

PART 1: CONTRACT DETAILS AND FEES

1-1 The company providing professional indemnity insurance in accordance with clause 3-7 is Griffiths and Armour.

1-2 Details of the Approved Inspector's insurance, including the total limit of liability to the Client, are contained within the 'Details of Approved Inspector appointment'.

1-3 The Fee The agreed fee, as contained in the 'Details of Approved Inspector appointment', shall be charged on a lump sum basis, unless otherwise agreed between the parties to this contract. The Fee/charge for Additional Work is calculated at a rate of £100 per hour.

1-4 Expenses and disbursements All other expenses and disbursements incurred by the Approved Inspector in performing the Services are included in the Fee.

PART 2: SERVICES

Taking such steps as are reasonable to enable him to be satisfied within the limits of the professional skill and care set out in clause 3-1 that the plans and the works comply with the Building Regulations, the Approved Inspector shall undertake the Statutory Functions.

Instructions Receive instructions, brief and necessary documentation from the Client.

Advise on procedure and programme for Building Regulation certification.

Initial notice Submit an initial notice(s) to relevant local authorities, and, where requested, copy to the Client.

Assessment of plans 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.

Maintain appropriate records of the design assessment process.

Statutory Consultations . Consult with the fire authority and forward observations to the Client. Undertake all other statutory consultations and forward observations of consultees to the Client. Consider the desirability of undertaking additional consultations and communicate to the Client any consultees' observations or advice beyond the scope of the Building Regulations. Alert the Client to provisions of legislation outside the Building Regulations believed to be relevant.

Plans certificate If requested by the Client, when satisfied that the plans show no observed contraventions of the Building Regulations, issue a plans certificate.

Compile a schedule of modifications specified and/or further plans or information required to demonstrate compliance of plans.

Inspection Notification Framework (INF) Prepare an inspection notification framework (INF) and if requested provide a copy to the Client.

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 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. References to the Client include persons designated by the Client.

PART 3: CONDITIONS

3-1 Approved Inspector's general obligations The Approved Inspector shall carry out the Services and any Additional Work with reasonable skill, care and diligence in accordance with this contract. The Approved Inspector shall have due 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).

3-2 Client's information and obligations

3-2.1 The Client shall provide such information and assistance as the Approved Inspector reasonably requires from time to time in order to facilitate the timely provision of the Services and any Additional Work.

3-2.2 The Client shall be responsible for safe access to the Project being provided when the Approved Inspector reasonably requires it.

3-3 Design, permits and approvals

3-3.1 Except where permitted by law and to the extent set out in Part 2: Services, the Client shall be entirely responsible for the design, construction and management of the Project and any Additional Work.

3-3.2 The Client shall also be entirely responsible for obtaining and implementing all necessary permits, licences and approvals, except those which form part of the Services.

3-4 Compliance with Building Regulations

3-4.1 The Client shall be responsible for the Project's compliance with the Building Regulations and the Services do not include advising the Client or managing the Project to ensure that compliance is achieved.

3-4.2 The Approved Inspector shall take such steps as are reasonable to enable it to be satisfied as to the Project's compliance with the Building Regulations, and if so satisfied, it shall issue a final certificate. The final certificate is not a representation that every aspect of the Project complies with Building Regulations.

3-5 Payment The due date for payment of an instalment of the Fee shall be the date of submission of the Approved Inspector's valid invoice for each instalment. The final date for payment of that invoice is 28 days after the due date for payment. The Fee is exclusive of VAT, which shall be paid in addition. In the event that the Client is in default over payments of amounts at the final date for payment and no notice of intention to withhold payment from such amount has been given, the Approved Inspector may suspend performance of any or all of the services and the Final Certificates will not be issued. This right is subject to the Approved Inspector first giving the Client not less than 7 days written notice of such intention and stating the grounds for suspension. The right to suspend performance shall cease when the client makes payment of the amount due.

