume	Folio
Crown allotment	Section	Parish	County

Acknowledge that I/we are appointing iPermit Building Approvals Pty Ltd to undertake the role of Relevant Building Surveyor (RBS) including all functions and services necessary under the Building Act 1993 in relation to my/our proposed development and hereby appoint any Registered Building Surveyor employed by iPermit Building Approvals:

Alternatively, nominate specific Relevant Building Surveyor: (if applicable)

Name	Category	Registration No.
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To be the RBS for the proposed development works as described below:

Nature of building work

Construction of a new building

☐

Demolition of a building

☐

Extension to an existing building

☐

Re-erection of a building

☐

Construction of swimming pool or spa

☐

Alterations to an existing building

☐

Removal of a building

☐

Change of use of an existing building

☐

Construction of swimming pool or spa barrier

☐

Description of building works

OWNERS CONSENT

- (a) By executing this Agreement/Contract, the Owner(s)/Person(s) having benefit of the consent declares that they have freely chosen to engage iPermit Building Approvals (IBA) Pty Ltd, have read this Contract and any document accompanying the contract and understands the roles and responsibilities of the person and the Building Surveyor,
- (b) The Owner(s) give authority to iPermit to correspond with the nominated builder/ applicant/ agent in relation to the application. iPermit may also correspond directly with the Owner(s), where the matter is significant, or where iPermit considers it appropriate.
- (c) I/We hereby request a Building Surveyor of iPermit Building Approvals Pty Ltd to determine my/our Application for Building Permit and Occupancy Permit or any other application, variation or extension required or related to this development.
- (d) I/We understand that iPermit Building Approvals Pty Ltd may have other registered building surveyors and inspectors, or external contractors (registered practitioners) engaged to carry out some of the inspections associated with this development.
- (e) The Client must pay the Contract Sum within two (2) Business Days of entry into this Agreement and in any event, prior to the Building Surveyor commencing the Services. (iPermit Building Approvals reserves the right to withhold the issue of any documentation or materials until such time as all outstanding invoices have been paid in full.)
- (f) 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 Building Surveyor nor is any representation, warranty or thing made or done by the Building Surveyor to be inferred, incorporated or implied into the Agreement.
- (g) I/We declare that all the information provided is true and accurate, and there are no fire safety performance solutions appurtenant to this project,
- (h) I/We have read iPermit Building Approvals Pty Ltd, Contract for Certification Work (Annexure A), Agreement Items (Annexure B) and Scope of Services (Annexure C).
- (i) I/We consent to transfer of the Building Surveyor to another Building Surveyor where they are unable to fulfil duties or employment ceases.
- (j) The Client agrees that iPermit Building Approvals reserves the right to withhold fee equal to fifty percent (50%), plus costs, of the originally invoiced fee for time and services where the Owner(s) cancel or do not proceed with this agreement.
- (k) By signing this agreement/contract electronically or manually, I/we agree to be legally bound by the terms of this agreement.
- (l) I/We agree to the execution of Contract and that to the best of my/our knowledge, no private building surveyor (RBS) or municipal building surveyor (RBS) has previously been appointed, accepted appointment, or commenced carrying out RBS functions

OWNER(S) SIGNATURE(S)

I/we understand that a builder who has entered into a major domestic building contract, or who acts or proposes to act as a domestic builder in relation to domestic building work, or a related person to that builder, must not appoint a private building surveyor on behalf of the owner of the land on which the domestic building work is to be carried out.

I/we declare that we understand the role of the Relevant Building Surveyor and understand my/our obligation as the owner(s) in relation to notification of increase to contract price of at least \$15,625 or more to the Victorian Building Authority within twenty-eight (28) day of becoming aware of the increase for a revised VIC Levy Payment. *(if applicable)*

I/we understand the legislative requirements in relation this Application (as detailed above) and give my/our **CONSENT** for an Applicant or Builder to apply for all necessary applications appurtenant to this Contract/Agreement (including the Building Permit Application) and lodge all necessary information and documentation on my/our behalf. *(If applicable)*

Name(s):

Signature:

Name(s):

Signature:

Date this agreement was made on:

