

LETTER OF APPOINTMENT AND TERMS OF ENGAGEMENT

Domestic Class 1 & 10 Works only



To: Simple Permits Building Consultants Pty Ltd (Simple Permits)

FROM:

Note a builder engaged in carrying out domestic building work **cannot** complete this form on behalf of an Owner. Only the Owner or Owners' Agent (other than the builder) can complete this form.

Name of the Client: _____
(Please provide the full name. If the client is a company, please ensure that the company name is provided and not just a business name)

ABN: _____
(Please complete if the Client is a company)

Postal address: _____

Contact person: _____
(Please complete if the Client is a company)

Telephone: _____ Mobile: _____

Email address: _____

The Client nominated above has formally chosen to appoint **Mr Frank D'Aquila** of Simple Permits to act as the Relevant Building Surveyor in respect of the following proposed building works;

DESCRIPTION OF PROJECT AND USE:

PROJECT ADDRESS:

By completing and signing this document the Client acknowledges that they have appointed the above mentioned Building Surveyor as a Private Building Surveyor to provide the Private Building Surveyor Functions for the Project and are entering into an agreement with the Building Surveyor as to the terms and conditions which apply to the Private Building Surveyor Functions and confirms and certifies that they:

- a. Are not a builder engaged in carrying out building works for the project listed above; and
- b. If acting as Agent of the Owner, they have been officially appointed by the Owner pursuant to Section 240 of the Building Act 1993 to act as Agent on their behalf; and
- c. Are aware of their obligations under the Building Act 1993 – Part 3 – Division 2 – Section 17 and Building Regulations 2018; and
- d. Have read all applicable terms and conditions and acknowledge that they are fully aware and informed of the role of the Relevant Building Surveyor and hereby agree to all Simple Permits Building Consultants Pty Ltd fees & charges and to the terms and conditions of engagement; and
- e. Have not appointed any another private building surveyor or a municipal building surveyor to complete any functions set out in section 76 of the Building Act 1993 in respect of a building or proposed building work mentioned above.

Signature: _____ Date: _____

BUILDING SURVEYOURS RESPONSE:

I hereby respond to the above appointment served on Simple Permits by the Client or Client's agent and—

- I have determined that to the best of my knowledge this letter has been submitted to me in good faith by the Client and/or Client's agent and I agree to the above appointment.
- Disagree with the above appointment for the following reasons:
 - The application is incomplete or has misleading or contradictory information; and/or
 - The applicant is affiliated and/or has a conflict of interest with the RBS; and/or
 - I have determined that the request does not permit the RBS to act under Section 79; and/or
 - I have determined that the above request does not warrant the services of the RBS.

Signature _____ Date: _____

1 PRIVATE BUILDING SURVEYOR FUNCTIONS

1.1 The Private Building Surveyor Functions include, as relevant for the Project:

- (a) assessing the building permit application;
- (b) collect and remit the applicable *Building* permit levy to the relevant *Building Authority* in the state of VICTORIA (when applicable);
- (c) Assess and if appropriate issue a *Building* permit;
- (d) Assess and if appropriate issue the applicable occupancy permit or certificate of final inspection;
- (e) Issue statutory directions notices or orders if necessary at the RBS's discretion for the proper completion of the *Building Work*;
- (f) Inspections:
 - (i) Conduct or arrange for mandatory inspections as specified on the *Building* permit;
 - (ii) Conduct or arrange for any further inspections where required by the RBS's discretion for the proper completion of the *Building Work*.

1.2 The Private Building Surveyor Functions exclude:

- (a) preparation of the design of the Project;
- (b) matters pertaining to Building Quality;
- (c) 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.
- (d) 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.

2 THE CLIENTS OBLIGATIONS, WARRANTIES AND INDEMNITIES

2.1 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.

2.2 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.

2.3 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.

