

### INFORMATION

- The Client seeks to engage the Contractor to perform certification work on the terms set out in this Agreement.
- The Contractor employs a registered certifier (the Certifier) who is authorised to carry out the certification work which is the subject of this Agreement.

### SECTION A – THE CONTRACTOR / PRINCIPAL CERTIFIER

Name of the Contractor	AcroCert Pty Ltd	Corporate Registration No	RBC5
Business & Postal Address	308 High Street / PO Box 216 MAITLAND NSW 2320		
Phone	(02) 4933 5626	Email	maitland@acrocert.com.au
Name of Insurer	Bishopsgate Insurance Brokers Limited and Pen Underwriting Pty Ltd		
Address	2 Minster Court, Mincing Lane, London, EC3R 7PD		
Policy Number	Primary Policy: B0831IN0042723 + Excess Layer: 000A3-0404983		
Period of Insurance Cover	From: 31 July 2023	To: 31 July 2024	

### SECTION B – THE CLIENT *Owner of the land or person / company listed on the DA*

Name(s)	
Postal Address	
Phone(s)	Email

### SECTION C – THE DEVELOPMENT

Description of Development	
Street Address	
Title Particulars (Lot & DP/SP)	

### SECTION D – DEVELOPMENT CONSENT DETAILS *Tick appropriate box/s and complete*

Development Consent granted by consent authority	Development Consent given by the issue of a Complying Development Certificate (CDC)	Part 6 Certificate issues
<input type="checkbox"/> YES / <input type="checkbox"/> NO	<input type="checkbox"/> YES / <input type="checkbox"/> NO	<input type="checkbox"/> YES / <input type="checkbox"/> NO
Name of Consent Authority	Name of Certifying Authority	Type of Part 6 Certificate Issued
Development Consent number	Complying Development number	Name of Certifying Authority
Date of Development Consent	Date of Complying Development	Certificate number & Date

## SECTION E – DETAILS OF APPROVED DOCUMENTS

Details of plans, specifications and other documents approved by the Development Consent / CDC	Details of plans, specifications, and other documents the subject of any Part 6 Certificate

**SECTION F – CERTIFICATION WORK** Any certification work carried out, in accordance with Clause 28(b) of the NSW Building and Development Certifiers Regulation (2020) shall be conducted by an employee of the Principal Certifier or a duly authorised registered certifier engaged the Principal Certifier. The Principal Certifier shall be:

Principal Certifier	AcroCert Pty Ltd – the Principal Certifier (PC)
Registration number	RBC5 (Corporate Registration)

## SECTION G – CERTIFICATION WORKS TO BE PERFORMED Tick one or more boxes as appropriate

<input type="checkbox"/>	All Mandatory Critical Stage Inspections
<input type="checkbox"/>	Determination of an application for a Complying Development Certificate *
<input type="checkbox"/>	Determination of an application for a Construction Certificate *
<input type="checkbox"/>	Undertaking functions of Principal Certifier for the development *
<input type="checkbox"/>	Determination of an application for an Occupation Certificate *

\* Refer to the relevant Attachment(s) which contain a Description of Services and the relevant Fees & Charges

## SECTION H – FEES & CHARGES – DEVELOPMENT CERTIFICATES / PC FUNCTIONS

- The fees and charges for the determination of an application for a development certificate and for the Contractor to carry out the functions as the PC for the development are set out in the relevant attachment
- The set fees and charges for the determination of an application for a development certificate and for the carrying out of the functions as the PC for the development, must be paid in full to the Contractor before, or at the time, an application is lodged & before the Contractor commences to carry out any of those functions
- In the case of fees and charges that may be payable for work arising from unforeseen contingencies, the basis on which those fees and charges are to be calculated are set out in the relevant attachment
- In respect of any unforeseen contingency work provided for under this Agreement, the Contractor is to send an invoice to the Client within 21 days after the completion of any such work

## SECTION I – STATUTORY OBLIGATIONS

- An information brochure which is to include information about statutory obligations, must accompany this Agreement, if one is published by the Commissioner of the Department of Fair Trading on its website. The Department of Fair Trading is the statutory body that registers the Certifier and administers the *Building and Development Certifiers Act 2018*.