**Please ensure that this application is completed to its entirety – whereby incomplete, this form will be returned to the owner and no further processing*

ANNEXURE A – CONTRACT

GENERAL CONDITIONS

1. Definitions and interpretation

Accurate means:

- (a) accurate, complete, correct and suitable for use by the Building Surveyor;
- (b) free from any Ambiguity and compliant with all Applicable Laws; and
- (c) prepared and issued by a person or persons competent, experienced, qualified and suitable;

Agreement means the following documents, in order of precedence:

- (a) these General Terms (including "Details" and "Execution" sections);
- (b) Agreement Items (Annexure B)
- (c) Development Particulars (as detailed in Nature of building works / Description of Building Works);
- (d) Scope of Services (Annexure C);
- (e) Special Conditions (N/A)
- (f) any other Contract Documents specified in Item 2;

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 Building Permits and Planning Permits 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 Building Surveyor may grant or make, as part of, or as a consequence of, performing the Services in accordance with the Building Surveyor's professional duties;

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

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

Client Deliverables means all information, documents, and other particulars which the Building Surveyor requires the Client to provide (or which the Client provides, or which is provided to the Building Surveyor on behalf of the Client by any person) which are necessary for the Building Surveyor 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 Building Surveyor from time to time;

Commencement Date means the date specified in Item 1;

Contract Sum means the amount specified in Item 3;

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;

Insolvency Event means:

- (a) the Client informs the Building Surveyor 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;

Item means an agreement item in Annexure B;

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;

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);

Project means the project specified in Item 4;

Registered Building Surveyor each have the same meanings as are given to those terms under the Building Act 1993;

Services means all of the work to be performed by the Building Surveyor identified in the Scope of Services in Annexure C, as varied in accordance with the these General Conditions;

Site means the location specified in Item 4, and includes any other area or location that the Building Surveyor may reasonably require access to in order to perform the Services;

Special Conditions means the special conditions specified in N/A

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

Variation Sum means the amount the Building Surveyor charges the Client for work performed as a result of a Variation, calculated at the hourly rate specified in Item 7 where applicable, plus Disbursements

and any other amounts as otherwise reasonably determined by the Building Surveyor (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. ("WHS Regulations") and any code of practice approved under the WHS Act.

In this Contract:

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

2. Services

- 2.1 The Building Surveyor agrees to perform the Services with Due Care and Skill, and in accordance with all requirements of the Building Act 1993 and Building Regulations 2018, including Code of Conduct.
- 2.2 The Services will be performed by a Registered Building Surveyor specified in Item 6, or employed by iPermit Building Approvals.
- 2.3 The Client acknowledges that any Approval is at the Building Surveyor's discretion, subject to the Building Surveyor 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 Building Surveyor, will be made.
- 2.4 If the Services involve carrying out functions under the Building Act 1993 and Building Regulations 2018, particulars of the relevant development are provided in the Application for Building Permit (Building Permit Application Form)

3. Client Obligations

- 3.1 The Client must, at its own cost, promptly:
 - (a) give the Building Surveyor safe access to the Site as and when the Building Surveyor requires, to enable the Building Surveyor to perform the Services (and notify the Building Surveyor of any changes to that access); and
 - (b) provide the Client Deliverables to the Building Surveyor;
 - (c) coordinating other contractors or persons involved in the Project so as not to impede the Building Surveyor's performance of the Services;
 - (d) notify the Building Surveyor of anything which the Client is aware of or becomes aware of which could materially affect the Building Surveyor's performance of the Services, including any Authority requirements, any design changes, or any defects in the works the subject of the Services;
 - (e) comply with all of the Client's obligations under the WHS Legislation;
 - (f) notify the Building Surveyor 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
 - (g) otherwise cooperate with the Building Surveyor and do all other things reasonably necessary so that the Building Surveyor is able to perform the Services.

- 3.2 The Building Surveyor is not liable for any Loss or delay that may result from the Client's failure to comply with this clause 3.

4. Client Deliverables

4.1 The Client:

- (a) acknowledges that the Building Surveyor, in performing the Services, is relying upon the Client Deliverables being Accurate;
- (b) warrants to the Building Surveyor that the Client Deliverables are Accurate;
- (c) has No Claim against the Building Surveyor (or any employee of the Building Surveyor), 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.

