

## KD ENGAGEMENT FORM (SHORT) (For Applications lodged with PlanSA) - PART A

PLAN SA DEVELOPMENT APPLICATION NO:

LOCATION OF PROPOSED DEVELOPMENT:

Lot No: ..... Street No: ..... Street: .....

Town / Suburb: .....

APPLICANT / PRIMARY CONTACT: .....

ADDRESS: .....

STATE: ..... POSTCODE: .....

PHONE: (Work)..... (Mobile) .....

EMAIL: .....

INVOICE ADDRESSED TO (Company / Name) : .....

ADDRESS: .....

STATE: ..... POSTCODE: .....

PHONE: (Work)..... (Mobile) .....

EMAIL: .....

*Please note: The 'Plan SA Electronic Lodgement Fee' will be issued directly to this contact via the Plan SA website for payment via their portal. **KD is not directly involved in this process.** The 'Building Rules Consent Fee will still be payable direct to KD Certifiers as supplied via Fee Submission.*

BUILDING RULES CLASSIFICATION SOUGHT:..... Present classification:.....

If Class 5,6,7 or 8 classification is sought, state the proposed number of employees: Male: .....Female: .....

If Class 9a classification is sought, state the number of persons for whom accommodation is provided: .....

If Class 9b classification is sought, state the proposed number of occupants of the various spaces at the premises: .....

RISE IN STOREYS:

TOTAL FLOOR AREA (m<sup>2</sup>):

Do you wish to have your building consent assessed in multiple stages:	YES	NO
If yes, please list the description of the stages below:		
Stage 1: .....		
Stage 2: .....		
Stage 3: .....		
Stage 4: .....		

DEVELOPMENT COST (For the purpose of CITB do not include any loose furniture costs): \$.....

HAS THE CONSTRUCTION INDUSTRY TRAINING LEVY BEEN PAID (CITB)?	YES	NO
IF YES, PLEASE WRITE THE RECEIPT NUMBER HERE & <b>PROVIDE A COPY:</b> .....		

PC

HAS A BUILDER BEEN ENGAGED FOR THE PROPOSED DEVELOPMENT?	YES	NO
IF YES, PLEASE FILL IN THE BELOW DETAILS. FOR RESIDENTIAL DEVELOPMENTS PLEASE PROVIDE A COPY OF THE PROFESSIONAL INDEMNITY INSURANCE:		
BUILDERS NAME: .....		
ADDRESS: .....STATE: ..... POSTCODE: .....		
PHONE: (Work)..... (Mobile) .....		
EMAIL:..... Builders Licence Number: .....		

## KD ENGAGEMENT FORM (SHORT) – PART B

### DETAILS OF WORK TO BE UNDERTAKEN BY KD Certifiers Wayville Pty Ltd

**KD Certifiers Wayville (ABN 67 637 452 263) acting through registered accredited professional Vittorio Barone** is hereby engaged as *accredited professional* pursuant to Section 97 of the PDI Act to exercise the powers of the *relevant authority* and perform the following services (where applicable) in relation to the proposed work described hereunder where applicable.

- liaise with the architectural and services consultants during the design/ documentation stages as appropriate,
- provide preliminary advice of a routine or general nature in accordance with Section 30 as appropriate
- assess the proposed development work in terms of the *building rules* as defined in the Act.
- liaise as necessary with other authorities such as the SAMFS,
- assess any *performance solution* or *variances* to the *building rules* under Section 118 & 122,
- grant a provisional building rules consent if appropriate,
- issue a Certificate of Occupancy, if appropriate, and
- undertake any of the other functions prescribed in Regulation 22 and 25 if appropriate.

