



## Terms and conditions

### SERVICES

Exercising the reasonable skill and care set out in clause 1, Approved Building Control shall –

Either undertake the Statutory Functions.

Or undertake the following services (where appropriate to the Project), including the Statutory Functions:

- |  |   |
|--|---|
| <b>Instructions</b>                      | Receive instructions brief and necessary documentation from the Client.<br>Advise on procedure and programme for Building Regulation certification.   |
| <b>Initial Notice</b>                    | Submit an Initial Notice(s) to relevant local authorities and copy to the Client.   |
| <b>Assessment of plans</b>               | Undertake an assessment of plans for compliance and communicate to the Client observed non-compliance with the Building Regulations, conditions pertaining to the approval or passing of plans and remedies available in the event of a dispute over compliance.<br><br>Maintain appropriate records of the design assessment process.  |
| <b>Statutory consultations</b>           | Consult with the fire authority and forward observations to the Client.<br><br>Undertake all other statutory consultations forming part of the Statutory Functions and forward observations of consultees to the Client.<br><br>Consider the desirability of undertaking additional consultations and communicate to the Client any consultees' observations or advice beyond the scope of the Building Regulations.<br><br>Alert the Client to provisions of legislation outside the Building Regulations believed to be relevant. |
| <b>Plans certificate</b>                 | If requested by the Client, when satisfied that the plans show no observed contraventions of the Building Regulations, issue a plans certificate.<br><br>Compile a schedule of modifications specified and/or further plans or information required to demonstrate compliance of plans  |
| <b>Inspection notification framework</b> | Prepare an inspection notification framework (INF) and if requested provide a copy to the client<br><br>Adopt an appropriate site inspection regime taking account of relevant factors, and keep under review.  |

Make inspections of the site to observe compliance with the Building Regulations. Maintain appropriate records of site inspections, identifying the work inspected and any observed non-compliance.

Communicate any observed contraventions of Building Regulations. Notify observed significant departures from plans to consultees.

Consider the need for tests, throughout construction and at completion, inform the Client of the requirements; witness tests and receive certificates as appropriate.

Request copies of such plans as are necessary in relation to the commissioning of services prior to issue of a Final Certificate(s).

**Final certificate**

Having taken reasonable steps to be satisfied that the whole or part of the works forming part of the Project has been completed for Building Regulations purposes, issue a Final Certificate(s) and send to the Client.

If requested by the Client, provide a list of inspections carried out.

Retain statutory records for an appropriate period.

## CONDITIONS

### **1 Approved Building Control's general obligations**

- 1.1 Approved Building Control shall carry out the Services and any Additional Work with reasonable skill, care and diligence in accordance with these Terms and Conditions. Notwithstanding any other provision of these Terms and Conditions Approved Building Control shall have no greater obligation under or in connection with these Terms and Conditions than to exercise reasonable skill, care and diligence.
- 1.2 Approved Building Control shall exercise reasonable skill, care and diligence in performing the Services and any Additional Work to have regard to the CIC Code of Conduct for Approved Inspectors and where possible to any programme for the Project (as amended from time to time and provided to Approved Building Control in writing).

### **2 Client's information and obligations**

- 2.1 The Client shall provide such information, documents and assistance as Approved Building Control reasonably requires or requests from time to time in order to facilitate the timely provision of the Services and any Additional Work.
- 2.2 The Client shall be responsible for safe access to the Project being provided when Approved Building Control reasonably requires it and shall procure such access and certification from any consultant, contractor or sub-contractor as is reasonably requested by the Approved Inspector.
- 2.3 The Client shall give Approved Building Control at least 7 days' notice before any works forming part of the Project are commenced and shall keep Approved Building Control regularly informed of the progress of the Project.
- 2.4 The Client confirms that it is the person intending to carry out the work forming part of the Project.

### **3 Design, permits and approvals**

- 3.1 The Client shall be entirely responsible for the design construction and management of the Project save to the extent set out in the Services and/or agreed in writing by Approved Building Control before undertaking Additional Work.
- 3.2 The Client shall also be entirely responsible for obtaining and implementing all necessary permits, licences and approvals, save to the extent set out in the Services and/or agreed in writing by Approved Building Control before undertaking Additional Work.