5. Ambiguities

- 5.1 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 Building Surveyor may resolve the Ambiguity in whichever way the Building Surveyor 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 Building Surveyor 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.

6. Legislative changes

- 6.1 Each party must perform its obligations under this Agreement in compliance with all Applicable Laws.
- 6.2 Subject to clause 6.3, 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 Building Surveyor 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 subparagraph, the Building Surveyor 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 (b) above.
- 6.3 The Client will have No Claim against the Building Surveyor as a result of or in any way connected with any change in Applicable Laws, which occurs after the Building Surveyor has ceased to perform the Services.

7. Intellectual property and Confidentiality

7.1 Building Surveyor's intellectual property:

- (a) Subject to the Client complying with its obligations under the Agreement, the Building Surveyor grants to the Client a non-exclusive, royalty-free, revocable license to use the intellectual property in any document which the Building Surveyor gives to the Client (that was prepared by the Building Surveyor 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 7.1 vests in the Building Surveyor.

7.2 Client's intellectual property:

- (a) The Client grants the Building Surveyor an unrestricted, royalty free license to use the intellectual property in any Client Deliverables to the extent reasonably necessary for the Building Surveyor 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 Building Surveyor against any Loss arising from a breach of the warranty in clause 7.2(b).
- 7.3 Each party agrees:
- (a) to keep the other party's confidential information confidential; and
 - (b) to not disparage the other party.

8. Payment

- 8.1 The Client must pay the Building Surveyor the Contract Sum within 2 Business Days of entry into this Agreement and in any event, prior to the Building Surveyor commencing the Services.
- 8.2 The Building Surveyor must issue a valid tax invoice to the Client in respect of the Contract Sum.
- 8.3 The Building Surveyor reserves the right to withhold the issue of any certificates until such time as all outstanding invoices have been paid in full.
- 8.4 The Client acknowledges that payment of the Contract Sum does not guarantee or imply that any certification will be issued by the Building Surveyor; rather the Building Surveyor can only provide certifications to the extent the conditions for certification are satisfied.

9. Variations and Variation Sum

- 9.1 If, in the Building Surveyor's reasonable opinion, a Variation has occurred or is required, the Building Surveyor must provide the Client written notice of such Variation.
- 9.2 Within 2 Business Days of the date the Building Surveyor provides notice under the previous subclause, the Client must provide written notice to the Building Surveyor if it disputes the Variation, and the reasons for that dispute.
- 9.3 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 Building Surveyor may suspend the Services under clause 15.1(d).
- 9.4 The Client acknowledges that Variations may include those specified in Annexure C (Scope of Services).
- 9.5 If, in the Client's reasonable opinion, a Variation is required, the Client must provide the Building Surveyor with written notice providing details of the proposed Variation to the Building Surveyor, at least 5 Business Days prior to the Building Surveyor being required to perform work in relation to the Variation. If the Building Surveyor agrees that a Variation is required, the work required in relation to the Variation is deemed to form part of the Services.
- 9.6 The Building Surveyor 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.
- 9.7 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.

10. Disbursements

- 10.1 The Building Surveyor may invoice the Client for the cost of any disbursements, plus a reasonable margin for profit and overheads, including as listed in Item 9.
- 10.2 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.

11. Overdue Amounts

- If the Client does not pay the Building Surveyor in accordance with this Agreement then, without prejudice to any other rights or remedies the Building Surveyor may have:
- (a) the Building Surveyor may charge the Client interest from the day after the relevant invoice's payment due date, until payment is made, at the rate specified in Item 8;
 - (b) the Client indemnifies the Building Surveyor for its costs and expenses in recovering.

