



BUILDING CONTRACT REVIEW PROGRAM (BCRP) BUILDER AGREEMENT

Section 1 - BCRP Service Provider Details

Name

Registered Business Name (if different from above)

ABN Number

Business Address (Not PO Box Address)

State

Postcode

Postal Address (leave blank if same as above)

State

Postcode

Business Telephone No.

Business Facsimile No.

Mobile Phone Number of key contact

Email Address of key contact

Mobile Phone Number of key contact

Email Address of key contact

Contact Person (regarding this application)

Position Title of Key Contact

Section 2 - Builder Details

Builder's Name (i.e the legal name under which you contract and as shown on your builder's licence)

Registered Business Name if different from above

ABN Number

Builder's Licence Number

Expiry Date (dd/mm/yyyy)

Eligibility Number

Registered Business Address (Not PO Box Address)

State

Postcode

Postal Address (leave blank if same as above)

State

Postcode

Business Telephone No.

Business Facsimile No.

Mobile Phone Number

Email Address

Contact Person (regarding this application)

Position Title of Key Contact

Builder's Insurance Agent

Builder's Intermediary

Intermediary Contact Name

Intermediary Reference

Intermediary Telephone Number

Intermediary Email Address

Section 3 - Project Details

Address of the service site

Unit Number

Lot Number

or

Street No.

Stree Name

Suburb

Postcode

Project Description

Building Contract Price (Inc GST)

Section 4 - BCRP Price

Total Contract Price for the BCRP Services

GST EXCLUSIVE

GST APPLICABLE

GST INCLUSIVE

Section 5 - Agreement Executed and Authorised By

Builder

Signature

Name

Position

Builder Legal Name

Date (dd/mm/yyyy)

BCRP Service Provider

Signature

Name

Position

Service Provider Legal Name

Date (dd/mm/yyyy)

Section 6 - Agreement Conditions

1. The Services

- 1.1 The services to be supplied by the Service Provider under the Building Contract Review Program (BCRP) - BCRP Builder Agreement (Agreement) are listed at Schedule 1 hereto.
- 1.2 Subject to clauses 7 and 8, the Service Provider must provide all the services listed at Schedule 1.

2. Contract Price

- 2.1 Subject to clause 7 and 8, the Total Contract Price is the total price payable as stated at Page 1 for all services.
- 2.2 A breakdown of the Total Contract Price is detailed at Schedule 1.
- 2.3 The Service Provider warrants that the Total Contract Price is based on current rates approved by the NSW Self Insurance Corporation (SICorp) as Manager of the Home Warranty Insurance Fund.

3. Payment

3.1 Payment of Contract Price

- 3.1.1 In consideration of the Service Provider providing the services under this Agreement, the Builder shall, subject to the terms and conditions of this Agreement, pay the Service Provider in accordance with this Clause 3.

3.1.1 Invoices and Time for Payment

- 3.2.1 The Service Provider may invoice the Builder for Components 1 to 3, prior to undertaking the Builder Services for these components. For variations to Components 1 to 3 and for Building Services provided under Component 4, the Service Provider may invoice the Builder for each individual activity, service and/or inspection immediately upon completion of that activity, service and/or inspection.
- 3.2.2 All claims for payment made by the Service Provider shall be in the form of a Tax Invoice. No amount is payable until a valid Tax Invoice is received.
- 3.2.3 All claims for payment must include, and be substantiated by, itemised details of the account and the Service Provider shall provide any further details in regard to the account that are reasonably requested by the Builder.
- 3.2.4 Components 1, 2 and 3 Services

Subject to receipt of a valid Tax Invoice and documents necessary to support the invoiced amount being provided to the Builder, the Builder shall make payment to the Service Provider, in advance for the services required under each component for Components 1 to 3 of the BCRP.

Variations to Components 1, 2, 3 and 4 Services

Subject to the services having been provided and this clause 3.2, the Builder shall make payment for variations to Components 1, 2 and 3 and individual Component 4 activities, services and/or inspections, no later than 30 days from the date of receipt of a valid Tax Invoice and documents necessary to support the invoiced amount being provided to the Builder.