### **4 Compliance with Building Regulations**

- 4.1 The Client and not Approved Building Control shall be responsible for the Project's compliance with the Building Regulations. The Services do not include and Approved Building Control is not responsible for i) confirming whether the Building Regulations have been complied with, and/or ii) advising the Client and/or managing the Project to ensure that compliance with the Building Regulations is achieved.
- 4.2 Approved Building Control shall take such steps as are reasonable to enable it to determine that a Final Certificate can be issued, and if so determined, it shall issue a Final Certificate. Any Final Certificate is based the information and documents provided and the Services and Additional Work performed and is not a representation that every aspect of the Project complies with the Building Regulations and/or conclusive proof of the Project's compliance with the Building Regulations.
- 4.3 Approved Building Control shall not be responsible or liable for any delay in issuing the Final Certificate and shall not be responsible or liable for any additional fees that are payable to the relevant local authority and/or any other costs, as a result of Approved Building Control being unable to issue a Final Certificate at any time. The Client

shall not (and shall ensure that a third party shall not) take possession of the works forming part of the Project and/or issue any certificate of completion under the building contract in respect of the works forming part of the Project, unless the Final Certificate has been issued.

## **5 Payment**

The due date for payment of an instalment of the Fee, together with expenses and disbursements if they are to be paid in addition, shall be the date of submission of Approved Building Control's valid invoice for each instalment. The final date for payment of that invoice is 28 days after the due date for payment. The Client shall pay the sum stated as due in any invoice on or before the final date for payment unless the Client has not later than 7 days before the final date for payment given written notice to Approved Building Control of its intention to pay less stating the sum considered to be due and the basis on which that is calculated ('pay less notice'). The sum stated as due in any pay less notice shall be paid on or before the final date for payment. The Fee is exclusive of VAT, which shall be paid in addition to the Fee if applicable.

### **5A Non-Payment**

Any sum due under these Terms and Conditions which is not paid by the final date for payment shall carry interest at 5% above the Bank of England official dealing rate applicable from the final date for payment until the date on which payment is made.

In the event that any sum is not paid on or before the final date for payment in accordance with clause 3-5 Approved Building Control shall be entitled to:

- 5A.1 Suspend performance of all or any part of the Services by giving 7 days' notice in writing and recover all reasonable costs incurred in connection with the suspension of the Services; and/or
- 5A.2 Terminate these Terms and Conditions by giving 14 days' notice.

## **6 Changes to the Project and Additional Work**

Approved Building Control shall notify the Client in writing as soon as it becomes aware that any Additional Work will be required, because of:

- 6.1 Changes in the design, size, scope or complexity of the Project;
- 6.2 Changes in the timing or programming of the Project;
- 6.3 A failure by the Client to comply with its obligations under these Terms and Conditions;
- 6.4 Additional meetings and/or visits and/or other work is required; and/or
- 6.5 Any change in law (including without limitation any change in Building Regulations and/or the Building Act 1984).

The Client shall pay Approved Building Control for the Additional Work on a time charge basis, at the rate of £100+VAT per hour. Approved Building Control may include the charge in the next payment instalment after the Additional Work (or part of it) has been performed.

If any Additional Work is carried out and/or if due to circumstances outside the Approved Building Control's control there are any changes in the timing or programming of the Services and/or any Additional Work, Approved Building Control shall be entitled to a fair and reasonable extension of time for performing the Services and the Additional Work.

## **7 Insurance**

Approved Building Control shall, provided it is available at commercially reasonable rates, maintain professional indemnity insurance and public liability insurance in compliance with the guidelines issued by the Department for Communities and Local Government (or any successor Department responsible for the Building Act 1984). At the date

of these Terms and Conditions, evidence as to whether these insurances are being maintained is available in the CICAIR Approved Inspectors' Register (published at [www.cicair.org.uk/approved-inspectors-register](http://www.cicair.org.uk/approved-inspectors-register)).

## **8 Assignment and subcontracting**

Neither Party may assign its rights and/or benefits under these Terms and Conditions [without the prior written consent of the other Party] Approved Building Control may subcontract any part of the Services and any Additional Work, with the prior approval of the Client, not to be unreasonably withheld or delayed.