12. Time and Completion

- 12.1 The Building Surveyor must commence the Services by the Commencement Date, and complete them within a reasonable period of time.
- 12.2 The Building Surveyor is entitled to an extension of time for completing the Services, if the Building Surveyor is delayed in performing the Services by:
- (a) an act, default, or omission of the Client, its agents, employees, or any other party associated with the Project (including a suspension or Variation);
 - (b) any change in Applicable Laws;
 - (c) any Client Deliverable not being Accurate; or
 - (d) any other act, matter, event or thing beyond the Building Surveyor's reasonable Control.
- 12.3 The Building Surveyor is not liable for any delay to the Project caused by the Building Surveyor completing the Services in accordance with this clause 12.

13. Insurance

The Building Surveyor must, maintain the insurances specified, for any amounts and periods specified, in Item 10.

14. Liability Limit

- 14.1 The Building Surveyor'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:
- (a) the amount of the Contract Sum; and
 - (b) \$100,000.
- 14.2 If, and to the extent that, clause 14.1 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 Building Surveyor's liability for a breach of a condition or warranty is limited to:
- (a) the supplying of the relevant Services again; or
 - (b) paying the cost of having the Services supplied again.
- 14.3 The Building Surveyor'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.
- 14.4 Clauses 14.1 and 14.3 do not limit or exclude the Building Surveyor's liability in respect of claims, actions, costs, losses, damages or liability arising due to:
- (a) liability which cannot be limited at law;
 - (b) fraudulent or criminal conduct; or
 - (c) any matters listed in Item 11.

15. Suspension

- 15.1 The Building Surveyor may suspend the Services for so long as:
- (a) the Building Surveyor considers that there is any risk to health or safety in providing the Services or entering any areas of the Site required to perform the Services (including because any persons on the Site are abusive or threatening);

- (b) the Client fails to provide any Client Deliverables required by the Building Surveyor;
 - (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).
- 15.2 The Client indemnifies and holds harmless the Building Surveyor for any additional costs or expenses the Building Surveyor incurs in relation to a suspension under this clause 15, if the suspension was not caused solely by an act or omission of the Building Surveyor.

16. Termination

- 16.1 The Building Surveyor 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 Building Surveyor'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) ceases to carry on business, or if the Building Surveyor:
 - (f) is prevented from lawfully completing the Services in accordance with this Agreement due to a change in the Applicable Laws; or
 - (g) becomes aware of any conflict of interest, which conflict may prevent the Building Surveyor from complying with relevant laws or regulations if the Building Surveyor continues to perform the Services, irrespective whether such conflict existed before or after entry into this Agreement;
 - (h) gives the Client 30 days notice that the Building Surveyor wishes to terminate for the Building Surveyor's convenience.
- 16.2 The Client may terminate this Agreement by giving the Building Surveyor written notice to that effect if the Building Surveyor 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.
- 16.3 If the Building Surveyor has an entitlement to terminate the agreement it may exercise that right with or without notice, in the Building Surveyor's absolute discretion.
- 16.4 If the Client receives a notice from the Building Surveyor that:
- (a) the Building Surveyor has terminated the Agreement - the Client must as soon as possible: appoint a replacement Building Surveyor to take over the certification role comprised in the Services; advise the Building Surveyor of that replacement; and notify all relevant Authorities of that replacement;
 - (b) the Building Surveyor will terminate the Agreement - the Client must, as soon as possible and in any event prior to the termination taking effect: appoint a replacement Building Surveyor to take over the certification role comprised in the Services from the date of termination of the Agreement; advise the Building Surveyor of that replacement; and notify all relevant Authorities of that replacement.
- 16.5 On termination of this Agreement:
- (a) any amounts owing to the Building Surveyor in respect of the Services up to and including the date of termination (together with any other amounts which the Building Surveyor 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 16.1(a) - 16.1(f), the Building Surveyor 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.

17. Force Majeure

- 17.1 The Services may be totally or partially suspended by the Building Surveyor during any period in which the Building Surveyor may be prevented or hindered from performing the Services (or any part of the Services) through any circumstances outside the Building Surveyor's reasonable control or where such performance is rendered materially more expensive by such circumstances.
- 17.2 Circumstances beyond the Building Surveyor'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.
- 17.3 The Building Surveyor incurs no liability to the Client in respect of such suspension.