**Note - that the applicant must, before engaging an accredited professional, notify the owner of the land of their intention to engage an accredited professional.**

### FEES AND DISBURSEMENTS

1. Please note: The Plan SA Electronic Lodgement Fee will be issued directly to this contact via the Plan SA website for payment via their portal. **KD Certifiers is not directly involved in this process.** The Building Rules Consent Fee will still be payable direct to KD Certifiers
2. **The certification fees must be paid prior to the issue of building rules consent.**
3. **KD Fees for residential dwellings is a minimum of \$550 + gst and commercial properties is a minimum of \$750 + gst or as per Quote/Fee Proposal sent via email**

### STATUTORY INSURANCES

Copies of **KD Certifiers'** certificates of currency for professional indemnity insurance and public liability insurance can be provided upon request please email admin@kdcertifiers.au

**BANKING DETAILS: EFT NAB: Account Name: KD Certifiers BSB 085 005 Acc No. 231 730 588**

### CONSULTANCY / SUPPLIER AGREEMENTS

Does your Client / Company require KD Certifiers to enter into an agreement separate to this engagement form?  
 YES                      NO

If yes please attach a copy to accompany this completed engagement form. Please note that additional fees may need to be applied if KD engages an attorney to conduct a review of the agreement.

### APPROVED SUPPLIER

Does your Client / Company require KD Certifiers to complete a Supplier Application (paper or electronic form)?  
 YES                      NO

If yes please attach a copy/link to accompany this completed engagement form. Please note that if a fee is charged that amount will be included to the invoice

I certify that the information included in both Part A and Part B of this form is true and correct. I have read and understand the TERMS AND CONDITIONS OF TRADE of KD Certifiers Wayville Pty Ltd (ACN 637 452 263) (attached) which form part of, and are intended to be read in conjunction with this Engagement Form and agree to be bound by those conditions. I authorise the use of my personal information as detailed in the Privacy Act clause therein. I agree that if I am a director or a shareholder (owning at least 15% of the shares) of the Client I shall be personally liable for the performance of the Client's obligations under contract.

### CLIENT OR CLIENT'S SERVANT OR AGENT TO SIGN

Signed ..... Name .....

Position ..... Date .....

Witness Signature ..... Name.....

This document is to be read in conjunction with the Agreement for the provision of Assessment Services (or other similar document) provided to the Client (together, 'Agreement').

**1. ASSESSMENT SERVICES**

- 1.1 The Assessment Services includes those services set out in the Schedule and, unless otherwise excluded by the Schedule, the following:
  - 1.1.1 preliminary advice of a routine or general nature on any application required for the Project and requirements thereof;
  - 1.1.2 the assessment of a development application for the Project against the Building Rules;
  - 1.1.3 the assignment of a classification under the National Construction Code to the Project;
  - 1.1.4 the assessment of an application for a Certificate of Occupancy; and
  - 1.1.5 the powers and duties of a relevant authority under the Act as specified in regulation 22 & 25 of the Regulations.
- 1.2 Unless otherwise specified in the Schedule, the Assessment Services exclude:
  - 1.2.1 advice for the Project beyond that specified in 1.1.1 above;
  - 1.2.2 drafting plans or any other documents required for the Application;
  - 1.2.3 matters pertaining to Building Quality;
  - 1.2.4 any guarantee by KD Certifiers that the Project will obtain Building Rules consent or development approval under the Act;
  - 1.2.5 any act or activity deemed by KD Certifiers to be contrary to the requirements of the Act, the Regulations, the Accredited Professionals Scheme Code of Conduct under the Planning, Development and Infrastructure Act 2016 or other relevant legislation; and
  - 1.2.6 any act or activity deemed by KD Certifiers to be outside the act or activities covered by KD Certifiers' professional indemnity insurance.
- 1.3 The Client acknowledges that KD Certifiers is subject to the requirements of the legislation referred to in clause 1.2.5 above. This means that KD Certifiers is obligated by law to assess the Project on its merits against the Building Rules and to strictly follow the requirements of the Act and Regulations. As a result, the Client understands that KD Certifiers' obligations are to assess and determine the Project in accordance with law and that they cannot guarantee the issue of a consent, certificate or approval to the Client.
- 1.4 The Client acknowledges that KD Certifiers may engage in any other business, occupation or activity during the Term, provided that does not detrimentally affect the performance of the Assessment Services.
- 1.5 If the Client engages another person to provide services substantially the same as the Assessment Services in respect of the Project, then KD Certifiers may seek to terminate this Agreement and their appointment in accordance with law.