## **9 Termination and discharge**

The Client may terminate this contract forthwith by written notice to Approved Building Control if:

- 9.1 Approved Building Control is in material breach of its obligations under this contract and has failed to remedy the breach within 28 days of the date of a notice of the breach from the Client; or
  - 9.2 Approved Building Control becomes Insolvent.
- 10** Approved Building Control may terminate the contract forthwith by written notice to the Client if:
- 10.1 The Client is in material breach of its obligations under these Terms and Conditions and has failed to remedy the breach within 28 days of the date of a notice of the breach from the Approved Inspector;
  - 10.2 Approved Building Control reasonably believes that it will not be in a position to issue a Final Certificate;
  - 10.3 The Client becomes Insolvent;
  - 10.4 Approved Building Control considers that there is a conflict between its obligations under these Terms and Conditions and the Statutory Functions;
  - 10.5 Approved Building Control considers that it is necessary to cancel the Initial Notice under Section 52(1) of the Building Act 1984;
  - 10.6 Approved Building Control reasonably believes that it is impossible or impracticable to perform the Services as a result of any circumstances for which Approved Building Control is not responsible; and/or
  - 10.7 Approved Building Control is unable to maintain professional indemnity insurance and public liability insurance in compliance with the guidelines issued by the Department for Communities and Local Government (or any successor Department responsible for the Building Act 1984).

**11** Following any notice of termination by Approved Building Control or the Client, Approved Building Control is entitled to:

- 11.1 Write to the relevant local authority (with a copy to the Client) cancelling the Initial Notice, in which case Approved Building Control functions will revert to the relevant local authority and Approved Building Control will be discharged from all requirements to complete the Services or any Additional Work; and/or
- 11.2 At Approved Building Control's discretion, issue a Final Certificate in respect of part of the works forming part of the Project.

## **12 Consequences of termination**

If these Terms and Conditions have been terminated, the Client shall pay Approved Building Control any instalments of the Fee due up to the date of termination together with a fair and reasonable proportion of the next instalment of the Fee commensurate with the Services performed, sums payable in respect of any Additional Work performed by Approved



Building Control prior to the notice of termination and, following termination under clauses 5A and/or 10, any costs or expenses incurred by Approved Building Control as a result of termination.

Termination of the contract shall not affect any rights or remedies of the Client or Approved Building Control which exist at the date of termination.

### **13 Limitations of liability**

13.1 Nothing in this clause 13 shall limit Approved Building Controls liability for negligence resulting in death or personal injury.

13.2 Notwithstanding any other provisions in these Terms and Conditions (apart from clause 13.1), ABC's total liability to the Client for any claims arising under or in connection with the contract and these Terms and Conditions (whether in contract, in tort (including negligence), for breach of statutory duty or otherwise) shall be limited to £\_\_\_\_\_

If no amount is inserted above, the liability of the Approved Inspector shall not exceed in aggregate a multiple of ten times the total of the fees payable to the Approved Inspector by the Client.

13.3 Without prejudice to any other exclusion or limitation of liability, damages, loss, expense or costs, the liability of Approved Building Control for any loss or damage ('the loss or damage') under the contract shall be limited to that proportion as it would be just and equitable for Approved Building Control to pay having regard to the extent of its responsibility for the loss or damage and on the assumptions that:

- all other consultants, contractors, subcontractors, and advisers engaged in connection with the Project have provided contractual undertakings on terms no less onerous than those in clause 1 to the Client in respect of the carrying out of their obligations in connection with the Project;
- there are no exclusions of or limitations of liability nor joint insurance or co-insurance provisions between the Client and any other party referred to in this clause and any such other party who is responsible to any extent for the loss or damage is contractually liable to the Client for the loss or damage; and
- all the parties referred to in this clause have paid to the Client such proportion of the loss or damage which it would be just and equitable for them to pay having regard to the extent of their responsibility for the loss or damage.

13.4 Approved Building Control shall not be responsible for the supervision of any contractor or subcontractor and/or for ensuring the performance or adequate standard of workmanship of any contractor or subcontractor. Approved Building Control shall not be liable under or in connection with the contract for or as a result of any work and/or services provided by and/or any act or omission of any third party (including without limitation any contractor, consultant or sub-contractor).

13.5 The Client agrees not to pursue any claims under or in connection with the contract (whether in contract, in tort (including negligence), for breach of statutory duty or otherwise) against any individuals engaged by Approved Building Control or any individual directors or members of the Approved Inspector. The Client acknowledges that such individuals are entitled to enforce this clause pursuant to the Contracts (Rights of Third Parties) Act 1999.

