

## MODIFIED CONSTRUCTION CERTIFICATE APPLICATION FORM

Construction Certificate: In accordance with Part 3, Section 7 of the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021. Liability limited by a scheme approved under Professional Standards Legislation.

### PART A – Project Information

Street Number:	Street Name:	
Suburb:	State:	Post Code:
DP:	Lot:	Zone:
Development Description:		Your Reference number:
Modification Description:		
Cost of development:	Building Classification:	

### PART B - Owners Details *(if class 2-9 project, the landlord will be the applicant)*

#### Owner 1

Title:	Given Name:	Surname:
Mobile Number:	Email Address:	
Street Number:	Street Name:	
Suburb:	State:	Post Code:

#### Owner 2

Title:	Given Name:	Surname:
Mobile Number:	Email Address:	
Street Number:	Street Name:	
Suburb:	State:	Post Code:

### PART C – Applicant Details (Person having Benefit of Development Consent) within the meaning and under the EP&A ACT 1979 *(CANNOT be architect or builder. If class 2-9 project, the tenant will be the applicant)*

Title:	Given Name:	Surname:
Company/Organisation:		
Street Number:	Street Name:	
Suburb:	State:	Post Code:
Phone Number:	Mobile Number:	
Email Address:		

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## PART D – Billing Details

Billing Name: \_\_\_\_\_ ABN: \_\_\_\_\_  
Billing Address: \_\_\_\_\_  
Billing Email: \_\_\_\_\_ Contact Number: \_\_\_\_\_

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## PART E – Third Party Contact

As the owner(s) of the above property, I/ we consent to information being provided to the following parties (who act on my/our behalf as an agent) during the course of my/our application:

Company/Organisation/Agent: \_\_\_\_\_  
Street Number: \_\_\_\_\_ Street Name: \_\_\_\_\_  
Suburb: \_\_\_\_\_ State: \_\_\_\_\_ Post Code: \_\_\_\_\_  
Phone Number: \_\_\_\_\_ Email Address: \_\_\_\_\_

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## PART F – Proposal Details

Local Government Area: \_\_\_\_\_  
Has development consent been granted for the development?  Yes  No  
Consent Number: \_\_\_\_\_ Date of Determination: \_\_\_\_\_  
Has a Section 4.55 Modification been granted for the development?  Yes  No  
Modification Number: \_\_\_\_\_ Date of Modification: \_\_\_\_\_  
Description of Modification: \_\_\_\_\_

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## PART G – Builders Details Owner Builder Details

Name: \_\_\_\_\_ Licence No/Owner Builder Permit No: \_\_\_\_\_  
Street Number: \_\_\_\_\_ Street Name: \_\_\_\_\_  
Suburb: \_\_\_\_\_ State: \_\_\_\_\_ Post Code: \_\_\_\_\_  
Mobile Number: \_\_\_\_\_ Email Address: \_\_\_\_\_

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## PROPOSAL DETAILS AND SCHEDULE

Details of information being submitted to the Australian Bureau of Statistics

*This must be completed in its entirety at lodgement*

Total area of subject site (m<sup>2</sup>):

Current use of existing building/s on the subject site (if vacant, state "vacant"):

Residential     Commercial     Industrial     Mixed Use     Vacant     Other

Floor area of existing building/s in m<sup>2</sup> except if being demolished:

Estimate of the area (if any) in m<sup>2</sup> of bonded asbestos material or friable material that will be disturbed, repaired or removed in the carrying out of the development:

Gross floor area in m<sup>2</sup> of proposed addition/s or new building/s. If multiple buildings, please itemise:

Proposed use of all parts of the addition/s or new building/s:

Is the new building to be attached to (or within 900mm of) an existing building?     Yes     No

Is the new building to be attached to (or within 900mm of) any proposed new building?     Yes     No

Is this bushfire prone land     Yes     No

Number of Storeys:

Number of Structures:

### *Complete next 3 rows for Residential Dwellings Only*

Number of storeys of proposed dwelling:

Number of dwellings to be demolished:

Number of pre-existing dwellings:

Number of proposed new dwellings:

Does the site contain a dual occupancy development?     Yes     No

### *Materials Used in Building for all project types*

*Tick the box alongside which best describes the material/s used on existing structures or to be used in the construction of the proposed new work/s.*

WALLS		ROOF		FLOOR		FRAME	
Brick (double)		Aluminium		Concrete or slate		Timber	
Brick (veneer)		Concrete or slate		Timber		Steel	
Concrete or stone		Fibre Cement		Other		Aluminium	
Fibre Cement		Steel		Not specified		Other	
Timber		Tiles				Not specified	
Steel		Other					
Aluminium		Not specified					
Curtain glass							
Other							
Not specified							