## SECTION J - SIGNATURES

Signed/Executed by the owner/s of the land or person/company listed on the DA

Signature(s)	
Date	

By signing the above it is acknowledged that the decision to appoint AcroCert Pty Ltd (RBC5) as the Principal Certifier has not been made as a result of any coercion, inducement or influence from any third party and that there exists no family, personal, employment or business relationship with AcroCert Pty Ltd (RBC5) in regards to any certification works for the proposed development.

Signed/executed by or on behalf of the Contractor (AcroCert Pty Ltd)

Signature	Date

## SECTION K – DATE OF AGREEMENT Date this Agreement is made on

Date
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## EFFECT OF CONTRACT

1. This contract supersedes and overrides any other documents or oral representations upon which the parties may seek to rely to generate any legal effect or to imply any contractual obligation.

## OBLIGATIONS OF THE PRINCIPAL CERTIFIER

2. Regarding the issuing of Construction Certificates, Complying Development Certificates and Occupation Certificates.
  - 2.1 The Principal Certifier shall issue a Construction Certificate, Complying Development Certificate or Occupation Certificate:
    - 2.1.1 Once the Client pays the Principal Certifier any money owed for work associated with the issuing of a Construction Certificate, Complying Development Certificate or Occupation Certificate; and
    - 2.1.2 The design and construction of the Building Works comply with a relevant Development Consent and the Regulations or any prescribed complying development criteria by either the State Government or Local Council; and
    - 2.1.3 The designs comply with the BCA.
  - 2.2 The Principal Certifier shall provide the relevant Consent Authority and/or Local Council with a Notice of Determination within 7 days of the determination.
  - 2.3 When the Principal Certifier issues a Construction Certificate, Complying Development Certificate or Occupation Certificate, the Principal Certifier may issue additional certificates or statements from any other Certifier or any other party as the Principal Certifier considers necessary in the circumstances.
  - 2.4 The Principal Certifier may carry out as many inspections as the Principal Certifier considers necessary in addition to any mandatory critical stage inspection inclusive of inspections required as a result of a complaint regarding non-compliance with any aspect of the development and as may be associated with the service of a Written Direction Notice.
  - 2.5 The Principal Certifier shall issue an Occupation Certificate for the Building Works when the Principal Certifier is satisfied that:
    - 2.5.1 A Development Consent has been complied with, including any preconditions to the issue of an Occupation Certificate or a Complying Development Certificate in force for the Building Works; and
    - 2.5.2 The Building Works are suitable for occupation or use in accordance with their classification under the BCA; and
    - 2.5.3 The Building Works or parts do not pose any danger for the occupants in the case of a partial Occupation Certificate or an Occupation Certificate for part of a building.
  - 2.6 The Principal Certifier shall maintain an insurance policy in accordance with the Act and shall provide a copy of that policy to the client upon request.

## OBLIGATIONS OF THE CLIENT

3. The client shall:
  - 3.1 Not engage any other Certifier or Principal Certifier after the Principal Certifier appointed pursuant to this contract has been engaged. Breach of this condition will entitle the Principal Certifier to recover any losses or costs of whatsoever nature that flow from such breach.
  - 3.2 Pay the Principal Certifier for the agreed amount when the Client submits an application for a Construction Certificate or Complying Development Certificate.
  - 3.3 Ensure that the site is available for the Principal Certifier to carry out its contractual obligations.
  - 3.4 Use Competent People for all aspects of the Building Works.

- 3.5 Provide the Principal Certifier with evidence of Home Owners Warranty insurance or Owner Builder Permit (if applicable) not less than 48 hours prior to the commencement of the Building Works.
- 3.6 Provide all relevant drawings, plans, statutory plans and documentation associated with but not limited to the Development Consent, the Construction Certificate or Complying Development Certificate and any Occupation Certificate at the request of the Principal Certifier.
- 3.7 Attend any meetings if required by the Principal Certifier to do so.
- 3.8 Comply with any Written Direction Notice that the Principal Certifier issues.
- 3.9 Provide Compliance Certificates as may be requested by the Principal Certifier.
- 3.10 Provide all information that the client reasonably can obtain to enable the Principal Certifier to fulfil its contractual obligations.
- 3.11 Pay the Principal Certifier in accordance with this contract or any signed agreement between the client and the Principal Certifier.
- 3.12 Act in good faith, in accordance with the Act and in a cooperative fashion.