3-6 Changes to the Project and Additional Work The Approved Inspector shall notify the Client in writing as soon as it becomes aware that any Additional Work will be required, because of:



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3-6.1 Changes in the design, size, scope or complexity of the Project;

3-6.2 Changes in the timing or programming of the Project;

3-6.3 A failure by the Client to comply with its obligations under this contract;

3-6.4 Additional meetings and/or visits and/or other work is required. The Client shall pay the Approved Inspector for the Additional Work on a time charge basis, at the rates set out in clause 1-3. The Approved Inspector may include the charge in the next payment instalment after the Additional Work (or part of it) has been performed.

3-7 Insurance The Approved Inspector shall 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). On the Client's written request, the Approved Inspector shall provide evidence that these insurances are being properly maintained.

3-8 Assignment and subcontracting Either party may assign its rights and benefits under this contract. The Approved Inspector 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.

3-9 Termination and discharge The Client may terminate this contract forthwith if:

3-9.1 The Approved Inspector 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

3-9.2 The Approved Inspector becomes insolvent.

3-10 The Approved Inspector may terminate this contract forthwith if:

3-10.1 The Client 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 Approved Inspector;

3-10.2 The Approved Inspector reasonably believes that it will not be in a position to issue a final certificate on completion; or

3-10.3 The Client becomes insolvent.

3-11 Following termination by the Approved Inspector or the Client, the Approved Inspector is entitled to write to the Local Authority (with a copy to the Client) cancelling the initial notice under the Building Regulations, in which case the approved inspector functions will revert to the Local Authority and the Approved Inspector will be discharged from all requirements to complete the Services or any Additional Work. The right of either party to terminate for material breach of this contract shall lapse if it has not been exercised within 35 days after giving notice of the breach to the other party.

3-12 Consequences of termination If this contract has been terminated, the Client shall pay the Approved Inspector 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 and any Additional Work performed by the Approved Inspector prior to the notice of termination. Termination of this contract shall not affect any rights or remedies of the Client or the Approved Inspector which exist at the date of termination.

3-13 Limitations of liability

3-13.1 Nothing in this clause 3-13 shall limit the Approved Inspector's liability for negligence resulting in death or personal injury. Subject to that:

3-13.2 Notwithstanding any other provisions in this contract (apart from clause 3-13.1), the Approved Inspector's total liability to the Client for any claims arising under or in connection with this contract (whether in contract, in tort (including negligence), for breach of statutory duty or otherwise) shall be limited to the amount:

- for alterations and extensions to domestic dwellings where the estimated cost of works stated on the applications form is less than the limitation of the 'insurance provider's policy as above, the limitations of the Approved Inspector will be no more than the Fee multiplied by ten. For such works where the estimated cost of works exceeds the limitation of the 'insurance provider's policy the limitation of this policy will be in force.
- for commercial projects where the estimated cost of works stated on the applications form is less than the limitation of the 'insurance provider's policy as above, the limitations of the Approved Inspector will be no more than the stated estimate of costs. For such works where the estimated cost of works exceeds the limitation of the 'insurance provider's policy the limitation of this policy will be in force.

3-13.3 Without prejudice to any other exclusion or limitation of liability, damages, loss, expense or costs, the liability of the Approved Inspector for any loss or damage ('the loss or damage') under this contract shall be limited to that proportion as it would be just and equitable for the Approved Inspector 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 3-1 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.

3-13.4 The Approved Inspector shall not be responsible for the supervision of any contractor or subcontractor, nor shall the Approved Inspector have any liability for ensuring the performance or adequate standard of workmanship of any contractor or subcontractor.

3–13.5 The Client shall look only to the Approved Inspector (and not to individuals engaged by the Approved Inspector or any individual directors or members of the Approved Inspector) for redress if the Client considers that there has been any breach of this contract. The Client agrees not to pursue any claims in contract, in tort (including negligence), for breach of statutory duty or otherwise against any such individuals as a result of carrying out its obligations under or in connection with this contract at any time. The Client acknowledges that such individuals are entitled to enforce this term of the contract pursuant to the Contracts (Rights of Third Parties) Act 1999.

