

## CERTIFYING AUTHORITY TERMS & CONDITIONS

### EFFECT OF AGREEMENT

1. **This Agreement** supersedes and overrides any other documents or oral representations upon which the parties may seek to rely to generate any legal effect or to imply any contractual obligation.

### OBLIGATIONS OF THE AC /PCA

#### 2. Issuing of Construction Certificates or Complying Development Certificates:

- 2.1. The AC shall issue a Construction Certificate or Complying Development Certificate: -

- once the AC is satisfied that the design of the Building work(s) complies with the Development Consent and the Regulations and;
- once the AC is satisfied that the design as depicted on the drawings and specification comply with the BCA and;
- once the Owner pays the AC any money owed for work associated with the issuing of a Construction Certificate or Complying Development Certificate.

- 2.2. The AC shall provide the Council with a Notice of Determination within two (2) days of the determination.

- 2.3. During the assessment of the application for a Construction Certificate or Complying Development Certificate, the AC may request as many certificates or statements from any Certifying Authority or any other party that the AC considers necessary.

- 2.4. If during the assessment of the application a conflict of interest becomes apparent the role of the PCA will be transferred to one of the following AC's without delay:
  - o Mr Peter Burgess
  - o Mr Mayah McIntosh

#### 3. Inspections

- 3.1. The PCA shall carry out or arrange to be carried out as many inspections as the PCA considers necessary in addition to those nominated as mandatory by the Environmental Planning and Assessment Act, 1979 (as amended).

- 3.2. Any inspections undertaken, and the notification of the result of any inspection that has been undertaken, in relation to the subject development are prepared and provided to the Owner/s solely for the purpose specified, for the Owner/s exclusive use in regard to the property identified only, and on the undertaking/condition that the Owner/s shall not communicate the contents of the notification of result to any third person who might act to his/her detriment on the basis of the notification. The Owner/s agrees to indemnify the accredited certifier and Illawarra

Building Certifiers Pty Ltd against any loss or damage suffered as a result of the Owner/s failure to observe this abovementioned clause. All inspections undertaken are based on a visual inspection and do not comment therefore on aspects, faults or otherwise, which are below ground level, covered up in any way, or which are not apparent at the time of inspection. No indication is given as to the adequate performance of any plumbing, hydraulic, gas or electrical appliance or fitting that may be installed or included in the building or on the site. Any notification of the result of an inspection is not intended to imply compliance or otherwise with any requirements of any Local Government Authority. Any parts of any structure that have been or are covered, unexposed or inaccessible will not be inspected and therefore any notification of the result of an inspection will have no reference to those parts.

#### 4. Issuing the Occupation Certificate

- 4.1. The PCA shall issue an Occupation Certificate for the Building Works when the PCA is satisfied that: -

- All conditions of a Local Development Consent or a Complying Development Certificate has been complied with;
- The Building Works are suitable for occupation or use in accordance with their classification under the BCA; and
- A Fire Safety Certificate has been issued (if required); and
- As at the date this agreement is executed, the Building does not pose any danger for the occupants in the case of an Interim Occupation Certificate.

- 4.2. In the event that the nominated PCA cannot fulfil the obligations required by the Act, due to a resignation from his/her employment position with Illawarra Building Certifiers or because he/she is unavailable due to leave of any description or because of illness and a transfer of that role is required, the Owner will agree to the transfer of that role to either of the following Accredited Certifiers; Mr Peter Burgess or Mr Mayah McIntosh.

#### 5. Insurance

- 5.1. The PCA shall maintain an insurance policy in accordance with the Act and shall provide a copy of that policy to the Owner upon request.

- 5.2. The extent of any claim or otherwise against the policy held by the AC or PCA or against the AC or PCA in any way shall be limited to five times (5x) the value of the service fee paid to the AC or PCA for the services provided and no more. Mortgagee taking possession of any part of its property, has an Administrator or a Provisional

### OBLIGATIONS OF THE OWNER

6. The Owner shall: -

- Not engage any other PCA after the PCA appointed pursuant to this agreement has been engaged. Breach of this condition will entitle the PCA to recover any losses or costs of whatsoever nature that flow from such breach.
- Ensure that a Construction Certificate or Complying Development Certificate has been issued prior to the commencement of any works.
- Ensure that the site is available for the PCA to carry out its obligations under this agreement.
- Use competent persons for all aspects of the building works.
- Provide the PCA with evidence of professional indemnity and public liability insurance for the building work prior to the commencement of any works.
- Provide all relevant drawings, plans, statutory plans and documentation associated with but not limited to any Development Consent, Complying Development Consent and/or any Certificate issued under Part 4A of the Act at the request of the PCA.
- Attend any meetings if required by the PCA to do so.
- Comply with any Notice of Intention to Serve an Order that the PCA issues.
- Provide Compliance Certificates as requested by the PCA.
- Provide all information that the Owner reasonably can obtain to enable the PCA to fulfil its obligations under this agreement.
- Provide the PCA with the date of practicable completion.
- Act in good faith, in accordance with the Act and in a cooperative fashion.
- Ensure compliance with all conditions of the Development Consent relating to any demolition works prior to the issue of any Occupation Certificate.