## CONTRACTUAL VARIATIONS

4. If:
  - 4.1 The Building Works do not commence within 60 days from the date of the execution of this contract; or
  - 4.2 Any Competent Person used by the Client in respect of the Building Works causes a delay in the progress of the Building Works for more than 21 days; or
  - 4.3 Any part of the Building Works is re-designed by the Client or the client's representative; or
  - 4.4 Any part of the Building is designed pursuant to a Deemed to Satisfy Provision and is subsequently changed by way of a Performance Solution; or
  - 4.5 More Certificates and / or Modified Certificates are required to be issued by the Principal Certifier than those listed originally agreed to; or
  - 4.6 An amendment to any statutory legislation that requires any aspect of the Building Works or the Principal Certifier's work to be varied; or
  - 4.7 The Principal Certifier is required to undertake more inspections than those listed in an Inspection Schedule; or
  - 4.8 The Client does anything that causes a delay to the Building Works or does anything that delays the ability of the Principal Certifier to carry out its obligations under this contract; or
  - 4.9 Any Written Direction Notice is issued by the Principal Certifier, then:
    - 4.10 The Principal Certifier may:
      - 4.10.1 Vary this contract to the extent that the Principal Certifier will be able to carry out its contractual obligations; and
      - 4.10.2 Increase the contract price with such increase to be made by way of Notice to the Client stating the reason/s for the increase and the amount of the increase.
    - 4.11 The variation will permit the Principal Certifier to claim all costs associated with that delay as reasonably determined by the Principal Certifier.
    - 4.12 Notice must be given to the Client in writing when the Principal Certifier becomes aware that a variation will be necessary.

## CONTRACTUAL TERMINATION

5. If:

- 5.1 The Client fails to pay any money owing to the Principal Certifier after 7 days of that money becoming payable; or
- 5.2 The Client has an execution levied against it, assigns or attempts to assign its estate for the benefit of its creditors, intends to or attempts to or makes a composition or Scheme of Arrangement with creditors, has a winding up order made against it, intends to or attempts to pass a resolution for winding up, goes into liquidation, has an Official Manager or Receiver appointed, has a Mortgagee taking possession of any part of its property, has an Administrator or a Provisional Liquidator appointed, becomes insolvent or bankrupt; or
- 5.3 The Client breaches the contract in any respect; or
- 5.4 A Construction Certificate or Complying Development Certificate is not capable of being issued within 180 days or 6 months (whichever is the lesser) from the date of execution of this contract; or
- 5.5 The Building Works do not commence within 60 days from the date a Construction Certificate or Complying Development Certificate was issued; or
- 5.6 The Client does not permit the Certifying Authority to issue any Occupation Certificate within 60 days from the date of practicable completion; or
- 5.7 The Building Works have commenced without the issuing of a Construction Certificate or Complying Development Certificate, then:
- 5.8 The Principal Certifier may terminate this contract by sending a written Notice of Termination, stating the breach/s, to the Client. Termination will take effect as soon as the client receives the Notice of Termination.
- 5.9 If the Principal Certifier terminates the contract, then the Principal Certifier is entitled to payment of Termination Money.
- 5.10 The Client may terminate this contract by doing so in writing, which will incur a \$110 (GST incl) administrative cancellation fee in addition to any other outstanding fees at the date of cancellation.
- 5.11 Unless the Client disputes the Notice of Termination, the Client must pay all Termination Money to the Principal Certifier within 14 days of receiving a Notice of Termination.
- 5.12 If the Principal Certifier terminates the contract, the Certifying Authority is entitled to carry out a final inspection, at the Client's expense, prior to termination.
- 5.13 As from the date of final inspection, the Client must indemnify the Principal Certifier for any liabilities, including but not limited to professional liability and public liability, of whatsoever nature that emanate from:
  - 5.13.1 The need to terminate this contract or the Building Contract;
  - 5.13.2 Any matters of non-compliance with the Act on the part of the Client or any other contractors.

