



**Building Act 1993
Building Regulation 2006
TERMS OF ENGAGEMENT**

1 NATURE OF CONTRACT

- 1.1 The RBS shall carry out upon request by the *owner* or *agent* and in accordance with the *Building Act 1993* (the Act) and *Building Regulations 2006* (the Regulations), the *Services* in accordance with this Agreement
- 1.2 The *owner* or *agent* 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 BUILDING SURVEYING FEES

- 7.1 In appointing BSP Melbourne as the *Relevant Building Surveyor (RBS)* for the project, the Building Permit fee must be paid in full prior to the issue of the permit including Government Levies which are a portion of the job cost/contract amount.
- 7.2 The *owner/ agent* shall pay the RBS the building surveying fee as per the fee proposal in accordance with the outlined schedule of payments.
- 7.3 *Services* that have not been allowed for within the scope of works of the fee proposal shall incur additional costs as outlined in the exclusions section of the fee proposal.

8 PAYMENT

- 8.1 The RBS shall claim payment in accordance with the *fee schedule* attached to this Agreement;
- 8.2 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.
- 8.3 The *owner* shall pay any claim made by the RBS within 14 days of the date of the claim.

9 INTEREST

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

10 TERMINATION

- 10.1 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*.
- 10.2 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.
- 10.3 The RBS shall be entitled to charge additional fees for costs and disbursements arising as a consequence of the termination.

11 THE SERVICES

11.1 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.
- 11.2 The building permit once issued shall be forwarded to the owner and /the owner's agent.
- 11.3 **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.
- 11.4 **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.
- 11.5 **Extension of time of Building Permit**
- The *owner* may lodge an application requesting an extension of time to the expiry date of the building permit 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.
- 12 **NON COMPLIANCE**
- 12.1 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.
- 13 **INSPECTIONS**
- 13.1 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.
- 13.2 The owner shall pay the *RBS* the fee or a fee adjustment required under this Agreement for any inspections.
- 13.3 It is the responsibility of the Owner/ Builder to contact BSP Melbourne office for the mandatory inspections as specified on the Building Permit.
- 13.4 The Owner / Builder shall pay for any additional inspections (at full inspection costs) before the Issue of the Final Inspection Certificate/ Occupancy Permit. Additional inspections are those carried out which exceed the amount of inspections specified in the fee proposal/ tax invoice or re-inspections of past failed inspections.
- 13.5 It is the Owner's /Builder's responsibility to ensure a copy of all documentation and endorsed plans are available on site at all times to ensure all tradesmen carry out the building work strictly in accordance with the approved plans / regulations, and to allow for mandatory building inspections.
- 13.6 Where applicable, all pre-fabricated floor and roof truss manufacturer computations and plans are to be submitted to this office for assessment and approval 48 hours prior to erection on site. Frame Inspections will not be booked until truss computations and plans have been approved by this office.
- 14 **ADDITIONAL SERVICES**
- 14.1 The *RBS* may perform additional *Services* in exercising its obligations under this Agreement, the *Building Act 1993* and its *Regulations* and or any other relevant legislation including but not limited to:
- (a) Obtaining additional information and documents from a Council and other authority;
 - (b) Carrying out additional inspections of the subject property;
 - (c) Reporting any matters to the Victorian Building Authority or other authority;
 - (d) Responding to any requests for information from the Victorian Building Authority or other authority including but not limited to a council, the Building Appeals Board, and the Building Practitioners Board;
 - (e) Issuing any Notices or Orders under the *Building Act 1993* and the *Regulations*.
 - (f) Preparation or Certification of performance based solutions pursuant to the Building Code of Australia.
 - (g) Independent certification of structural and services designs. Issue of a Certificate of Compliance (Reg. 1507(a)) by the design consultant would be acceptable for this project.
 - (h) Fire Engineer's fees and independent peer review related to any alternative solutions under the performance provisions of the BCA (if required).
 - (i) Fire authority fees & consultancy involved with seeking variations to fire service matters.
 - (j) Protection Notice Determinations under Reg. 602(6),
 - (k) Attendances at appeals (e.g. Protection of adjoining properties etc.)
 - (l) Staged Permits for building works other than any nominated within the scope of works.
 - (m) Design amendments assessed after the issue of the initial building permit
 - (n) Disbursements other than those specifically included in fee schedule.
- 14.2 Upon the *RBS* carrying out additional *Services* the owner shall pay the *RBS* the fee or a fee adjustment required under this Agreement as specified in the fee proposal.

15 **OWNERS OBLIGATIONS**

15.1 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.

16 **ENTIRE AGREEMENT**

16.1 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.

17 **SEVERANCE**

17.1 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.

18 **DEFINITIONS**

18.1 **In this Agreement—**

Agent	means a person who has been formally appointed by the <i>Owner</i> to apply for the building permit as the applicant on the <i>Owner's</i> behalf.
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 Practitioners Board	means the Building Practitioners Board under Part 11 of 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 <ul style="list-style-type: none">(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 <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 building, means the owner of the land on which a building is situated;
Victorian Building Authority	means the Victorian Building Authority Part 12 of the Building Act 1993.