### VARIATIONS TO THIS AGREEMENT

7. If:-

- The building works do not commence within 60 days from the date of the execution of this agreement; or any competent person used by the Owner in respect of the building works causes a delay in the progress of the building works for more than 21 days; or
- Any part of the Building Works are redesigned by the Owner; or Any part of the

- building is designed pursuant to a Deemed to Satisfy Provision and is subsequently changed by way of an Alternative Solution; or
- Additional Construction Certificates and/or Compliance Certificates are required to be issued by an Accredited Certifier; or
- An amendment to the Act, the BCA or any other law that requires any aspect of the Building Works or the PCA's work to be varied; or
- The PCA is required to undertake more inspections than those listed as mandatory inspections under the Environmental Planning and Assessment Act, 1979 (as amended); or
- The Owner does anything that causes a delay to the building works or does anything that delays the ability of the PCA to carry out its obligations under this agreement; or
- A Notice of Intention to Serve an Order is issued by the PCA; or
- The PCA is notified of a complaint the Building Professionals Board or a representative from the Local Council with jurisdiction over the subject site, then: the PCA may: -
- vary this agreement to the extent that the PCA will be able to carry out its obligations under this agreement; and increase the agreement price, such increase to be made by way of Notice to the Owner stating the reason/s for the increase and the amount of the increase.

7.1. The variation will permit the PCA to claim all costs associated with that delay as reasonably determined by the PCA.

7.2. Notice must be given to the Owner within seven (7) days from the date on which the PCA becomes aware that a variation will be necessary.

#### **TERMINATION OF AGREEMENT**

8. If: -

- The person/s or Company responsible for making payment for this service fails to pay any money owing to the PCA after seven (7) days of that money becoming payable; or
- The person/s or Company responsible for making payment for this service has an execution levied against it, assigns or attempts to assign its estate for the benefit of its creditors, intends to or attempts to or makes a composition or Scheme of Arrangement with creditors, has a winding up order made against it, intends to or attempts to pass a resolution for winding up, goes into liquidation, has an Official Manager or Receiver appointed, has a

Liquidator appointed, becomes insolvent or bankrupt; or

- The Owner or the person/s or Company responsible for making payment for this service breaches the agreement in any respect; or
- The Construction Certificate or Complying Development Certificate is not capable of being issued within 180 days or six (6) months (whichever is the lesser) from the date of application; or the building works do not commence within 60 days from the date the Construction Certificate or Complying Development Certificate was issued; or
- The failure of the Owner to complete any works and as a result does not permit the Accredited Certifier to issue the Occupation Certificate within 60 days from the date of practicable completion, occupation or use of the proposed development; or
- The Owner, for any other reason, does not permit the Accredited Certifier to issue the Occupation Certificate within 60 days from the date of practicable completion, occupation or use of the proposed development; or
- The Owner does not permit the Accredited Certifier to issue the Occupation Certificate within 60 days from the date of practicable completion; or the building works have commenced without the issuing of a Construction Certificate; or
- Within 2 years of the date of issue of the Construction Certificate or Complying Development Certificate, the PCA has not been advised by the owner, in writing, that the building works have been completed or if an Occupation Certificate has not been issued by the PCA, then:

8.1. The PCA may terminate this agreement by sending a written Notice of Termination, stating the breach/s, to the Owner. Termination will take effect as soon as the Owner receives the Notice of Termination.

8.2. If the PCA terminates the agreement, then the PCA is entitled to payment of Termination Money.

8.3. Unless the Owner disputes the Notice of Termination, the Owner must pay all Termination Money to the PCA within 14 days of receiving a Notice of Termination.

8.4. If the PCA terminates the agreement, the PCA is entitled to carry out a final inspection, at the Owner's expense, prior to termination.

8.5. As from the date of final inspection, the Owner must indemnify the PCA for any liabilities, including but not limited to professional liability and public liability, of whatsoever nature that emanate from:

- the need to terminate this agreement or the Building Agreement.
- any matters of non-compliance with the Act on the part of the Owner or any other contractors.

#### **DISPUTE RESOLUTION**

9. Any dispute of whatever nature to do with this agreement must be referred to mediation.

9.1. If either party believes there is a dispute under this agreement it must give Notice of the dispute to the other party.

