

AIBS Standard Terms of Engagement

Terms and Conditions

1 NATURE OF CONTRACT

- 1.1 The RBS shall carry out upon request by the owner, and in accordance with the Building Act 1993 (the Act) and Building Regulations 2018 (the 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 the 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 work;
 - (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

- 6.1 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 shall pay any claim made by the RBS within 14 days of the date of the claim.

8 INTEREST

- 8.1 Interest at rate of 12% shall be due and payable by the owner 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 work;
- (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

11.1 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 work, 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 and the Building Appeals 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 work cease on the subject property;
 - (iv) if the subject property is transferred to a new owner; 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 1993 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.

15 ENTIRE AGREEMENT

15.1 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.

16 SEVERANCE

16.1 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.

17 DEFINITIONS

17.1 In this Agreement—

Building	includes structure, temporary building, temporary structure and any part of a building or structure;
Building Appeals Board	means the Building Appeals Board under Part 10 of the Building Act 1993;
Building Practitioner	has the same meaning as it has in the Building Act 1993;
Building Work	means work for or in connection with the construction, demolition or removal of a building;
Certificate of Consent	means a certificate of consent under Division 3A of Part 3 of the Building Act 1993;
Council	means a council within the meaning of the Local Government Act 1989;
Domestic Building Work	has the same meaning as it has in the Domestic Building Contracts Act 1995;
Fee	means the fee calculated in accordance with the Fee Schedule attached hereto;
Fee adjustment	means a sum to be added to or deducted from the fee;
Function	includes power, authority and duty;
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;
Municipal Building Surveyor	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;
Owner	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 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 building, means the owner of the land on which a building is situated.
RBS	means the Relevant Building Surveyor;
Victorian Building Authority	means the Victorian Building Authority under Part 12 of the Building Act 1993.