Regardless of the terms of payment under this clause 3.2.4, no further Component 4 services shall be provided by the Service Provider to the Builder until such time as all previously provided services have been paid in full.

- 3.2.5 If the Builder disputes an invoice amount the Builder shall certify the amount it believes is due for payment and shall pay that amount and the liability for the balance of payment shall be determined in accordance with the Dispute Resolution process at clause 6 below. The Service Provider shall continue to perform the services to the Builder, pending the outcome of any dispute.
- 3.2.6 The Service Provider will not be entitled to any credit charge, service fee or any other fee or charge for extending credit or allowing time for the payment by the Builder of money becoming due for the provision of the services.

4. Punctual Delivery

- 4.1 The Service Provider must deliver the services promptly so as not to delay the Builder's schedule or progress.
- 4.2 As soon as practicable after becoming aware of any matter which is likely to delay the delivery of services, the Service Provider must notify the Builder of the circumstances which the Service Provider considers will give rise to the delay, and the extent or likely extent of the delay.
- 4.3 Notwithstanding such notification, the Service Provider shall proceed to promptly rectify any delay, and provide the services in a timely manner.

5. Confidentiality and Sharing of Information

- 5.1 Subject to this clause 5, the Service Provider must keep the Builder's information and details, including information relating to the personal and business affairs of the Builder confidential unless expressly authorised by the Builder in writing to disclose this information or such disclosure is required by law.
- 5.2 The Builder acknowledges that the Service Provider has obligations as part of the services provided under the BCRP to provide information in relation to this Agreement and the Builder to SICorp directly or through its authorised Insurance Agents and/or their Intermediaries.
- 5.3 The Builder authorises the Service Provider to make available to SICorp directly or through its authorised Insurance Agents and/or their Intermediaries information obtained as part of the services plus any other information concerning the Builder, including any information provided by the Builder to the Service Provider and any information relating to the Builder's financial position or the Builder's performance under the BCRP.
- 5.4 The Builder acknowledges that SICorp has the right to disclose such information for purposes relating to the Home Warranty Insurance Fund, and expressly authorises the Service Provider, SICorp or its agents to provide to and share with NSW Government parties, including other agency personnel, Ministers and Parliament, any information relating to the Builder.

6. Disputes

- 6.1 Disputes in relation to this Agreement shall be managed in accordance with SICorp's approved complaints processes detailed on the Service Provider's website.

7. Variations to Agreement

- 7.1 The parties acknowledge that the Total Contract Price for services is based on information provided by the Builder to the Service Provider, when applying for services under the BCRP. The Agreement may be varied as a result of the need for additional activities to be undertaken, including additional monitoring and reviews (including site visits and remote site assessments), to meet the requirements of the BCRP, as determined by the Service Provider, which will have the result of also varying the Total Contract Price.
- 7.2 Any variation to the Total Contract Price under the Agreement must be in writing and signed by both the Builder and the Service Provider.

8. Termination

- 8.1 In the event that a home warranty insurance certificate has been issued, neither party to this Agreement may terminate this Agreement unless and until they have received the written permission of SICorp, through the Builder's Insurance Agent and/or its Intermediary, in accordance with the Termination procedures detailed in clause 8.2.

8.2 Termination Procedures

- a. The party/parties to this Agreement requiring termination shall submit an application or joint application for termination to SICorp, through the Builder's Insurance Agent and/or its Intermediary, stating the reasons for seeking termination.
- b. In the event that the application is from one party to this Agreement only, and not a joint application, SICorp, through the Builder's Insurance Agent and/or its Intermediary shall seek further information from the other party to this Agreement.
- c. The outcome of the application shall be determined by SICorp in its absolute discretion and advised, in writing, to the parties to this Agreement, through the Builder's Insurance Agent and/or its Intermediary.
- d. If SICorp does not approve the termination of this Agreement, both the Service Provider and the Builder must perform their respective obligations under this Agreement.