18. Dispute Resolution

- 18.1 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 18.
- 18.2 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.
- 18.3 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.
- 18.4 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 Building Surveyor may elect that the Dispute must be referred to mediation in which case:
- (a) the mediation will be in accordance with, and subject to, the Mediation Rules of the Resolution Institute;
 - (b) the parties must participate in the mediation genuinely and in good faith.
- 18.5 This clause 18 will survive termination, completion, or expiration of this Agreement.

19. GST

- 19.1 "**GST Law**" has the meaning in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).
- 19.2 Words or expressions used in this clause 19 which are defined in GST Law have that defined meaning unless otherwise provided.
- 19.3 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).

20. General

- 20.1 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.
- 20.2 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 Building Surveyor nor is any representation, warranty or thing made or done by the Building Surveyor to be inferred, incorporated or implied into the Agreement.
- 20.3 This Agreement may only be varied by a document signed by or on behalf of each party.
- 20.4 The Client must not assign or novate this Agreement without the Building Surveyor's prior written consent.
- 20.5 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.
- 20.6 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.
- 20.7 A party's rights and obligations do not merge on completion of any transaction under this agreement.
- 20.8 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.
- 20.9 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.
- 20.10 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) a waiver given by a party under this Agreement is only effective and binding on that party if it is given or confirmed in writing by that party; and
 - (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.
- 20.11 This Agreement is governed by the law specified in Item 13. 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 20.11.

ANNEXURE B – AGREEMENT ITEMS

Item 1	Commencement Date (Clause 1)	Date as identified on Appointment Building Surveyor Form															
Item 2	Additional Contract Documents (Clause 1)	All documentation provided to iPermit Building Approvals appurtenant to the Project.															
Item 3	Contract Sum (Clause 1)	\$ - As per fee schedule or written quotation provided (or as incorporated in Builders Contract)															
Item 4	Project (Clause 1)	The development, construction, or other related work which the Client requires the Services in relation to the appurtenant Building Permit Application.															
Item 5	Site (Clause 1)	As identified in 'Property Details' of this Appointment.															
Item 6	Building Surveyor details (Clause 2.2)	<table><tr><td colspan="2">☒The Building Surveyor is a Registered Building Surveyor</td></tr><tr><td>Name</td><td>Building Surveyor employed by iPermit Building Approvals</td></tr><tr><td>Phone</td><td>(02) 6054 1879</td></tr><tr><td>Email</td><td>Admin@ipermittba.com.au</td></tr></table>		☒ The Building Surveyor is a Registered Building Surveyor		Name	Building Surveyor employed by iPermit Building Approvals	Phone	(02) 6054 1879	Email	Admin@ipermittba.com.au						
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Item 7	Variations - hourly rates (Clause 9.1)	<table><tr><td>Building Surveyor's personnel</td><td>Hourly rate (ex. GST)</td></tr><tr><td>Principal / Director</td><td>\$300.00</td></tr><tr><td>Senior Building Surveyor</td><td>\$265.00</td></tr><tr><td>Junior Building Surveyor</td><td>\$200.00</td></tr></table>		Building Surveyor's personnel	Hourly rate (ex. GST)	Principal / Director	\$300.00	Senior Building Surveyor	\$265.00	Junior Building Surveyor	\$200.00						
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Item 8	Interest rate (Clause 11)	5%															
Item 9	Disbursements for which the Building Surveyor may claim payment (Clause 10.1)	<table><tr><td>[Performance Solution – CodeMark Certificate]</td><td>\$350.00</td></tr><tr><td>[Performance Solution]</td><td>\$650.00</td></tr><tr><td>[Any other assessment of specialist reports as deemed necessary by iPermit Building Approvals]</td><td>\$TBA</td></tr><tr><td>[Travel]</td><td>\$1.30/km</td></tr><tr><td>[Submission of application with inaccurate or lack of information deemed satisfactory to assess within a reasonable timeframe]</td><td>\$200.00/hr</td></tr><tr><td>[Photographs, colour copying, laminating, presentation materials, scanning]</td><td>\$200.00/hr</td></tr><tr><td>[Amendment to Building Permit, including re-submission to relevant Council]</td><td>\$200.00 plus any incurred cost to iPermit</td></tr></table>		[Performance Solution – CodeMark Certificate]	\$350.00	[Performance Solution]	\$650.00	[Any other assessment of specialist reports as deemed necessary by iPermit Building Approvals]	\$TBA	[Travel]	\$1.30/km	[Submission of application with inaccurate or lack of information deemed satisfactory to assess within a reasonable timeframe]	\$200.00/hr	[Photographs, colour copying, laminating, presentation materials, scanning]	\$200.00/hr	[Amendment to Building Permit, including re-submission to relevant Council]	\$200.00 plus any incurred cost to iPermit
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Item 10	Insurance (Clause 13)	<table><tr><td>Insurance</td><td>Policy details</td></tr><tr><td>Professional Indemnity</td><td>Insurer: Current insurance held at time of application *This information is available upon request</td></tr><tr><td colspan="2"><i>(details of policy can be made available upon request by Owner(s) if this is the case)</i></td></tr></table>		Insurance	Policy details	Professional Indemnity	Insurer: Current insurance held at time of application *This information is available upon request	<i>(details of policy can be made available upon request by Owner(s) if this is the case)</i>									
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Item 11	Liability limitation carve outs (Clause 14.3)	Liability limit carve outs: ☒ Gross negligence ☒ Liability for third party property damage ☒ A risk covered by insurance, in which case liability is limited to the amount of insurance paid out
Item 12	Dispute Resolution Representative (Clause 18.3)	[Director] Building Surveyor's representative: <u>Robert Landman (or a third party as appointed by Robert Landman)</u> Client's representative: <u>The Owner(s) (as detailed in Section G or a third party as appointed by this party)</u>
Item 13	Jurisdiction (Clause 20.11)	Victoria