2.4 The Client hereby acknowledges their ongoing obligations pursuant to the *Building Act* 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 Client's address;
 - (iii) if *Building Work* cease on the subject property;
 - (iv) if the subject property is transferred to a new Client; and
- (e) ensuring the *Building Work* 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* and the Regulations.
- (f) to make application for and obtain required occupancy permit, certificate of final inspection, report and consent or other permits or approvals deemed by the RBS to be necessary to the carrying out of the Functions.

2.5 The Client warrants;

- (a) that any Data provided to the Building Surveyor is accurate and complete in all respects;
- (b) that, in performing the Private Building Surveyor Functions, the Surveyor acts with the Client's authority;
- (c) that they are the registered proprietor of the project or the duly authorised agent of the registered proprietor. If requested by Simple Permits, the Client's agent will produce written Authority of the registered proprietor authorising them to act on its behalf;
- (d) that no other person has been appointed to perform the Private Building Surveyor Functions in relation to the Project;
- (e) to provide and ensure a safe Workplace for all Simple Permit employees and contractors;
- (f) to provide accurate total cost of Works estimates relevant to the project;
- (g) to pay any/all Fees and any/all Fee adjustments as allocated/calculated and billed by Simple Permits;

(h) to comply with all relevant obligations under the *Building Act*, *Building Regulations* and Simple Permits conditions;

(i) and acknowledges and agrees that they accept the terms and conditions contained in this agreement.

2.6 The Client must:

- (a) provide Simple Permits Building Consultants Pty Ltd (Simple Permits) with all necessary information required to enable the RBS to perform their role;
- (b) 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;
- (c) 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.
- (d) monitor the cost of work and maintain records of the cost of work. This duty will fall to the owner or the applicant for the building permit (if the variation related to an amendment of a building permit). Notification must be given to the Building Authority within 28 days of becoming aware of the revised final cost.

2.7 The Client shall indemnify and keep the RBS and Simple Permits, its officers, employees, agents and contractors indemnified from and against all costs, expenses, losses or damages which the Client (including the builder) and any employees of the Client may sustain, incur or suffer or be or become liable for or in respect of any suit action proceeding judgment or claim brought by any person arising from or referable to the terms of engagement or non-compliance with the agreed terms and conditions.

3 MUTUAL WARRANTIES

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

3.1 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

3.2 all Authorisations required for its entry into, exercise of its rights under, and performance of its obligations under this agreement have been obtained.

4 FORCE MAJEURE

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

- (a) neither party is liable for such delay or failure; and
- (b) all obligations of a party under this agreement are suspended until the Force Majeure Event ceases to apply.

4.2 A party which is, by reason of a Force Majeure Event, unable to perform any obligation or condition required by this agreement must:

- (a) notify the other party as soon as possible giving:
 - (i) reasonably full particulars of the Force Majeure Event;
 - (ii) 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
 - (iii) where possible, the means proposed to be adopted to remedy or abate the Force Majeure Event;
- (b) use all reasonable diligence and employ all reasonable means to remedy or abate the Force Majeure Event as soon as possible;
- (c) 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;
- (d) notify the other party when the Force Majeure Event terminates or abates to an extent which permits resumption of performance; and
- (e) notify the other party when resumption of performance occurs.

4.3 If a delay or failure under this clause exceeds 60 days, either party may immediately terminate this agreement by notice to the other party.

5 MISCELLANEOUS

5.1 Entire agreement

This agreement:

- (a) constitutes the entire agreement between the parties about its subject matter;
- (b) supersedes any prior understanding, agreement, condition, warranty, indemnity or representation about its subject matter.

5.2 Waiver

(a) 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.

5.3 Exercise of power

- (a) 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.
- (b) 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.

5.4 Survival

- (a) 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.

5.5 Governing law

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

5.6 Consumer Law

- (a) 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.
- (b) 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.

6 NOTICES

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

- (a) in writing, in English and signed by a person authorised by the sender; and
- (b) 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.