8.3 In the event that:

- a. a home warranty insurance certificate has yet not been applied for by and on behalf of and/or issued to the Builder, and
- b. the Builder has engaged the Service Provider to provide services under this Agreement, and the Builder does not subsequently proceed to enter into contract with the homeowner for the Project, for whatever reason,
- c. the Builder may immediately terminate the remaining services required under this Agreement by giving notice in writing to the Service Provider.

8.4 In the event of termination in accordance with this Clause 8, the Service Provider is entitled to payment for all services properly provided in accordance with this Agreement up until the date of termination.

9. Disclaimer

9.1 The Builder acknowledges that the Service Provider provides advice and services under this BCRP Builder Agreement solely for the purposes and benefit of SICorp and the Home Warranty Insurance Fund and shall not under this Agreement be liable to the Builder or any third party other than SICorp and/or SICorp's agents, in relation to or in connection with the Builder Services or the quality of the work.

Section 7 - BCRP Builder Agreement - Schedule 1

<p>Prior to the issue of a Certificate of Home Warranty Insurance for the project the following BCRP Components MUST be confirmed by the BCRP Service Provider:</p> <ol style="list-style-type: none"> 1. BCRP Component 1 – Contract document review 2. BCRP Component 2 – Reasonableness of budget and progress payments 3. BCRP Component 3 – Builder performance review schedule 4. BCRP Component 1, 2 and 3 - Confirmation or Incomplete notice or Project commenced notice. 				
1	<p>BCRP Component 1 – Contract document review</p> <p>Review the contract documentation for each Project to ensure that:</p> <ol style="list-style-type: none"> a. the correct parties to the residential building contract; site address etc. are identified b. the correct name and licence number of the Builder’s trading entity is shown on all documentation (i.e. name on building contract, certificate of insurance application and licence is the same) c. the licence held by the Builder’s trading entity covers all the work being contracted d. the building contract terms do not create a commercial risk for the completion of the Project because of unfair terms, provisions etc. (including contracts with developers and architect administered contracts) e. the Project application for home warranty insurance is consistent with the Service Providers understanding of the Project and f. Review the Project’s construction schedule provided by the builder to ensure that it is appropriate for the type and complexity of the Project. 		\$	
2	<p>BCRP Component 2 – Reasonableness of budget and progress payment</p> <ol style="list-style-type: none"> a. Ensure that the Builder provides a detailed budget, providing for a gross margin that is reasonable for the Project requirements, type, size and value. b. Adequately test the Builder’s detailed budget for completeness and realistic costs including contingency allowance. Verify as much as possible likely contingencies including cost erosion and wage assumptions. c. Review and confirm the scheduled payments under the building contract directly relate to the progress of work carried out at each stage that a payment is scheduled. (i.e. progress payments do not exceed the cost of work performed and materials supplied under the contract plus margin). 		\$	

3	<p>BCRP Component 3 – Builder performance review schedule</p> <p>Determine the number of reviews (site visits and remote site assessments) that are required to be completed, taking into account the nature of the Project, in order to ensure that:</p> <ul style="list-style-type: none"> a. the Builder’s supervision of the Project construction works is of an acceptable industry standard and b. the Project is progressing to contractual completion date and budget. <p>NOTE 1: Site visits require attendance at the Service Site by the BCRP Service Provider.</p> <p>NOTE 2: Remote site assessments do not require attendance at the Service Site by the BCRP Service Provider. The BCRP Service Provider must review sufficient information and make necessary enquiries to meet the requirements of Component 4 – Builder Performance Review. The completion of the remote site assessment can include (as an example) a review of project photographs or relevant documentation and phone enquiries with the Builder.</p> <p>NOTE 3: Site visits and remote site assessments should not reflect the mandatory certification inspection dates; rather they should be determined based on the specific Project and the requirements under BCRP Component 4.</p>			