**2. SUBCONTRACTING THE ASSESSMENT SERVICES**

KD Certifiers may subcontract or licence all or part of its obligations under this Agreement without prior notice to the Client.

**3. FEE**

- 3.1 The Fee payable for the Assessment Services is, at KD Certifiers' discretion, either:
  - 3.1.1 as indicated on invoices provided by KD Certifiers to the Client in respect of Assessment Services supplied; or
  - 3.1.2 KD Certifiers' quoted Fee (subject to clause 3.2) which is binding upon KD Certifiers provided that the Client shall accept the quote in writing within one hundred and eighty (180) days of receipt.
- 3.2 KD Certifiers reserves the right to change the Fee in the event of a variation to the scope of work for the Assessment Services. 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 KD Certifiers in the cost of materials and labour) will be charged for on the basis of KD Certifiers' 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.

- 3.3 Payment of an invoice is required within 14 days of issue.
- 3.4 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 KD Certifiers.
- 3.5 Receipt by KD Certifiers of any form of payment other than cash does not constitute payment until that payment has been honoured, cleared or recognised by KD Certifiers. In the event that the Client's payment is dishonoured for any reason, the Client shall be liable for any dishonour fees payable by KD Certifiers.
- 3.6 GST, other taxes, duties, disbursements and applicable government, State Commission Assessment Panel, and council fees and charges will be added to the Fee, other than where they are expressly included in the Fee.
- 3.7 If the Client defaults in payment of any invoice when due, the Client shall indemnify KD Certifiers from and against all costs and disbursements incurred by KD Certifiers in pursuing the debt including legal costs on a solicitor and own client basis and KD Certifiers' collection agency costs.
- 3.8 Without prejudice to any other remedies KD Certifiers may have, if at any time the Client is in breach of any obligation (including those relating to payment) Katnich Dodd may suspend or terminate the supply of the Assessment Services to the Client and any of its other obligations under this Agreement. KD Certifiers will not be liable to the Client for any loss or damage the Client suffers because KD Certifiers has exercised its rights under this clause.
- 3.9 All amounts payable by the Client to KD Certifiers pursuant to this Agreement which are overdue will bear interest at a rate of 1.25% per calendar month (and at KD Certifiers' discretion, such interest shall compound monthly at such rate), calculated from the date upon which payment was due.
- 3.10 If any account remains overdue after 30 days then an amount of the greater of \$20.00 or 10% of the amount overdue (up to a maximum of \$200.00) shall be levied for administration fees which sum shall become immediately due and payable.
- 3.11 Without prejudice to KD Certifiers' other remedies at law, KD Certifiers may cease providing the Assessment Services and all amounts owing to KD Certifiers shall, whether or not due for payment, become immediately payable in the event that:
  - 3.11.1 any money payable to KD Certifiers becomes overdue, or in KD Certifiers' opinion the Client will be unable to meet its payments as they fall due;
  - 3.11.2 the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
  - 3.11.3 a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

**4. INTELLECTUAL PROPERTY AND DATA**

- 4.1 Nothing in this Agreement affects the Intellectual Property Rights of either party, except as set out in this clause.
- 4.2 The Client grants KD Certifiers an unrestricted, royalty free licence to use and manipulate all Intellectual Property Rights in any Data which the Client provides to KD Certifiers to the extent reasonably necessary for KD Certifiers to perform the Assessment Services.
- 4.3 The Client warrants that any Data provided by it to KD Certifiers will not infringe the Intellectual Property Rights of any person. The Client indemnifies KD Certifiers against any loss, costs, expenses, demands or liability arising out of any claim by a third party against KD Certifiers alleging that KD Certifiers' use of such Data infringes any third party's Intellectual Property Rights.
- 4.4 Where KD Certifiers has designed, drawn or written documents for the Client, then the copyright in those

**6. MUTUAL WARRANTIES**

Each party represents and warrants to the other that as at the date

designs and drawings and documents shall be owned by KD Certifiers. The Client shall have no licence to use documents

prepared for it by KD Certifiers unless and until payment in full for the Assessment Services, or as otherwise agreed by KD Certifiers in its absolute discretion.