## DISPUTE RESOLUTION

6. Any dispute of whatever nature to do with this contract must be referred to mediation.
- 6.1 If either party believes there is a dispute under this contract it must give Notice of the dispute to the other party.
- 6.2 The mediator must be appointed by the AIBS or the AAC.
- 6.3 The mediation will be invoked by either party serving Notice upon the AIBS or the AAC and the other party within 7 days of a party being notified of a dispute.
- 6.4 Both parties must attend the mediation and must co-operate with the mediator and each other and shall give the mediator whatever the mediator requests.
- 6.5 If the mediator resolves the dispute, the resolution must be evidenced by a written agreement that is signed by the mediator and the parties.
- 6.6 If the mediation fails, then either party may take action to resolve the dispute in a court of competent jurisdiction.
- 6.7 Both parties will remunerate the mediator on a 50/50% basis, regardless of any alleged fault and regardless of the outcome.
- 6.8 The mediator may request mediation funds to be placed into a trust account before the mediation commences and may request

payment of additional moneys from time to time until the mediation is concluded.

## 7. OCCUPATION CERTIFICATES

- 7.1 An Occupation Certificate must be applied for, and issued, within 24 months of the date of the construction approval. Failure to comply with this requirement shall entitle the Principal Certifier to terminate the contract, and to charge additional fees in order to finalise the project including, but not limited to, for any additional liability and inspections, including the Final inspection and issue of any Occupation Certificate.
- 7.2 Where a partial Occupation Certificate or Occupation Certificate for a part of a building is issued a further application for an Occupation Certificate must be applied for, and issued, within 5 years of the date of the original Occupation Certificate.
- 7.3 If, for whatever reason, an Occupation Certificate is not issued whether it be on account of the insolvency of the Client, the disappearance of the Client or the termination of the Contract, the Principal Certifier's responsibilities under the Contract cease forthwith. With respect to any liabilities that may be occasioned under the Act, the Principal Certifier will be able to give evidence that no action can be brought 10 years after the date upon which the act that evidenced the ending of the Contract occurred.

## ADDRESS FOR NOTICES

8. Where any Direction or Written Direction Notice is to be forwarded to the client, the address for such Direction or Notice shall be the address stated in the application for a relevant Certificate, or to any other address that is notified in writing by the Client to the Principal Certifier.

## DEFINITIONS

**The Act** means the Environmental Planning and Assessment Act 1979, as amended (NSW). All amendments and references to the Act also mean amendment and references to the Regulations.

**AAC** means the Association of Accredited Certifier

**AIBS** means the New South Wales Chapter of the Australian Institute of Building Surveyors.

**Performance Solution** has the same meaning as the term in the Building Code of Australia.

**BCA** means the National Construction Code, Building Code of Australia including all applicable amendments.

**Building Contract** means the contract to construct the Building Works that the client enters into with the builder.

**Building Works** means any physical activity associated with the erection of a building.

**Certificates** mean statutory certificates and non-statutory certificates.

**Client** means the owner or the owner's agent.

**Direction or Notice** includes any notice issued under the Act or this contract.

**Inspection Schedule** means the Inspection Schedule provided in the Notice of Inspections within the meaning of the Act.

**Practicable Completion** means the date the builder has completed the Building Works in accordance with the Building Contract.

**Principal Certifier** means a Principal Certifier within the meaning of the Act including an accredited body corporate.

**Termination Money** means the money owing to the Principal Certifier if the Principal Certifier terminates the contract in accordance with this contract, being money for work done (with interest if applicable) and for cost incurred (with interest if applicable) and any money that the Client would have been bound to pay to the Principal Certifier if the contract had been totally completed.

## Information about registered certifiers – building surveyors and building inspectors

**Important: this is a summary document only.**

Before signing any contract for certification work, make sure you understand your obligations and what you are agreeing to. The Fair Trading website has more information about certifiers.

Under section 31(2) of the *Building and Development Certifiers Act 2018* and clause 31 of the *Building and Development Certifiers Regulation 2020*, a contract to carry out certification work must be accompanied by an applicable document made available on the website of the Department of Customer Service (which includes NSW Fair Trading)<sup>1</sup>. This is the applicable document for certification work involving a certifier registered in the classes of **building surveyor** or **building inspector**, working in either the private sector or for a local council.