6.2 Notice is deemed to be received:

- (a) if hand delivered, on delivery;
- (b) 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);
- (c) 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

7 INFORMATION

7.1 The Client shall:

- (a) promptly answer any reasonable enquiries made by the RBS;
- (b) direct others to liaise, co-operate and confer with the RBS when necessary; and
- (c) provide the RBS with all relevant information.

8 LEGISLATIVE REQUIREMENTS – COMPLIANCE

8.1 If a legislative requirement necessitates a change to:

- (a) the Client's project requirements; or
- (b) the Building Work; or
- (c) a Fee or service or payment of a new Fee or charge;

there shall be a *Fee adjustment*.

9 THE RBS' REPRESENTATIVES AND KEY PERSONNEL

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

9.2 The Building Surveyor may subcontract or licence all or part of its obligations under this agreement without prior notice to the Client.

10 FEE AND PAYMENT

10.1 The Fee payable for the Private Building Surveyor Functions is, at the Building Surveyor's discretion, either:

- (a) as indicated on invoices provided by the Building Surveyor to the Client in respect of Private Building Surveyor Functions supplied; or
- (b) the Building Surveyor's quoted Fee (subject to clause 10.2) which is binding upon the Building Surveyor provided that the Client shall accept the quote in writing within one hundred and eighty (180) days of receipt.

10.2 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.

10.3 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 the Agreement.

10.4 The Client shall pay the full amount owing of any claim made by the RBS within 14 days of the date of the claim or as scheduled by Simple Permits.

10.5 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.

10.6 Services that have not been allowed for within the scope of Works of the Fee schedule shall incur additional costs as outlined in the exclusions section of the Fee proposal or by hourly rate, whichever is the highest.

10.7 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.

10.8 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.

10.9 If the Client disputes the whole or any portion of the amount claimed in an account submitted by Simple Permits, then it shall pay that portion of the amount stated in the account which is not in dispute and it shall notify Simple Permits in writing of the reasons for disputing the account. If it is established that some or all of the amount in dispute ought correctly to have been paid at the time it was first claimed, then The Client shall pay the amount finally established together with interest on that amount in accordance with clause 8.

10.10 If the performance of the Services is delayed beyond a reasonable period for any reason other than a breach of the Agreement by Simple Permits, then The Client shall pay to Simple Permits a reasonable sum of money to cover the consequential costs and expenses suffered by Simple Permits as a result of the delay.

10.11 If after the date of these Terms of Engagement there is any change to the laws, by-laws, regulations or ordinances of the Commonwealth of Australia or a State or Territory of Australia or any statutory Authority and that change directly or indirectly increases or decreases the costs or expenses incurred by Simple Permits in performing the Services, then the Fees and expenses otherwise payable to Simple Permits under these Terms of Engagement shall be increased or decreased accordingly.

11 INTEREST ON OVERDUE PAYMENT

11.1 In addition to all other rights and remedies of Simple Permits, if the Client fails to pay all monies as and when due, Simple Permits shall be entitled to recover interest at the rate of 15% per annum and the rate that is 2% higher than the rate for the time being fixed under Section 2 of the Penalty Interest Rates Act 1983.

12 SCOPE OF LIABILITY

12.1 Direct and Indirect Loss

The liability of Simple Permits to The Client arising out of the performance or non-performance of the Services, whether under the law of contract, tort or otherwise shall be limited to the direct cost of rectifying the Building Works.

12.2 Maximum Amount of Liability

The maximum liability of Simple Permits to the Client arising out of the performance or non-performance of the Services, whether under the law of contract, tort or otherwise, shall be determined through the dispute resolution process in accordance with clause 13.

12.3 Release

To the greatest extent possible at law the Client and Agents of the Client release us from any and all liability for any costs, loss, claims or demands arising from any costs incurred in connection with the Services in excess of the Simple Permits and any liability of the Client or Agent of the Client to third parties arising from or in relation to Building Work performed by them or on their behalf and the performance of our role as relevant Building surveyor (including the time we take to perform that role and any decision by us not to issue the Building permit and and/or occupancy permits or certificates of final inspection as required).

