



Building Act 1993
Building Regulations 2018



TERMS OF APPOINTMENT
RELEVANT BUILDING SURVEYOR

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1 NATURE OF CONTRACT

- 1.1 The *RBS* shall carry out upon request by the *owner*, and in accordance with the *Building Act 1993* and *Regulations*, the *Services* in accordance with this Agreement
- 1.2 The *owner* shall pay the *RBS* the *fee* and *fee adjustments* in accordance with this Agreement.

2 OWNERS WARRANTIES AND INDEMNITIES

- 2.1 The *owner* warrants:
- (a) the accuracy and completeness of all information given to the *RBS*;
 - (b) that the *RBS* when carrying out *the Services* acts with the *owner's* authority;
 - (c) that no other person has been appointed as *RBS* for the *subject property*.
- 2.2 The *owner* shall indemnify the *RBS* against any claims in respect of the *RBS* acting within authority as the *owner's* agent.

3 SERVICE OF NOTICES

- 3.1 A notice (and any other document) shall be deemed to have been given and received:
- (a) if addressed or delivered to the relevant address in this Agreement or last address communicated in writing to the person giving the notice; and
 - (b) on the earliest day of
 - (i) actual receipt;
 - (ii) confirmation of correct transmission of fax; or
 - (iii) two (2) days after posting.

4 INFORMATION

- 4.1 The *owner* shall:
- (a) promptly answer any reasonable enquiries made by the *RBS* in connection with the *Services*;
 - (b) direct others to liaise, co-operate and confer with the *RBS* when necessary; and
 - (c) provide the *RBS* with all relevant information.

5 LEGISLATIVE REQUIREMENTS – COMPLIANCE

- 5.1 If a *legislative requirement* necessitates a change to:
- (a) the *owner's* project requirements;
 - (b) the *building works*;
 - (c) the *Services*; or
 - (d) a *fee* or charge or payment of a new *fee* of charge;
- there shall be a *fee adjustment*.

6 THE RBS' REPRESENTATIVES AND KEY PERSONNEL

The *RBS* shall provide the *Services* personally or by a competent representative.

7 PAYMENT

- 7.1 The *RBS* shall claim payment in accordance with the *fee schedule* attached to this Agreement;
- 7.2 Each claim shall be in writing, include details for the value of *Services* provided together with any disbursements incurred by the *RBS* and may include details of other moneys then due to the *RBS* pursuant to the provisions of this Agreement.
- 7.3 The *owner* and/or *applicant* shall pay any claim made by the *RBS* within 14 days of the date of the claim.
- 7.4 In the event of the account being in default and being referred to an external party for collection, the *owner* and/or *applicant* shall be liable for all resulting costs arising from the recovery, including commission which would be payable if the account is paid in full and legal costs including legal demand costs.

8 INTEREST

Interest at rate of 12% shall be due and payable by the *owner* and/or *applicant* as from the 15th day after the claim.

9 TERMINATION

- 9.1 The termination of the *RBS* under this Agreement may only occur *with the owner first obtaining written consent to terminate from the Victorian Building Authority* pursuant to Section 81(1) of the *Building Act 1993*.
- 9.2 If this Agreement is terminated in accordance with clause 9.1, the *owner* shall pay to the *RBS* all outstanding payments owing to the *RBS* at the time of termination.
- 9.3 The *RBS* shall be entitled to charge additional fees for costs and disbursements arising as a consequence of the termination.

10 THE SERVICES

10.1 Building Permit

- (a) The *owner* may lodge an application for a building permit to be issued by the *RBS*.
- (b) The *owner* in making an application for a building permit must:
- (i) complete an Application for Building Permit Form 1 Annexed hereto;
 - (ii) pay the required *fee*;
 - (iii) pay the required building permit levy under the *Building Act 1993*;
 - (iv) comply with the requirements of the *Building Act 1993*;
 - (v) provide all documents and information required under the *Building Act 1993* and its *Regulations* or as requested by the *RBS*;
 - (vi) comply with the conditions of any Planning Permit or other prescribed approval issued in relation to the *subject property*;
 - (vii) state the contract price for the *building work* including the costs of labour and materials if there is a contract for the *building work*; or
 - (viii) in any other case provide such sufficient information to enable the *RBS* to estimate the costs of the *building work* including the cost of labour and materials; and
 - (ix) include any necessary report and consent of any prescribed reporting or service authority under the *Building Act 1993* or any necessary permit or approval of a responsible authority under the *Planning and Environment Act 1987*.
- (c) The *RBS* may:
- (i) request further information from the *owner*;
 - (ii) issue a building permit for a stage of the *building works*;
 - (iii) issue a building permit with conditions;
 - (iv) issue a building permit without conditions; or
 - (v) refuse to issue a building permit.

10.2 The building permit once issued shall be forwarded to the *owner and /the owner's agent*.

10.3 If a Building Permit is refused

If an application for a building permit is refused by the *RBS* the *owner* may make a further application for a building permit.

10.4 **Variation of Building Permit**

The *owner* may lodge an application requesting a building permit be varied and or extended by the *RBS*;

The application must:

- (a) be in writing;
- (b) include all documents required under the *Building Act 1993* and the *Regulations* or requested by the *RBS*;
- (c) be accompanied by the required *fee* as per this Agreement.