- 4.5 The Client agrees that KD Certifiers may use any documents, designs, drawings or goods created by KD Certifiers for the purposes of advertising, marketing, or entry into any competition.

## 5. LIMITATION OF LIABILITY

- 5.1 All terms which may be implied by law or otherwise are excluded.
- 5.2 If, under the Australian Consumer Law or any other law, any terms implied by law cannot be legally excluded, restricted or modified, then those terms apply but only to the minimum extent required by law.
- 5.3 To the extent permitted by law, KD Certifiers' liability for any breach this Agreement including any term implied by law (or for any unlawful or negligent act or omission) is limited to:
- 5.3.1 the re-supply of the Assessment Services; or
- 5.3.2 at KD Certifiers' election, the payment of the cost of having the Assessment Services re-supplied.
- 5.4 If, despite clauses 5.1 to 5.3, KD Certifiers becomes liable to the Client for any claims, demands expenses, loss or damage caused by a breach of this Agreement, or any default or any unlawful or negligent act or omission, then that liability of KD Certifiers is limited as set out clauses 5.5 to 5.8.
- 5.5 KD Certifiers' liability is reduced to the extent which the Client's own act or omissions have contributed to the expense, loss or damage.
- 5.6 KD Certifiers' liability is limited to the lesser of:
- 5.6.1 \$2,000,000; and
- 5.6.2 such amount recoverable (if any) under KD Certifiers' professional indemnity insurance policy for the relevant claim.
- 5.7 KD Certifiers is released from liability for expense, loss or damage in connection with particular Assessment Services two years from the date of invoice for the relevant Assessment Services unless a claim is commenced within that time in a court of competent jurisdiction.
- 5.8 Notwithstanding any other provision in this Agreement, KD Certifiers is not liable to the Client, nor is it required to indemnify the Client, for any claims, demands, expenses, loss or damage suffered by the Client (howsoever arising):
- 5.8.1 for economic, indirect or consequential losses of any kind whatsoever;
- 5.8.2 which relate to the presence, discharge, dispersal, release or escape of any asbestos, asbestos fibres or derivatives of asbestos or the cost of removing, nullifying or cleaning up any asbestos, asbestos fibres or derivatives of asbestos; or
- 5.8.3 which relate to external insulation and finishing system, wall panelling, cladding or façade material that is not compliant with the applicable codes and standards.
- 5.9 The Client indemnifies KD Certifiers 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 KD Certifiers or its employees officers and contractors caused or contributed to by the Client.
- 5.10 The Client releases and holds harmless KD Certifiers against all claims, demands, expenses, loss or damage arising in connection with the Client's reliance on, or use of, any deliverable, including advice, given to the Client by KD Certifiers in a manner which is not contemplated or authorised by the Act or otherwise not in accordance with any exclusions or assumptions given by KD Certifiers.

- 8.3 If a delay or failure under this clause exceeds 60 days, either party may immediately terminate this Agreement by providing written notice to the other party.

## 8A. PRIVACY

- 8A.1 The Client agrees for KD Certifiers to obtain from a credit reporting agency a credit report containing personal credit information about the Client in relation to credit provided by KD

of this Agreement:

- 6.1 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
- 6.2 all Authorisations required for its entry into, exercise of its rights under, and performance of its obligations under this Agreement have been obtained.