12.4 Duration of Liability

Simple Permits shall be deemed to have been discharged from all liability in respect of the Services, whether under the law of contract tort or otherwise, at the expiration of one (1) year from the completion of the Services, and The Client (and persons claiming through or under The Client) shall not be entitled to commence any action or claim whatsoever against Simple Permits (or any employee of Simple Permits) in respect of the Services after that date.

12.5 Extent of Warranty

Except to the extent imposed by law or specifically provided for in these Terms of Engagement, Simple Permits does not give any warranty nor accept any liability in relation to the performance or non-performance of the Services. If, apart from this clause, any warranty would be implied whether by law, custom or otherwise, that warranty is to the full extent permitted by law hereby excluded. Nothing herein, contained shall be read or applied so as to purport to exclude, restrict or modify or have the effect of excluding, restricting or modifying the application in relation to the supply of any goods or Services pursuant to these Terms of Engagement of all or any of the provisions of Part V of the Trade Practices Act 1974 (as amended) or any relevant State Act or Territorial Ordinance which by law cannot be excluded, restricted or modified.

12.6 Indemnity

- (a) 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 willful 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.

- (b) This indemnity is reduced by the extent to which the Client contributes to the event giving rise to the claim for the indemnity.
- (c) 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.
- (d) The Client shall indemnify and keep indemnified the RBS and Simple Permits from and against all suits, actions, claims or demands by any person for any loss, damages, expense or costs as a result of any negligence or default by The Client.
- (e) 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.
- (f) 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.
- (g) 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.

13 DISPUTE RESOLUTION

If a Dispute arises between the parties, the Dispute must be determined in accordance with the procedure as set out in this clause:

13.1 Notice of Dispute:

- (a) A party claiming that a Dispute has arisen must notify the other party and give details of the Dispute in a notice and must in that notice:
 - (i) identify the subject matter of the Dispute;
 - (ii) set out the facts upon which the Dispute;
 - (iii) identify the provisions of this Agreement relevant to the Dispute;
 - (iv) annex copies of all correspondence and background information relevant to the Dispute; and
 - (v) contain any particulars of the quantification of the Dispute.
- (b) Within 10 Business Days after a notice is given under clause 13.1(a), each party must nominate its representative in writing, who must be authorized to resolve the Dispute.
- (c) During the period of 15 Business Days after a notice is given under clause 13.1(a) (or any longer period agreed between the parties) each party must procure that its representative uses its best endeavours to resolve the Dispute with the other representative.
- (d) If, within the 15 Business Day period referred to in clause 13.1(c), the representatives have not resolved the Dispute, the parties must within the 10 Business Days after expiry of that period appoint and authorize an Expert to perform the following functions:
 - (i) resolve the Dispute as an independent expert and not as an arbitrator;
 - (ii) establish the procedures for identifying the issues relating to the Dispute and the contentions of the parties in accordance with the requirements of procedural fairness;
 - (iii) make a written, reasoned decision to resolve the Dispute; and
 - (iv) decide how the Expert's fees and the costs of the parties in participating in the expert determination should be allocated between the parties.
- (e) If the parties cannot agree, within the 10 Business Day period referred to in clause 13.1(d), on the appointment of an Expert, the parties must request the President of the Institute of Arbitrators and Mediators Australia to appoint the Expert.
- (f) A determination by the Expert will be final and binding on the parties unless:
 - (i) the Dispute involves a Claim of more than \$5000 (Indexed between the date of this Agreement and the date of the claim); and
 - (ii) either party issues a notice to the other party disputing the determination within 20 Business Days of receipt of the determination. If such notice is not given within the time stipulated by this clause the determination will be final and binding, in which case either party may initiate legal proceedings.
- (g) Each party must:
 - (i) keep confidential all confidential information and confidential communications made by a representative under this clause 13; and