This document summarises the statutory obligations of the registered certifier who will assess your development and your obligations as the applicant for the development. It also sets out the types of information that can be found on Fair Trading's online register of registrations and approvals.

### Obligations of registered certifiers

The general obligations of registered certifiers include compliance with their conditions of registration, to hold professional indemnity insurance, comply with a code of conduct and avoid conflicts of interest.

### Who does a registered certifier work for?

A registered certifier is a public official and independent regulator, registered by the Commissioner for Fair Trading.

Certifiers must carry out work in a manner that is impartial and in the public interest, even if this is not in the interests of the applicant, developer, or builder. Receiving a certificate is not guaranteed – the applicant is paying for the certifier to assess the application and determine *whether or not* a certificate can be issued.

It is a serious offence to attempt to bribe or influence a certifier, attracting a maximum penalty of \$110,000 and/or two years imprisonment.

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<sup>1</sup> Visit [www.fairtrading.nsw.gov.au](http://www.fairtrading.nsw.gov.au) and search 'certification contracts'.

## Obligations of the applicant

An applicant is the person seeking a certificate, or engaging a certifier for other certification work, under the *Environmental Planning and Assessment Act 1979*.

As an applicant, you have the following obligations:

- Appoint, and enter into a contract with, your chosen certifier.
- Pay the certifier's fees before any certification work is carried out.
- Communicate with your builder to ensure the certifier is notified when work reaches each stage. If a mandatory inspection is missed, the certifier may have to refuse to issue an occupation certificate.
- Follow any written direction issued by the certifier and provide any requested additional information to assess an application.
- Meet the conditions of any development consent and ensure the development is carried out in accordance with the approved plans.

## What does a registered building surveyor do?

Registered **building surveyors** issue certificates under the *Environmental Planning and Assessment Act 1979* (construction certificates, complying development certificates and occupation certificates), act as the **principal certifier** for development, and inspect building work.

The principal certifier will attend the site to carry out mandatory inspections at certain stages. When construction is complete, the certifier may issue an occupation certificate, which signifies that the work:

- is 'suitable for occupation' – this does not necessarily mean all building work is complete
- is consistent with the approved plans and specifications
- meets all applicable conditions of the approval.

The certifier does not manage or supervise builders or tradespeople or certify that the builder has met all requirements of the applicant's contract with the builder.

## What does a registered building inspector do?

Registered **building inspectors** carry out inspections of building work<sup>2</sup> with the approval and agreement of the principal certifier. Building inspectors are not authorised to issue certificates or be appointed as the principal certifier.

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<sup>2</sup> Building inspectors may inspect class 1 and 10 buildings under the Building Code of Australia; that is, houses, duplexes and the like; garages and sheds; and structures such as swimming pools, retaining walls and fences.

## Principal certifier enforcement powers

If the principal certifier becomes aware of a non-compliance with the development approval, the certifier must, by law, issue a direction to you and/or the builder, requiring the non-compliance to be addressed. If it is not, the certifier must notify the council which may take further action.

The certifier is also required to respond appropriately if a complaint is made about the development.

## Finding more information on certifiers

Details of the class of registration each certifier holds, their period of registration, professional indemnity insurance and disciplinary history can be found at [www.fairtrading.nsw.gov.au](http://www.fairtrading.nsw.gov.au):

- [Details of registered certifiers](#) (or search 'appointing a certifier' from the homepage)
- [Disciplinary actions against certifiers](#) (or search 'certifier disciplinary register' from the homepage).

## Questions?

The Fair Trading website [www.fairtrading.nsw.gov.au](http://www.fairtrading.nsw.gov.au) has information about certifiers, enforcement powers, how to replace a certifier and resolving concerns about a certifier:

- Search '[what certifiers do](#)' for information about a certifier's role and responsibilities.
- Search '[concerns with development](#)' for information about enforcement powers of certifiers, councils and Fair Trading, and how to resolve concerns about a certifier.

The NSW Planning Portal at [www.planningportal.nsw.gov.au](http://www.planningportal.nsw.gov.au) provides information on the NSW planning and development certification system.

Note, although Fair Trading regulates certifiers, it does not mediate in contract disputes and does not regulate the actions of councils. Visit the Fair Trading website for more information.