## 7. CLIENT WARRANTIES AND OBLIGATIONS

- 7.1 The Client warrants:
- 7.1.1 that any documents supplied for provisional building rules consents are complete, describe all building and site features relevant to the assessment, are identical sets, and are consistent with the documents granted for the provisional development plan consent, and with the consent, and any condition or notes that apply in relation to the provisional development plan consent, and any Data provided to KD Certifiers is accurate and complete in all respects;
- 7.1.2 that, in performing the Assessment Services, the Surveyor acts with the Client's authority;
- 7.1.3 that no other person has been appointed to perform the Assessment Services in relation to the Project.
- 7.2 The Client must:
- 7.2.1 provide all information required by KD Certifiers within the time specified by KD Certifiers to enable KD Certifiers to perform the Assessment Services;
- 7.2.2 in the event the Client is not the owner of the land the subject of the Project, obtain the owner's prior written consent to engage KD Certifiers;
- 7.2.3 give KD Certifiers such access to the Project and any relevant site as is required by KD Certifiers to perform the Assessment Services; and
- 7.2.4 give KD Certifiers 14 days' prior written notice of any proposed change of ownership or control (as defined in the *Corporations Act 2001* (Cth)) of the Client.

## 8. FORCE MAJEURE

- 8.1 If a Force Majeure Event causes delay or failure by a party to perform its obligations under this Agreement:
- 8.1.1 neither party is liable for such delay or failure; and
- 8.1.2 all obligations of a party under this Agreement are suspended until the Force Majeure Event ceases to apply.
- 8.2 A party which is, by reason of a Force Majeure Event, unable to perform any obligation or condition required by this Agreement must:
- 8.2.1 notify the other party as soon as possible giving:
- 8.2.1.1 reasonably full particulars of the Force Majeure Event;
- 8.2.1.2 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
- 8.2.1.3 where possible, the means proposed to be adopted to remedy or abate the Force Majeure Event;
- Majeure Event as soon as possible;
- 8.2.3 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;
- 8.2.4 notify the other party when the Force Majeure Event terminates or abates to an extent which permits resumption of performance; and
- 8.2.5 notify the other party when resumption of performance occurs.
- 8A.7.7 advice that cheques drawn by the Client for one hundred dollars (\$100) or more, have been dishonoured more than once; and
- 8A.7.8 that credit provided to the Client by KD Certifiers has been paid or otherwise discharged.

## 9. TERMINATION

- 9.1 KD Certifiers may terminate this Agreement or cancel supply of the Assessment Services at any time before the

Certifiers.

- 8A.2 The Client agrees that KD Certifiers may exchange information about the Client with those credit providers either named as trade referees by the Client or named in a consumer credit report issued by a credit reporting agency for the following purposes:
- 8A.2.1 to assess an application by the Client;
  - 8A.2.2 to notify other credit providers of a default by the Client;
  - 8A.2.3 to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
  - 8A.2.4 to assess the creditworthiness of the Client.
- 8A.3 The Client understands that the information exchanged can include anything about the Client's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the *Privacy Act 1988* (Cth).
- 8A.4 The Client consents to KD Certifiers being given a consumer credit report to collect overdue payment on commercial credit.
- 8A.5 The Client agrees that personal credit information provided may be used and retained by KD Certifiers for the following purposes (and for other purposes as shall be agreed between the Client and KD Certifiers or required by law from time to time):
- 8A.5.1 the provision of Services;
  - 8A.5.2 the marketing of Services by KD Certifiers, its agents or distributors;
  - 8A.5.3 analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Services;
  - 8A.5.4 processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
  - 8A.5.5 enabling the daily operation of Client's account and/or the collection of amounts outstanding in the Client's account in relation to the Services.
- 8A.6 KD Certifiers may give information about the Client to a credit reporting agency for the following purposes:
- 8A.6.1 to obtain a consumer credit report about the Client; or
  - 8A.6.2 to allow the credit reporting agency to create or maintain a credit information file containing information about the Client.
- 8A.7 The information given to the credit reporting agency may include:
- 8A.7.1 personal particulars (the Client's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number);
  - 8A.7.2 details concerning the Client's application for credit or commercial credit and the amount requested;
  - 8A.7.3 advice that KD Certifiers is a current credit provider to the Client;
  - 8A.7.4 advice of any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more than sixty (60) days, and for which debt collection action has been started;
  - 8A.7.5 that the Client's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed;
  - 8A.7.6 information that, in the opinion of KD Certifiers, the Client has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Client's credit obligations);
- 11A.5 To the extent permitted by law, the Guarantor waives its rights as surety or indemnifier (legal, equitable or statutory) which are inconsistent with this Guarantee and Indemnity.
- 11A.6 The Guarantor's obligations continue until all obligations of the Client under this Agreement have been performed.
- 11A.7 If the Client does not perform on time any of its obligations under the Agreement, KD Certifiers may immediately make demand on the Guarantor under this Guarantee and Indemnity.
- 11A.8 KD Certifiers need not make demand on the Client before enforcing this Guarantee and Indemnity against the Guarantor.