- (ii) must not use or disclose that confidential information or those confidential communications except to attempt to resolve the Dispute,
- (iii) but nothing in this clause 13 will affect the admissibility into evidence in any court or arbitral proceedings or extrinsic evidence of facts which, but for this sub-clause, would be admissible in evidence.
- (h) If a party does not comply with any provision of clauses 13.1(a) or, if applicable, clause 13.1(b) and any procedural requirements established under clause 13.1(d), then the other party will not be bound by those clauses in respect of the Dispute.
- (i) Nothing in this clause 13 will prejudice the right of a party to seek injunctive or urgent declaratory relief in respect of a dispute or any matter arising under or in connection with this Project Deed.
- (j) The parties must give effect to the determination of the Expert unless and until it is stayed, reversed, overturned or otherwise changed by an order of a court.

13.2 Expert Agreement

The parties must sign an agreement with the Expert which sets out the terms of the Expert's appointment.

13.3 Costs

The costs of the Expert will be paid by the parties in the proportions determined by the Expert.

13.4 Appointment of replacement expert

Where the Expert is unable or fails to make a determination within any period agreed between the parties or the Expert dies, then the parties must appoint a replacement within 5 Business Days after that event and, if they cannot agree on the replacement within that period, the parties must request the senior office bearer from time to time of the Institute of Arbitrators and Mediators Australia to nominate a replacement.

13.5 Consultant to continue to perform this Agreement

Despite anything else in clause 13, the Consultant must, if the work under this Agreement (including the making good of any defects) has not been completed, at all times (subject as otherwise may be provided for in this Project Deed) proceed without delay to continue to perform their obligations under this agreement.

14 TERMINATION BY CLIENT

- 14.1 The termination of the RBS under this Agreement may only occur with the Client first obtaining written consent to terminate from the Building Authority pursuant to Section 81(1) of the Building Act.
- 14.2 The RBS shall be entitled to charge additional Fees for costs and disbursements arising as a consequence of the termination, for the period up to and including the date of termination.
- 14.3 Notwithstanding any other provision of this agreement, the Client must pay the Building Surveyor the Fee within 14 days of the termination of this agreement, or such part of the Fee which is, at that time, unpaid.
- 14.4 Termination of this agreement under this clause does not affect any accrued rights or remedies of either party.

15 TERMINATION BY SIMPLE PERMITS

- 15.1 Subject to the provisions of the Building Act (as amended), Simple Permits may by notice in writing served on The Client, terminate Simple Permits obligations under these Terms of Engagement:
 - (a) If The Client is in breach of any conditions of Clause 2 & 7 and the breach has not been remedied within seven (7) days (or such longer period as Simple Permits may allow) Simple Permits can serve on The Client a notice requiring the breach to be remedied at a cost to the Client; or
 - (b) If The Client is in breach of the provisions of any other clause hereof and the breach has not been remedied within twenty-eight (28) days (or such longer period as Simple Permits may allow) which affects the service by Simple Permits on The Client, then Simple Permits can serve on The Client a notice requiring the breach to be remedied at a cost to the Client; or
 - (c) If Simple Permits serves on The Client a notice requiring that these Terms of Engagement be terminated it will nominate a date in the notice being not less than sixty (60) days after the date of the notice and claim any outstanding fees of which the Client must pay by a due date nominated by Simple Permits.

16 TERMINATION NOT TO AFFECT RIGHTS IN RESPECT OF PRIOR BREACHES

- 16.1 Termination shall be without prejudice to any claim which either party may have against the other in respect of any breach of the provisions of these Terms of Engagement which occurred prior to the date of determination.