11 **NON COMPLIANCE**

If the *owner/ owner's agent* fails to comply with:

- (a) the building permit and/or its conditions;
- (b) any directions issued by the *RBS*;
- (c) a section of the *Building Act 1993* and the *Regulations*; and
- (d) the *RBS* provides additional *Services* under the *Building Act 1993*, the *Regulations* or this Agreement;

the *owner* shall pay the *RBS* a *fee adjustment* in accordance with this Agreement.

12 **INSPECTIONS**

12.1 If the *RBS* is requested by the *owner* or the *owner's agent* to carry out an inspection of the *building works*, the *owner* shall provide the *RBS* with not less than 24 hours notice and shall cease any works on the *subject property* until such time as the *RBS* has caused the *subject property* to be inspected.

12.2 The *owner* shall pay the *RBS* the *fee* or a *fee adjustment* required under this Agreement for any inspections.

13 ADDITIONAL SERVICES

13.1 The *RBS* may perform additional *Services* in exercising its obligations under this Agreement, the *Building Act 1993* and its *Regulations* and or any other relevant legislation including but not limited to:

- (a) obtaining additional information and documents from a *council* and other authority;
- (b) carrying out additional inspections of the *subject property*;
- (c) reporting any matters to the *Victorian Building Authority* or other authority;
- (d) responding to any requests for information from the *Victorian Building Authority* or other authority including but not limited to a *council*, the *Building Appeals Board*, and the *Building Practitioners Board*;
- (e) issuing any notices or orders under the *Building Act 1993* and the *Regulations*.

13.2 Upon the *RBS* carrying out additional *Services* the *owner* shall pay the *RBS* the *fee* or a *fee adjustment* required under this Agreement.

14 OWNERS OBLIGATIONS

14.1 The *owner* hereby acknowledges his/her/its ongoing obligations pursuant to the *Building Act 1993* and the *Regulations* including but are not limited to:

- (a) providing the *RBS* with unfettered access to the *subject property*;
- (b) not obstructing the *RBS* in carrying out its functions;
- (c) not provide the *RBS* with any information which may be misleading or deceptive;
- (d) advising the *RBS*:
 - (i) of any changes in relation to the engagement of a *Building Practitioner* or an insured architect within 14 days of such change;
 - (ii) of any change to the *owner's* address;
 - (iii) if *building works* cease on the *subject property*;
 - (iv) if the *subject property* is transferred to a new *owner*; and
- (e) ensuring the *building works* the subject of any building permit issued by the *RBS* are carried out in accordance with the building permit, directions of the *RBS*, the *Building Act 1993* and the *Regulations*.

15 ENTIRE AGREEMENT

This document embodies the entire agreement between the parties and any previous or simultaneous negotiations, representations, arrangements and agreements are superseded by this Agreement. No amendment or variation may be made to this Agreement other than in writing executed by each of the parties.

16 SEVERANCE

In the event that any condition or provision of this Agreement is held to be invalid or unenforceable for any reason whatsoever that condition or provision shall be read

down to the extent necessary to give it, if possible, partial operation, but if that is not possible, the condition or provision may be severed and the remainder of this Agreement shall remain in full effect.

17 DEFINITIONS

In this Agreement—

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| <i>Applicant</i> | means a person and/or company engaged by the <i>owner</i> to liaise with Nicholson Wright Pty Ltd and apply for the relevant Building Permits and/or services |
| <i>Building</i> | includes structure, temporary building, temporary structure and any part of a building or structure; |
| <i>Building Appeals Board</i> | means the Building Appeals Board under Part 10 of the Building Act 1993; |
| <i>Building Practitioner</i> | has the same meaning as it has in the Building Act 1993; |
| <i>Building Practitioners Board</i> | means the Building Practitioners Board under Part 11 of the Building Act 1993; |
| <i>Building Work</i> | means work for or in connection with the construction, demolition or removal of a building; |
| <i>Certificate of Consent</i> | means a certificate of consent under Division 3A of Part 3 of the Building Act 1993; |
| <i>Council</i> | means a council within the meaning of the <i>Local Government Act 1989</i> ; |
| <i>Domestic Building Work</i> | has the same meaning as it has in the <i>Domestic Building Contracts Act 1995</i> ; |
| <i>Fee</i> | means the fee calculated in accordance with the Fee Schedule attached hereto; |
| <i>Fee adjustment</i> | means a sum to be added to or deducted from the fee; |
| <i>Function</i> | includes power, authority and duty; |
| <i>Legislative requirements</i> | includes: (a) Acts, Ordinances, regulations, by-laws, orders, awards and proclamations of the jurisdiction where Services are being provided; (b) Certificates, licences, consents permits, approvals and requirements of organisations having jurisdiction in connection with the carrying out of the Services and (c) Fees and charges payable in connection with the foregoing; |
| <i>Municipal Building Surveyor</i> | means a person for the time being appointed, employed or nominated by a council as its municipal building surveyor for the purposes of this Act; |
| <i>Owner</i> | means (a) the person who is registered or entitled to be registered as proprietor, or the persons who are registered or entitled to be registered as proprietors, of an estate in fee simple in the land; and (b) in relation to Crown land reserved under the <i>Crown Land (Reserves) Act 1978</i> and managed or controlled by a committee of management, means the Minister administering that Act; and (c) in relation to any other Crown land, means the Minister or <i>public authority</i> that manages or controls the land; (d) in relation to a building, means the owner of the land on which a building is situated; |
| <i>Victorian Building Authority</i> | means the <i>Victorian Building Authority</i> under Part 12 of the Building Act 1993; |