Assessment Services are supplied by giving written notice to the Client. On giving such notice, KD Certifiers shall repay to the Client any sums paid in respect of the Fee. KD Certifiers shall not be liable for any expenses, loss or damage whatsoever arising from such termination or cancellation.

- 9.2 Either party may terminate this Agreement with the prior approval of the Minister as per section 96 of the Act (if such approval is required). If the Client terminates this Agreement or cancels the supply of the Assessment Services, the Client will be liable for any expense or loss incurred by KD Certifiers (including, but not limited to, any loss of profit) up to the time of termination or cancellation.
  - 9.3 Notwithstanding any other provision of this Agreement, the Client must, except in the case of a termination pursuant to clause 9.1, pay KD Certifiers the Fee within 14 days of the termination of this Agreement, or such part of the Fee which is, at that time, unpaid.
  - 9.4 Termination of this Agreement under this clause does not affect any accrued rights or remedies of either party.
- 10. CONFIDENTIAL INFORMATION**
- 10.1 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:
    - 10.1.1 keep confidential;
    - 10.1.2 take reasonable steps to ensure that the party's officers and employees do not disclose to a third party;
    - 10.1.3 maintain proper and secure custody of; and
    - 10.1.4 not use or reproduce in any form,
- any Confidential Information belonging to the other party.

**11. INSURANCE**

- 11.1 KD Certifiers must maintain at all times during the Term all insurances required by law or this Agreement.
- 11.2 KD Certifiers must produce evidence of those insurances to the Client upon reasonable request.
- 11.3 KD Certifiers must not allow any act or omission which would make any such policy of insurance void or unenforceable.

**11A. GUARANTEE AND INDEMNITY**

- 11A.1 The Guarantor unconditionally guarantees to Katnich Dodd the performance on time of the obligations of the Client under this Agreement ('**Guarantee**').
  - 11A.2 The Guarantor indemnifies KD Certifiers against any loss that KD Certifiers suffers because:
    - 11A.2.1 of any matter or thing done or incurred which is at any time other than as warranted and represented by the Client in this Agreement;
    - 11A.2.2 the Client does not perform any obligation under the Agreement;
    - 11A.2.3 KD Certifiers cannot recover money because of operation of law;
    - 11A.2.4 KD Certifiers must, under the law, repay a payment by the Client; or
    - 11A.2.5 this Agreement is not enforceable against the Client,
- (together, '**Indemnity**').
- 11A.3 This Indemnity is a separate undertaking to the Guarantee. It is effective even if the Agreement or the Guarantee is invalid, illegal or unenforceable.
  - 11A.4 As between KD Certifiers and the Guarantor, the Guarantor is a primary debtor and contracts jointly and severally with KD Certifiers.

Dodd or KD Certifiers' nominee as the Client's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 11B.

**12. DISPUTE RESOLUTION**

- 12.1 General
  - 12.1.1 A party must not commence arbitration or court proceedings (except for urgent equitable or injunctive relief) in respect of a dispute under this Agreement, unless it first attempts to resolve the dispute by negotiation and mediation under this clause.