17 THE SERVICES

17.1 Building Permit

- (a) The Client or agent of Client may lodge an application for a Building permit to be issued by the RBS.
- (b) The Client or agent of Client 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*;
- (iv) comply with the requirements of the *Building Act*;
- (v) provide all documents and information required under the *Building Act* 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* 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 *Client*;
- (ii) issue a *Building* permit for a stage of the *Building Work*;
- (iii) issue a *Building* permit with conditions;
- (iv) issue a *Building* permit without conditions; or
- (v) refuse to issue a *Building* permit.

17.2 The *Building* permit once issued shall be forwarded to the *Client* or the *Client's* agent as nominated on the application for a *Building* permit.

17.3 If a *Building* Permit is refused

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

17.4 Variation of *Building* Permit

The *Client* 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* and the *Regulations* or requested by the RBS;
- (c) be accompanied by the required *Fee* as per this Agreement.

17.5 Additional Services

If you request us to perform additional *Services* that are not included in the scope of *Services* described in this agreement, we are not obliged to proceed with such additional *Work* until you provide us with a written request, which we may or may not agree to. Any additional *Work* we agree to perform, requested or required by you or the proper performance of our role as relevant *Building* surveyor or the *Act* or *Regulations* will be invoiced separately and must be paid within seven days.

18 NON COMPLIANCE

18.1 If the *Client*/ *Client'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* and the *Regulations*; and
- (d) the RBS provides additional *Services* under the *Building Act*, the *Regulations* or this Agreement;

the *Client* shall pay the RBS a *Fee adjustment* in accordance with this Agreement.

19 INSPECTIONS

19.1 If the RBS is requested by the *Client* or the *Client's* agent to carry out an inspection of the *Building Work*, the *Client* 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.

19.2 The *Client* shall pay the RBS the *Fee* or a *Fee adjustment* required under this Agreement for any inspections.

20 ADDITIONAL SERVICES

20.1 The RBS may perform additional *Services* in exercising its obligations under this Agreement, the *Building Act* 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 *Building Authority* or other *Authority*;
- (d) responding to any requests for information from the *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* and the *Regulations*.

20.2 Upon the RBS carrying out additional *Services* the *Client* shall pay the RBS the *Fee* or a *Fee adjustment* required under this Agreement.

21 INTELLECTUAL PROPERTY AND DATA

21.1 Nothing in this agreement affects the Intellectual Property Rights of either party, except as set out in this clause.

21.2 The *Client* grants the *Building Surveyor* an unrestricted, royalty free licence to use or 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*.

21.3 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.

21.4 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:

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

22 ACKNOWLEDGEMENTS

22.1 The *Client* and *Clients* Agents acknowledge that:

- (a) They are responsible for obtaining (including the cost of) any required planning permit and will provide Simple Permits with a copy of the planning permit and approved planning permit drawings. If necessary, Simple Permits are not required to issue a *Building* permit until we receive any required planning permit and approved planning permit drawings.
- (b) This agreement constitutes the entire agreement between Simple Permits and the *Client* or Agent of *Client*. The *Client* or Agent of *Client* may not rely on any oral discussions or representations made prior to or at the time of signing the agreement.
- (c) Simple Permits are not estimators, quantity surveyors or project managers/site supervisors and you have not engaged us to provide any of those *Services*.
- (d) They must notify Simple Permits in writing of each *Building Practitioner* engaged by you or on your behalf for the *Building Work*, including details of any *Building Practitioner* certificate issued to the *Building Practitioner* under Part 11 of the *Act*. Such notice must be given either upon our appointment (where you have already engaged a *Building Practitioner*) or within fourteen days of engaging the *Building Practitioner* (where the *Building Practitioner*(s) is/are engaged after our appointment).
- (e) They may terminate our appointment only with the written consent of the *Authority*, and that upon any such termination we are entitled to payment of all *Fees* and disbursements incurred to the date of termination. In the event that the *Building Work* nominated in the agreement is terminated before commencement or completion, you must notify the *Authority* of this in writing. Only when this written notice is issued will our appointment end.
- (f) All approvals Simple Permits issue have stipulated on them mandatory timeframes by which the approved *Building Work* must commence and must be completed. If you require an extension of time for any of these time limits you must make a formal written request to us stating the reasons why a time limit extension should be granted.
- (g) *Building Notices* and *Building Orders* are formal documents prescribed in the *Act* and the *Regulations* to be served when breaches and non-compliance in the *Building Work* are identified. Such notices and orders are required to be served as a matter of course for significant areas of non-compliance or where safety is or may be compromised. In the case of routine rectification *Works* we will normally send to the registered proprietor of the project an inspection report or letter (as applicable) and in the event of non-response or an insufficient response within an appropriate time (generally 7, 14 or 30 days) a *Building Notice* will be served and further *Fees* will be payable.