4	<p>BCRP Components 1, 2 and 3 – Confirmation OR Incomplete notice OR Project commenced notice</p> <p>a. BCRP Components 1, 2 and 3 – Confirmation</p> <ul style="list-style-type: none"> i. Confirm the cost of the BCRP to the Builder. ii. Confirm the requirements of BCRP Components 1, 2 and 3 have been completed satisfactorily, or have been adjusted so as to be satisfactory, (through the builder's Intermediary). iii. Provide the number and timing of site visits or remote site assessments required during the Project to the builder and the Principal (through the Intermediary). <p>NOTE: NSW SICorp reserves the right to review the proposed site visit and site report schedule and request the BCRP services to be revised.</p> <p>b. BCRP Component 1,2 and 3 –Incomplete notice</p> <ul style="list-style-type: none"> i. In the event that the Builder does NOT satisfactorily complete the requirements of BCRP Components 1, 2 and 3, the BCRP Service Provider must notify the Builder's Insurance Agent of this fact within 7 days of the due date of the requested information. <p>c. BCRP Component 1,2 and 3 –Project commenced notice</p> <ul style="list-style-type: none"> i. In the event that the Builder has already commenced works under the project contract the BCR Service Provider must notify the Builder's Insurance Agent of this fact immediately. 	Not applicable	\$ NIL	

DURING CONSTRUCTION POST ISSUE –CERTIFICATE OF INSURANCE				
5	<p>BCR Component 4 - Builder performance review</p> <p>a. Obtain a copy of the certificate of home warranty insurance for the Project from the builder and check that all details correspond with the contract and the licence of the Builder's trading entity.</p> <p>b. Undertake reviews as determined under BCRP Component 3 - Builder performance review schedule.</p> <p>c. At the time of each site visit or remote site assessment:</p> <ul style="list-style-type: none"> i. review all scheduled progress payments invoiced to determine that progress claims were appropriate ii. review all third party certificates (including engineers inspections, mandatory PCA inspections, trade compliance certificates etc.) issued since the time of the last BCRP review iii. review contract variations ensuring they are in writing and properly costed iv. review progress in accordance with the Project construction schedule and terms of contract and investigate reasons for any significant delays; and v. review the Builder's competence in site supervision for all works carried out since the last report, and any areas previously identified as a concern including: <ul style="list-style-type: none"> 1. set out and levels 2. sequencing of tradesmen 3. general standard of finish 4. frame integrity 5. cavity drainage integrity, external weep holes and termite barrier integrity 6. sill and window flashings 7. wet area treatment 8. stormwater disposal and 9. future integrity of footings against drainage and other works still required to be completed. 			

	<p>d. For each site visit or remote site assessment complete a Builder's Performance Review Report using the standard Home Warranty Insurance Fund (HWIF) template and include dated photographs, concerns over works identified as 3.5 (c)(v)(1) –(9) inclusive above and any other concerns, as well as notes covering an observation of the following;</p> <ul style="list-style-type: none"> i. general site presentation ii. work flow of trades and materials; and iii. competence of the trades and appropriateness of the materials being used. <p>e. Immediately report to the Principal (through the Insurance Agent) any instances of concerns over the Bulder's competency to complete the Project (including concerns as to time delays, standard of work performed, any evidence of cash flow issues and where payments have been made or sought other than as scheduled under the residential building contract) including copies of all Builder Performance Review Reports completed to that time.</p> <p>f. As requested by the Principal (through the Insurance Agent) provide timely copies of all completed Builder Performance Review Reports.</p>			
6	<p>BCRP Component 5 – Final report on completion of the Project</p> <p>a. On completion of the Project, prepare a final report using the standard HWIF template and provide a copy to the Builder and the Insurance Agent. The content of the final report is to include:</p> <ul style="list-style-type: none"> i. confirmation that all Builder performance reviews identified in BCRP Component 3 have been completed ii. details as to whether there are any unresolved issues of concern and iii. comment on the progression or development of the builders competency relating to the specific areas that have been reviewed as part of the BCRP for this Project. <p>NOTE: NSW SICORP reserves the right to seek feedback from Builders who have participated in the Building Contract Review Program.</p>	Not Applicable	\$ NIL	