ANNEXURE C – SCOPE OF SERVICES

(a) Details of service(s) provided under this agreement are:

- i. Determination of Application for Building Permit (Consented to, by the Owner(s) in Contract / Agreement),
- ii. Determination of Application for Occupancy Permit or Application for Certificate Final Inspection (Consented to, by the Owner(s) in Contract / Agreement),
- iii. Undertake the function of the Building Surveyor (RBS), and
- iv. Carry out mandatory inspections under the Building Regulations 2018 and as per fee schedule or written quote.

1. Definitions

Unless otherwise defined in this Annexure C, capitalised words have the same meaning as defined in the General Terms.

BCA means the Building Code of Australia under the National Construction Code.

Fee Proposal means any proposal of services and associated costs, that may be broken down into the service components, that the Building Surveyor provided to the Client, or any other document or forming the background to the Contract Sum;

2. Description of Services

The Building Surveyor will perform all work that is necessary to comply with relevant statutory requirements, including:

- (a) No later than two days before any building work or subdivision work commences, and subject to receipt of the necessary notifications and paperwork from the Client, the Building Surveyor will:
 - (i) Notify the consent authority and/or the Council of the Building Surveyor's appointment as RBS, and
 - (ii) Notify the Client of all inspections that are required to be carried out of the building work or subdivision work.
- (b) Determine applications necessary of the relevant Building Permit Application.
- (c) Ascertain, before any building work or subdivision work commences, that a Building Permit has been issued for the work.
- (d) Ascertain, before any residential building work commences, that either:

- (i) The Client contractor is the holder of a license under the Domestic Building Contracts Act 1995 and is covered by appropriate insurance, or
- (ii) Where the work is to be carried out by an owner-builder, that an owner-builder permit has been issued.
- (e) The Building Surveyor will either carry out all mandatory stage inspections of the building work or subdivision work prescribed by the legislation or as required by the Building Surveyor, or ensure that the inspections are carried out by another registered practitioner. In that instance, certain inspections may be sub-contracted to other entities.
- (f) The Building Surveyor will make a record as required by the Building Act 1993 and Building Regulations 2018 of all inspections that he or she carries out and will ensure that any other registered practitioner that has carried out an inspection also prepares a report and supplies it to the Building Surveyor.
- (g) The Building Surveyor will determine whether any inspection has been not carried out due to circumstances that were unavoidable, and whether the work that would have been inspected was satisfactory. The Building Surveyor will make a record of any such missed inspection as required by the Building Act 1993 and Building Regulations 2018 and provide a copy to the Client. The Building Surveyor will also notify the Client contractor or owner-builder of the missed inspections as required under this legislation.
- (h) Determine applications for occupancy permits or subdivision certificate.