22.2 Simple Permits make no repetitions or warranties that:

- (a) the *Building Work* are commercially viability;
- (b) our appointment is limited to ensuring the *Building Work* carried out complies with the *Act* and *Regulations* that are applicable at the time;
- (c) any *Building* permit we issue will be an assessment of the drawings for compliance with the *Act* and *Regulations* and not the serviceability, quality or *Functionality* of the *Building Work* approved by the permit;
- (d) you will be able to gain any required planning permits;
- (e) the proposed *Building Work* are suitable for the issuing of a *Building* permit (unless we issue one);
- (f) in fulfilling our statutory duties, we will issue a *Building* permit, an occupancy permit or a certificate of final inspection;
- (g) that in properly fulfilling our statutory duties, we will take as much time to investigate and determine applications for the *Building* permit and/or occupancy permits or certificates of final inspection as reasonably required;

- (h) we will rely on the accuracy and completeness of all information supplied by you in performing our obligations under this agreement;

23 GENERAL MATTERS

23.1 Transfer and Assignment

- (a) Simple Permits and *The Client* each binds itself and its partners (if any), successors, executors, administrators, permitted assigns and legal representatives to the other party to these Terms of Engagement and to the partners (if any), successors, executors, administrators, permitted assigns and legal representatives of the other party in respect to all covenants and obligations of these Terms of Engagement.
- (b) Neither Simple Permits nor *The Client* shall assign, sublet or transfer any right or obligation under the Agreement without the written consent of the other party. Unless specifically stated to the contrary in any written consent to an assignment, no assignment shall release or discharge the assignor from any obligation under these Terms of Engagement.
- (c) Nothing contained in this Clause shall prevent Simple Permits from employing such persons or companies as it may deem appropriate to assist it in the performance of these Terms of Engagement.

23.2 Consultants

If circumstances arise which require the Services of a specialist or expert outside the field of Simple Permits, then Simple Permits may with the prior approval of *The Client* engage the appropriate consultant. The consultant shall be engaged at *The Client's* expense and on its behalf. *The Client's* approval shall not be unreasonably withheld.

24 ENTIRE AGREEMENT

- 24.1 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.

25 SEVERANCE

- 25.1 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.

26 PRIVACY

Personal information requested is for the purposes of dealing with the *Building* permit application and associated *Functions*. It will be used solely by Simple Permits and any legally authorized *Building Authority* including the Victorian *Building Authority* (VBA) for this primary purpose or other directly related purposes.

27 Interpretation

In this agreement, unless the context otherwise requires:

- 27.1 headings do not affect interpretation;
- 27.2 singular includes plural and plural includes singular;
- 27.3 words of one gender include any gender;
- 27.4 a reference to a party includes its executors, administrators, successors and permitted assigns;
- 27.5 a reference to a person includes a partnership, corporation, association, government body and any other entity;
- 27.6 a reference to this agreement includes any schedules and annexures to this agreement;
- 27.7 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;
- 27.8 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;
- 27.9 a reference to legislation includes any amendment to it, any legislation substituted for it, and any subordinate legislation made under it;
- 27.10 a provision is not construed against a party only because that party drafted it;
- 27.11 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;
- 27.12 the meaning of general words is not limited by specific examples introduced by 'including', 'for example' or similar expressions;
- 27.13 an expression defined in the Act has the meaning given by that Act at the date of this agreement;
- 27.14 an expression defined in the *Corporations Act 2001* (Cth) has the meaning given by the Act at the date of this agreement; and
- 27.15 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.