- 11A.9 Within seven days of demand by KD Certifiers, the Guarantor must:
- 11A.9.1 pay all money payable by the Client under this Agreement and perform any other obligations of the Client under this Agreement; and
- 11A.9.2 indemnify KD Certifiers against any loss that KD Certifiers suffers under this Agreement.
- 11A.10 The Guarantor's liability is not affected by anything which might otherwise affect such liability under law relating to sureties including:
- 11A.10.1 the granting of time or other indulgence to the Client;
- 11A.10.2 the compounding, compromise, release, abandonment, waiver or variation of KD Certifiers' rights against the Client;
- 11A.10.3 KD Certifiers exercising, not exercising or delaying in exercising its rights against the Client;
- 11A.10.4 the insolvency of the Client or any Guarantor;
- 11A.10.5 the Agreement being unenforceable against the Client or any other person;
- 11A.10.6 any prejudice (including material prejudice) to any Guarantor because of anything done or omitted by KD Certifiers;
- 11A.10.7 any other person named in the Agreement failing to execute or properly execute the Agreement; or
- 11A.10.8 any notice or failure to give notice by the Client to KD Certifiers.
- 11B. SECURITY AND PPSR**
- 11B.1 Where the Client and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Client and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to KD Certifiers or Katnich Dodd's nominee to secure all amounts and other monetary obligations payable under this Agreement. The Client and/or the Guarantor acknowledge and agree that KD Certifiers (or Katnich Dodd's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable under this Agreement have been met.
- 11B.2 Should KD Certifiers elect to proceed in any manner in accordance with this clause 11B, the Client and/or Guarantor shall indemnify KD Certifiers from and against all KD Certifiers' costs and disbursements including legal costs on a solicitor and own client basis.
- 11B.3 The Client and/or the Guarantor (if any) consent to KD Certifiers registering an interest on the Personal Property Securities Register to protect its interest in any asset capable of being charged contemplated by this clause 11B.
- 11B.4 The Client and/or the Guarantor (if any) agree to do all things reasonably necessary to assist KD Certifiers to undertake the actions consented to under clause 11B.3.
- 11B.5 The Client consents to KD Certifiers not giving any notice under the *Personal Property Securities Act 2009* (Cth) ('PPSA') (including notice of a verification statement) unless the notice is required by the PPSA and cannot be excluded.
- 11B.6 Without limitation to clause 11B.5, the Client waives any rights it has to receive a notice under section 95, 118, 121(4), 130, 135 and 157 of the PPSA.
- 11B.7 The Client and/or the Guarantor (if any) agree to irrevocably nominate, constitute and appoint Katnich
- 12.1.2 A party claiming that a dispute has arisen under this Agreement must give written notice to the other party specifying the nature and details of the dispute.
- 12.2 Negotiation
- 12.2.1 On receipt of that notice by the other party, the parties must negotiate in good faith to resolve the dispute.
- 12.2.2 If the parties are unable to resolve the dispute within 10 business days, they must promptly refer the dispute:
- 12.2.2.1 in the case of the Client to the Client's representative; and
- 12.2.2.2 in the case of KD Certifiers to KD Certifiers' representative.
- 12.2.3 Those persons must meet to resolve the dispute and must be authorised to resolve the dispute.
- 12.3 Mediation
- 12.3.1 If those persons are unable to resolve the dispute within 10 business days of referral, a party may refer the dispute for mediation under the mediation rules of the Resolution Institute ABN 69 008 651 232 to:
- 12.3.1.1 a mediator agreed by the parties; or
- 12.3.1.2 if the parties are unable to agree a mediator within five business days, a mediator nominated by the Resolution Institute.
- 12.3.2 The role of a mediator is to assist in negotiating a resolution of the dispute. A mediator may not make a decision that is binding on a party unless that party has agreed in writing.
- 12.3.3 Any information or documents disclosed by a party under this clause:
- 12.3.3.1 must be kept confidential; and
- 12.3.3.2 may not be used except to attempt to resolve the dispute.
- 12.3.4 Each party must bear its own mediation costs. The parties must bear equally the costs of any mediator.
- 12.4 Performance
- If possible, each party must perform its obligations under this agreement during negotiations, mediation and arbitration proceedings.
- 13. MISCELLANEOUS**
- 13.1 Entire agreement
- This Agreement:
- 13.1.1 constitutes the entire agreement between the parties about its subject matter; and
- 13.1.2 supersedes any prior understanding, agreement, condition, warranty, indemnity or representation about its subject matter.
- 13.2 Waiver
- 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.
- 13.3 Exercise of power
- 13.3.1 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.
- 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.
- 15.1.8 **Fee** is defined in clause 3.
- 15.1.9 **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:
- 15.1.9.1 acts of God, lightning strikes,
- 13.3.2 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.
- 13.4 Survival
- 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.
- 13.5 Governing law
- This Agreement is governed by the law in South Australia and is subject to the jurisdiction of the Courts in South Australia.
- 14. NOTICES**