3. Compliance Functions

- (i) The Building Surveyor will take such steps as he or she considers appropriate to address any of the following matters relating to the development;
 - (i) Non-compliance with the Building Permit
 - (ii) The carrying out of work without a Building Permit
 - (iii) An unauthorised use of a building
 - (iv) A breach of a law relating to the carrying out of work or the use of land
 - (v) A threat to the safety of a person or a person's property
 - (vi) Any other matter the Building Surveyor considers to be in the public interest to address.
- (j) Without limiting the actions that the Building Surveyor may take, the Building Surveyor may:

- (i) Attend the Site or nearby properties to inspect any issue of concern relating to the development
- (ii) Confer with any person in relation to any issues of concern
- (iii) Cause correspondence to be issued to any person
- (iv) Refer any matter of concern to such persons or authorities as the Building Surveyor considers appropriate, including the consent authority, the council, Victorian Building Authority or an environmental protection agency.
- (v) Issue Building Notices, Orders, or the like as deemed necessary.

4. Variations to the Services

The following may result in a Variation under the Agreement:

- (k) conceptual design changes made subsequent to the Commencement Date;
- (l) allowances reasonably estimated in the Fee Proposal for particular parts of the Services being significantly exceeded;
- (m) design amendments necessary subsequent to the issue of the Building Permit, requiring a revised Building Permit to be assessed and issued;
- (n) staging of Building Permits or Occupancy Permits not already allowed for as part of the Fee Proposal;
- (o) re-inspections arising from non-compliance work;
- (p) time associated with any correspondence or other communications required by the Building Surveyor in relation to any queries or complaints which may be made by neighbours or other members of the public to the Building Surveyor in the Building Surveyor's capacity as RBS;
- (q) an Occupancy Permit sought more than 6 months from the date the Services were completed;

5. Certifications and other reports to be provided

- (r) Significant alterations, extensions, or new works to key fire services must have both the design and completed works certified as compliant to the Building Surveyor's satisfaction by the relevant Accredited Fire Services Designer if required by the regulations, or else by a Building Services Engineer listed on the Engineer's Australia NPER Register. Key fire services includes any active systems listed on the building's fire-safety schedule. The exact nature of certification required should be clarified prior to the issue of

the Building Permit (as appropriate) and prior to the letting of contracts or sub-contracts.

- (s) Any works which involve alterations, extensions or new works to loadbearing elements of a building (including balustrades and façade works) must have both the design and completed installation certified as compliant to the Building Surveyor's satisfaction by a Structural Engineer listed on the Engineer's Australia NPER Register.
- (t) Unless otherwise agreed, the final certification must be submitted in the format identified in any project certification schedule the Building Surveyor may have issued on submission of the notice of commencement form. If certificates do not meet the agreed requirements then any consequent work may be subject to a Variation.

- (u) In order to clarify site-specific compliance requirements, a report or reports may be required from specialist consultants detailing the exact method of compliance of the bounding construction of walls, and sealing or protecting of penetrations in those walls, particularly for multi-residential projects.

6. Out of scope

- (v) The preparation of documentation associated with alternative solutions to the Deemed-to-Satisfy requirements of the BCA is not included within the scope of work. However, the assessment of submitted alternative solutions or fire-safety engineering report is included within the scope of work where applicable.
- (w) The issue of Compliance Certificates is not allowed for in the Contract Sum. Where

Compliance Certificates are required a separate Fee Proposal may be submitted and if accepted, will constitute a Variation.

- (x) Any other inspections undertaken are limited to a visual, non-destructive inspection and to an assessment of the minimum requirements of the BCA. Only those matters able to be determined by such an inspection will be reported.
- (y) Investigation of the detailed requirements of Australian Standards referenced in the BCA is outside the scope of work. Certification and/or advice from specialist consultants is generally required in relation to those requirements. Exact details of the required certification will be advised once an assessment is made