28 DISCLAIMER

This publication is provided solely on the basis that readers will be responsible for making their own assessment of matters discussed. No person should rely on the contents without first obtaining independent expert advice. In no

event shall the RBS and Simple Permits *Building Consultants* be liable whatsoever for any direct or indirect or consequential damages or results of any actions taken on the basis of information provided nor for any error in or omission resulting from the use of information stated in this publication &/or forms attached. No other organisations or individuals are permitted to reproduce this publication without the prior written consent of the Principals of Simple Permits.

29 DEFINITIONS

29.1 In this Agreement—

Agreement	this document where an official alternative signed agreement is not available.
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
Building	includes structure, temporary <i>Building</i> , temporary structure and any part of a <i>Building</i> or structure;
Building Act (Act)	the legislative framework for the regulation of building construction, building standards and the maintenance of specific building safety features enforced by the Victorian State Government as at the time of initial assessment and/or issuing of the <i>Building Permit</i> ;
Building Appeals Board	means the <i>Building Appeals Board</i> under Part 10 of the <i>Building Act</i> ;
Building Authority	means the Victorian <i>Building Authority</i> (VBA) under Part 12 of the <i>Building Act</i> ;
Building Code of Australia	has the same meaning as it has in the <i>Building Regulations</i> (BCA)
Building Practitioner	has the same meaning as it has in the <i>Building Act</i> ;
Building Practitioners Board	means the <i>Building Practitioners Board</i> under Part 11 of the <i>Building Act</i> ;
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.
Building Surveyor	means the person identified as such on the front page of this agreement
Building Work	means Work for or in connection with the construction, demolition or removal of a <i>Building</i> .
Business Day	means a day which is not a weekend or public holiday in Victoria
Certificate of Consent	means a <i>Certificate of Consent</i> under Division 3A of Part 3 of the <i>Building Act</i> ;
Client	means <ul style="list-style-type: none"> (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 Crown Land (Reserves) Act 1978 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 public Authority that manages or controls the land; (d) in relation to a <i>Building</i>, means the <i>Client</i> of the land on which a <i>Building</i> is situated; (e) the Owner of the property and to the extent appropriate includes the agents (including the builder), officers and employees of the Owner. "You" includes, jointly and severally, the registered proprietor of the project and, if the applicant for the approvals to be issued by us is not the registered proprietor, then the applicant. "You" also includes your successors and assignees. "Us" includes our successors and assignees.
Commercial Building Work	means any building work associated with a Class 2 to 9 building or use as defined by the BCA and may include a Class 10 type building or structure if it is appurtenant to a Class 2 to 9 building or use;
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

Council	means a <i>Council</i> within the meaning of the Local Government Act 1989;
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.
Domestic Building Work	has the same meaning as it has in the <i>Domestic Building Contracts Act 1995</i> ;
Fee	means the <i>Fee</i> calculated in accordance with the <i>Fee Schedule</i> as defined in clause 10
Fee adjustment	means a sum to be added to or deducted from the <i>Fee</i> ;
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: (a) acts of God, lightning strikes, earthquakes, floods, storms, explosions, fires and any natural disaster; and (b) acts of war, acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage and revolution.
Function	includes power, <i>Authority</i> and duty;
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.
Law	means any statute, regulation, order, rule, subordinate legislation or other document enforceable under any statute, regulation, order, rule or subordinate legislation.
Legislative requirements	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;
Private Building Surveyor Functions	is defined in Clause 1 to this agreement.
Municipal Building Surveyor	means a person for the time being appointed, employed or nominated by a <i>Council</i> as its <i>Municipal Building Surveyor</i> for the purposes of this Act;
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.