- 14.1 A notice, demand, consent, approval or communication under this Agreement must be:
- 14.1.1 in writing, in English and signed by a person authorised by the sender; and
- 14.1.2 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.
- 14.2 A notice is deemed to be received:
- 14.2.1 if hand delivered, on delivery;
- 14.2.2 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);
- 14.2.3 if sent by email, at the time deemed to be the time of receipt under the *Electronic Communications Act 2000* (SA) or *Electronic Transactions Act 2000* (SA), as relevant 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 deemed to be received at 9:00am on the next business day.

## 15. DEFINITIONS AND INTERPRETATION

### 15.1 Definitions

In this Agreement:

- 15.1.1 **Act** means the *Development Act 1993* (SA) and *Planning, Development & Infrastructure Act 2016*.
- 15.1.2 **Assessment Services** is defined in Clause 1 to this Agreement.
- 15.1.3 **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.
- 15.1.4 **Australian Consumer Law** means the Australian Consumer Law contained in Schedule 2 to the *Competition and Consumer Act 2010* (Cth).
- 15.1.5 **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 Building Rules.
- 15.1.6 **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.
- 15.1.7 **Data** means information directly or indirectly relating to this Agreement and/or the Assessment Services and includes software (including source code and object code versions) manuals, diagrams, graphs, charts,

pandemics (including, without limitation, the COVID-19 pandemic), epidemics, earthquakes, floods, storms, explosions, fires and any natural disaster; and

- 15.1.9.2 acts of war, acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage and revolution.

15.1.10 **Intellectual Property Rights** means all intellectual and industrial property rights and interests throughout the world, whether registered or unregistered, including trade marks, designs, patents, inventions, circuit layouts, copyright and analogous rights, confidential information, know how and all other intellectual property 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.

15.1.11 **law** means any statute, regulation, order, rule, subordinate legislation or other document enforceable under any statute, regulation, order, rule or subordinate legislation.

15.1.12 **Regulations** means the *Development Regulations 2008* (SA) and *PDI Regulations*.

15.1.13 **Term** means the period starting on the date that the client accepts the terms and conditions of this Agreement and concluding upon the completion of the Assessment Services or termination of this agreement, whichever occurs first.

### 15.2 Interpretation

In this Agreement, unless the context otherwise requires:

- 15.2.1 headings do not affect interpretation;
- 15.2.2 singular includes plural and plural includes singular;
- 15.2.3 words of one gender include any gender;
- 15.2.4 a reference to a party includes its executors, administrators, successors and permitted assigns;
- 15.2.5 a reference to a person includes a partnership, corporation, association, government body and any other entity;
- 15.2.6 a reference to this Agreement includes any schedules and annexures to this Agreement;
- 15.2.7 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;
- 15.2.8 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;
- 15.2.9 a reference to legislation includes any amendment to it, any legislation substituted for it, and any subordinate legislation made under it;

- 15.2.10 a provision is not construed against a party only because that party drafted it;
- 15.2.11 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;
- 15.2.12 the meaning of general words is not limited by specific examples introduced by 'including', 'for example' or similar expressions;
- 15.2.13 an expression defined in the Act has the meaning given by that Act at the date of this Agreement;
- 15.2.13 an expression defined in the *Corporations Act 2001* (Cth) has the meaning given by the Act at the date of this Agreement; and
- 15.2.14 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