9.2. The mediator must be appointed by the AAC.

9.3. Mediation will be invoked by either party serving Notice on the AAC and the other party within seven (7) days of a party being notified of a dispute.

9.4. Both parties must attend the mediation and must co-operate with the mediator and each other and shall give the mediator whatever the mediator requests.

9.5. If the mediator resolves the dispute the resolution must be evidenced by a written agreement that is signed by the mediator and the parties.

9.6. If the mediation fails, then either party may take action to resolve the dispute in a court of competent jurisdiction.

9.7. Both parties will remunerate the mediator on a 50/50% basis regardless of any alleged fault and regardless of the outcome.

- The AAC may request mediation funds to be placed into an AAC trust account before the mediation commences and may request payment of additional moneys from time to time until the mediation is concluded.

#### **MISCELLANEOUS**

10. If for whatever reason an Occupation Certificate is not issued whether it be on account of the insolvency of the Owner, the disappearance of the Owner or the termination of the agreement, the PCA's responsibilities under the agreement cease forthwith. With respect to any liabilities that may be occasioned under Part 4 of the Act the PCA will be able to give evidence that no action can be brought 10 years after the date upon which the act that evidenced the ending of the agreement occurred.

11. If, during the course of completion, of the project that is the subject of this Agreement, the nominated Principal Certifying Authority resigns from his or her employed position within Illawarra Building Certifiers the role of the Principal Certifying Authority as determined by the Act shall be transferred to

either Mr Peter Burgess, Mr Mayah McIntosh or Illawarra Building Services Pty Ltd without delay. Illawarra Building Certifiers shall not incur any liability whatsoever that may result from any delay, for whatever reason as a result of a delay in the transfer of this role.

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

#### ADDRESS FOR NOTICES

13. Where any Notice is to be forwarded to the Owner the address for such Notice shall be the address stated in the Application Form or to any other address that is notified in writing by the Owner to the PCA.

#### DEFINITIONS

**Accredited Certifier (AC)** means the holder of a certificate of accreditation as an accredited certifier under the Building Professionals Act.

**The Act** means the Environmental Planning and Assessment Act 1979 (NSW). All amendments and references to the Act also mean amendments and references to the Regulations. AAC means the Association of Accredited Certifiers. DOP means the Department of Planning. Alternative Solution has the same meaning as the term in the Building Code of Australia 1996.

**Building Code of Australia (BCA)** means the Building Code of Australia 1996 including all applicable amendments.

BP Act means the Building Professionals Act 2005.

**Building** means that which is the subject of the Building Works. Building Contract means the contract to construct the Building Works that the Owner enters with the builder.

**Building Works** means the building works for which a Construction Certificate is to be issued in accordance with this agreement and is referred to in the "Land to be Developed" section of the Application Form relating to the subject works. Certificates mean statutory certificates and non-statutory certificates.

**Certifying Authority** means a Certifying Authority within the meaning of the Act.

**Owner** means the owner or the owner's agent.

**Competent people** means people authorised to carry out any work associated with Building Works under the Act and includes contractors.

**Complying Development Certificate** means a Complying Development Certificate within the meaning of the Act. Conflict of Interest has the same meaning as the term defined by the Building Professionals Act 2005.

**Construction Certificate** means a Construction Certificate within the meaning of the Act. Deemed to Satisfy Provision has the same meaning as the same term in the Building Code of Australia 1996.

**Development Consent** means a Development Consent within the meaning of the Act.

**Fire Safety Certificate** means a Fire Safety Certificate within the meaning of the Act.

**Inspection Schedule** means the mandatory inspections required under the Act.

**Notice** includes any notice issued under the Act or this agreement and in respect of notices in this agreement must be made by pre-paid ordinary mail, facsimile transmission or notice by hand delivery to the Address for Notices in this agreement.

**Occupation Certificate** means an Occupation Certificate within the meaning of the Act.

Order means an Order within the meaning of the Act.

**Practicable completion** means the date the builder has completed the Building Works in accordance with the Building Contract.

**Principal Certifying Authority** is a building practitioner as defined by the Act

**Regulations** means the Environmental Planning and Assessment Regulation 2000 (NSW) (as amended) and all applicable amendments.

**Schedule** means the Schedule in this agreement.

**Scope of Works** means obligations in this agreement and any other tasks set out in the Schedule.

**Statutory Notices** means those notices that are issued by the PCA in accordance with the Act.

**Termination money** means the money owing to the PCA if the PCA terminates the agreement in accordance with this agreement, being money for work done (with interest if applicable) and for costs incurred (with interest if applicable) and any money that the Owner would have been bound to pay to the PCA if the agreement had been totally completed.

**End of Terms and Conditions**