## 1. Definitions and interpretation

### Accurate means:

- (a) accurate, complete, correct and suitable for use by the Certifier;
- (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);

### Agreement Items & Development Particulars with Scope of Services & Any Special Conditions as detailed in the quotation

- (b) Information Sheet and

- (c) any other Contract Documents specified in the form;

### 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 construction certificates and development approvals 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 Certifier may grant or make, as part of, or as a consequence of, performing the Services in accordance with the Certifier'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;

### BDC Act means the *Building and Development Certifiers Act 2018* (NSW), and **BDC Regulations** means the *Building and Development Certifiers Regulation 2020* (NSW);

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

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

### Commencement Date means the date the application was lodged;

### Contract Sum means the amount specified in the quote or service agreement.

### 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 Certifier 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 this contract;

### 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 merit);

### Project means the project specified in the application form and client deliverables;

### Registered Body Corporate, Registered Certifier and Registered Individual each have the same meanings as are given to those terms under the BDC Act;

### Services means all of the work to be performed by the Certifier identified in the Scope of Services, or as varied in accordance with these General Conditions;

### Site means the location specified in the application form, and includes any other area or location that the Certifier may reasonably require access to in order to perform the Services;

### Special Conditions means the special conditions specified in this agreement & approval if varied after discussion;

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

### Variation Sum means the amount the Certifier charges the Client for work performed as a result of a Variation, calculated at the hourly rate specified in the contract terms where applicable, plus Disbursements and any other amounts as otherwise reasonably determined by the Certifier (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 (including the *Work Health and Safety Act 2011* (NSW) (**WHS Act**), *Work Health and Safety Regulation 2011* (NSW) ("**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 Certifier agrees to perform the Services with Due Care and Skill, and in accordance with all requirements of the BDC Act and BDC Regulations, including the Code of Conduct prescribed therein.
- 2.2 The Services will be performed by the Registered Certifier (or Registered Body Corporate and Registered Individual) and employed by Patmark Pty Ltd.
- 2.3 The Client acknowledges that any Approval is at the Certifier's discretion, subject to the Certifier 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 Certifier, will be made.
- 2.4 If the Services involve carrying out functions under the *Environmental Planning and Assessment Act 1979* (NSW), particulars of the relevant development are provided in application forms.

## 3. Client Obligations

- 3.1 The Client must, at its own cost, promptly:
  - (a) give the Certifier safe access to the Site as and when the Certifier requires, to enable the Certifier to perform the Services (and notify the Certifier of any changes to that access); and
  - (b) provide the Client Deliverables to the Certifier;
  - (c) coordinating other contractors or persons involved in the Project so as not to impede the Certifier's performance of the Services;
  - (d) notify the Certifier of anything which the Client is aware of or becomes aware of which could materially affect the Certifier'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 Certifier 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 Certifier and do all other things reasonably necessary so that the Certifier is able to perform the Services.
- 3.2 The Certifier is not liable for any Loss or delay that may result from the Client's failure to comply with this clause 3.

### 3.3 In the event that the nominated Registered Certifier cannot fulfil the obligations required by the Act, due to a resignation from his/her employment position with CoCert Unit Trust or because he/she is unavailable due to leave of any description or because of illness or for any other reason that may occur and a transfer of that role is required, the owner agrees to the transfer of that role to another registered certifier employed by Patmark Pty Ltd.

## 4. Client Deliverable

- 4.1 The Client:
  - (a) acknowledges that the Certifier, in performing the Services, is relying upon the Client Deliverables being Accurate;
  - (b) warrants to the Certifier that the Client Deliverables are Accurate;
  - (c) has No Claim against the Certifier (or any employee of the Certifier), 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) accept's 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 Certifier may resolve the Ambiguity in whichever way the Certifier 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 Certifier 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 Certifier 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 Certifier 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 Certifier as a result of or in any way connected with any change in Applicable Laws, which occurs after the Certifier has ceased to perform the Services.

## 7. Intellectual property and Confidentiality

- 7.1 Certifier's intellectual property:
  - (a) Subject to the Client complying with its obligations under the Agreement, the Certifier grants to the Client a non-exclusive, royalty-free, revocable license to use the intellectual property in any document which the Certifier gives to the Client (that was prepared by the Certifier 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 Certifier.
- 7.2 Client's intellectual property:
  - (a) The Client grants the Certifier an unrestricted, royalty free license to use the intellectual property in any Client Deliverables to the extent reasonably necessary for the Certifier 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 Certifier 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 Certifier the Contract Sum within 2 Business Days of entry into this Agreement and in any event, prior to the Certifier commencing the Services.
- 8.2 The Certifier must issue a valid tax invoice to the Client in respect of the Contract Sum.
- 8.3 The Certifier 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 Certifier; rather the Certifier can only provide certifications to the extent the conditions for certification are satisfied.