13.6 Approved Building Control's liability under or in connection with the contract shall be limited to the exercise of reasonable skill, care and diligence and Approved Building Control shall not be liable unless it has failed to exercise such skill, care and diligence.

- 13.7 Neither Party shall under any circumstances whatsoever be liable to the other for any direct or indirect loss of profit, loss of business or anticipated saving or special, indirect or consequential damage suffered by the other Party that arises under or in connection with the contract and these Terms and Conditions.
- 13.8 No action or proceedings under or in respect of these Terms and Conditions whether in contract, in tort, in negligence, for breach of statutory duty or otherwise shall be commenced after the expiry of six years from the date of completion of Services or the termination of the contract if earlier.

#### **14 Notices**

The Client and Approved Building Control can give notice to each other in writing under the contract by personal delivery. They can also give notice by post, in which case delivery is effective two working days after posting. Notices must be sent to the address given on Approved building controls application form and/or Approved building controls official business address.

#### **15 Disputes and complaints**

- 15.1 If the Client is not satisfied with the Approved Inspector's performance of the Services or any Additional Work, it may ask Approved Building Control to implement the Approved Inspector's complaints handling procedure. Approved Building Control shall provide a copy of the procedure on request. The operation of the Approved Inspector's complaints handling procedure does not affect the Client's right to refer a dispute to the courts.
- 15.2 The Client and Approved Building Control shall consider in good faith whether any dispute or difference between them is suitable for resolution by mediation, and if so shall take the appropriate steps with a view to resolving the dispute or difference by mediation.
- 15.3 Commercial and Industrial Projects ONLY.  
[Either the Client or Approved Building Control may at any time refer a dispute or difference arising under or in connection with the contract to adjudication in accordance with the edition of the CIC Model Adjudication Procedure current at the date of the adjudication notice. The Adjudication shall be appointed by the CIC.]

#### **16 Intellectual Property**

The intellectual property rights in all documents produced by Approved Building Control under the contract ('Documents') shall vest or remain vested Approved Building Controls. The Client shall have a licence to use the Documents for the purpose for which they were prepared and Approved Building Control shall not be liable for the use of any of the Documents for any purpose other than that for which they were prepared.

#### **17 Rights of third parties**

No-one has any right to enforce any term of the contract under the Contracts (Rights of Third Parties) Act 1999, except as set out in clause 13.5. It is agreed and acknowledged that Approved Building Control shall not be required to enter into any collateral warranties with any third parties, provide any letters of reliance and/or grant any rights to any third parties under or in connection with the contract.

#### **18 Commencement**

Whatever the date of the contract, it shall have effect as if it had been signed on the date when Approved Building Control commenced the Services.

## DEFINITIONS AND INTERPRETATION

### 1 Definitions

In the contract, unless the context otherwise requires, the following expressions have the following meanings:

**Additional Work** means any additional or varied services as a result of or in consequence of the matters described in clause 6.1--6.5 and which are not already covered by the Services detailed above, together with any additional or varied services instructed by the Client and agreed with Approved Building Control.

**Approved Inspector** means a licensed individual or organisation carrying out the duties given to an approved inspector by the Building Act 1984 and regulations made under it.

**Building Regulations** means the building regulations made under the Building Act 1984, including the Building Regulations 2010.

**CIC** means the Construction Industry Council.

**Fee** means the total amount to be paid to Approved Building Control for the Services and any Additional Work.

**Final Certificate** means a certificate in accordance with Section 51 of the Building Act 1984.

**Initial Notice** means an initial notice to the relevant local authority notifying them of the Project under Section 47 of the Building Act 1984.

**Insolvent** means as defined in section 113, Housing Grants, Construction and Regeneration Act 1996.

**Services** means the services listed under services.

**Statutory Functions** means the duties of an approved inspector under the Building Act 1984, regulations made under it and formal guidelines issued by a government department.

### 2 Interpretation

In this Terms and Conditions, unless the context otherwise requires:

- the word 'include' and any derivations of it shall be construed without limitation;
- the singular shall include the plural and vice versa;
- a gender shall include any other gender; and
- references to any statute or statutory instrument includes any statute or statutory instrument amending, consolidating or replacing it, and references to a statute includes statutory instruments and regulations made pursuant to it.