## 9. Variations and Variation Sum

- 9.1 If, in the Certifier's reasonable opinion, a Variation has occurred or is required, the Certifier must provide the Client written notice of such Variation.
- 9.2 Within 2 Business Days of the date the Certifier provides notice under the previous subclause, the Client must provide written notice to the Certifier 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 Certifier may suspend the Services under clause 15.1(d).
- 9.4 The Client acknowledges that Variations may include those specified in the Scope of Services.
- 9.5 If, in the Client's reasonable opinion, a Variation is required, the Client must provide the Certifier with written notice providing details of the proposed Variation to the Certifier, at least 5 Business Days prior to the Certifier being required to perform work in relation to the Variation. If the Certifier 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 Certifier 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 Certifier may invoice the Client for the cost of any disbursements, plus a reasonable margin for profit and overheads, including as listed but not limited to the following: NSW Fire Brigade fees for fire safety report required under s 144 of the EP&A Regulation; Any other specialist reports; Travel; couriers; Photographs, colour copying, laminating, presentation materials.

- 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 Certifier in accordance with this Agreement then, without prejudice to any other rights or remedies the Certifier may have:
- (a) the Certifier may charge the Client interest from the day after the relevant invoice's payment due date, until payment is made, at the rate of 5% per annum;
- (b) the Client indemnifies the Certifier for its costs and expenses in recovering.
- 12. Time and Completion**
- 12.1 The Certifier must commence the Services by the Commencement Date, and complete them within a reasonable period of time.
- 12.2 The Certifier is entitled to an extension of time for completing the Services, if the Certifier 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 Certifier's reasonable Control.
- 12.3 The Certifier is not liable for any delay to the Project caused by the Certifier completing the Services in accordance with this clause 12.
- 13. Insurance**  
The Certifier must, maintain the insurances specified, for any amounts and periods specified, in clause 14.5.
- 14. Liability Limit**
- 14.1 The Certifier'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 Certifier'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 Certifier'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 Certifier'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) gross negligence
- (d) liability for third party property damage
- (e) a risk covered by insurance, in which case liability is limited to the amount of insurance paid out
- 14.5 The Registered Certifier shall maintain an insurance policy in accordance with *Division 1 of part 3 of the Building and Development Certifiers Act 2018* and shall provide a copy of that policy to the Owner upon request:
- Current Policy Details**  
Professional indemnity Insurance Policy No: TT2500603  
CBC UK Limited  
Policy Period: 30.06.26-30.06.27
- The extent of any claim or otherwise against the policy held by the Registered Certifier or against the Registered Certifier in any way shall be limited to five times (5x) the value of the service fee paid to the Registered Certifier for the services provided and no more.
- 14.6 Building and Development Certifiers Act 2018**  
The registered Certifier shall carry out all certification work in accordance with any standard or methodology specified in *Section 14 of the Building and Development Certifiers Act 2018*
- 15. Suspension**
- 15.1 The Certifier may suspend the Services for so long as:
- (a) the Certifier 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 Certifier;
- (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 Certifier for any additional costs or expenses the Certifier incurs in relation to a suspension under this clause 15, if the suspension was not caused solely by an act or omission of the Certifier.
- 16. Termination**
- 16.1 The Certifier 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 Certifier'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 Certifier:
- (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 Certifier from complying with relevant laws or regulations if the Certifier 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 Certifier wishes to terminate for the Certifier's convenience.
- 16.2 The Client may terminate this Agreement by giving the Certifier written notice to that effect if the Certifier 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 Certifier has an entitlement to terminate the agreement it may exercise that right with or without notice, in the Certifier's absolute discretion.
- 16.4 If the Client receives a notice from the Certifier that:
- (a) the Certifier has terminated the Agreement - the Client must as soon as possible: appoint a replacement certifier to take over the certification role comprised in the Services; advise the Certifier of that replacement; and notify all relevant Authorities of that replacement;
- (b) the Certifier will terminate the Agreement - the Client must, as soon as possible and in any event prior to the termination taking effect: appoint a replacement certifier to take over the certification role comprised in the Services from the date of termination of the Agreement; advise the Certifier of that replacement; and notify all relevant Authorities of that replacement.
- 16.5 On termination of this Agreement:
- (a) any amounts owing to the Certifier in respect of the Services up to and including the date of termination (together with any other amounts which the Certifier 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 Certifier 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 Certifier during any period in which the Certifier may be prevented or hindered from performing the Services (or any part of the Services) through any circumstances outside the Certifier's reasonable control or where such performance is rendered materially more expensive by such circumstances.
- 17.2 Circumstances beyond the Certifier'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 Certifier 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 to 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 Certifier 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 Certifier nor is any representation, warranty or thing made or done by the Certifier 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 Certifier'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 void ability, 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 in NSW. 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