3–14 Notices The Client and the Approved Inspector can give notice to each other in writing under this contract by personal delivery. They can also give notice by Recorded Delivery or Special Delivery, in which case delivery is effective two working days after posting. Notices to the Approved Inspector must be sent to the registered address unless otherwise notified.

3–15 Disputes and complaints

3–15.1 If the Client is not satisfied with the Approved Inspector's performance of the Services or any Additional Work, it may ask the Approved Inspector to implement the Approved Inspector's complaints handling procedure. The Approved Inspector 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.

3–15.2 The Client and the Approved Inspector 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. (Note: this does not apply to domestic clients)

3–15.3 Either the Client or the Approved Inspector may at any time refer a dispute or difference arising under or in connection with this contract to adjudication in accordance with the edition of the CIC Model Adjudication Procedure current at the date of the adjudication notice. The Adjudicator shall be appointed by the CIC. (Note: this does not apply to domestic clients)

3–16 Novation Where applicable, the Approved Inspector shall, within 14 days of the Client's request, execute and deliver to the Client a novation agreement in favour of the contractor in the form published by the CIC current at the date of the Client's request (with the deletion of clause 4 and amending the recitals as appropriate). With effect from the date of execution of that novation agreement:

- all references to the Client in this contract shall (unless the context otherwise requires) be construed as references to the contractor;
- any variations to the Services and other obligations of the Client and the Approved Inspector set out in Schedules 1 and 2 to the novation agreement shall apply; and
- the rights and obligations of the Approved Inspector in respect of the Project shall otherwise remain unchanged.

3–17 Rights of third parties No-one has any right to enforce any term of this contract under the Contracts (Rights of Third Parties) Act 1999, except as set out in clause 3–13.4. This does not affect the rights of the Client and the Approved Inspector in relation to this contract.

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3–18 Commencement This contract shall have effect on the date when the Approved Inspector commenced the Services.



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PART 4: DEFINITIONS AND INTERPRETATION

4-1 Definitions

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

Additional Work means the type or volume of services appropriate for an Approved Inspector to carry out in relation to the Project as a result of or in consequence of the matters described in clause 3-6 and which are not already covered by the Services set out in Part 2, together with any other services instructed by the Client and agreed by the Approved Inspector.

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.

CIC means the Construction Industry Council.

Fee means the total amount to be paid to the Approved Inspector for the Services and any Additional Work. **Services** means the services listed in Part 2. **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.

4-2 Interpretation In this contract, 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.

GUIDANCE

1. These notes are for general guidance only and are not intended to affect the interpretation of the contract. Legal/professional advice should be sought to cover any particular situation. Notes on the Terms and Conditions

2. Limitations of liability: clauses 1–2 and 3–13. It is recommended that the parties agree a suitable total (i.e. overall or aggregate) amount of damages for which the Approved Inspector might become liable to the Client. See the CIC Liability Briefing ‘Managing liability through financial caps’ available at www.cic.org.uk.

3. In agreeing the amount the parties should have regard to (amongst other things) the following: • the level of professional indemnity insurance the Approved Inspector has agreed to maintain;

- the fact that the cap will apply to all claims, for breach of contract or for breach of a duty to take care (that is, in ‘tort’) or for breach of statutory duty or otherwise;
- the nature and scope of the Services provided by the Approved Inspector;
- the nature, size and complexity of the Project; and
- the Fee.

4. In clause 3–13.3, the contract also includes what is called a ‘net contribution’ clause, which provides that if both the Approved Inspector and another party are liable to the Client in respect of the same loss or damage, the Approved Inspector will only have to pay a fair and reasonable proportion of the Client’s losses, having regard to the extent of the Approved Inspector’s responsibility for the loss or damage. For a fuller explanation of such clauses, see the CIC Liability Briefing ‘Net contribution clauses’ available at www.cic.org.uk.

5. In clause 3–13.4, the contract provides that if the Approved Inspector is a firm, company or limited liability partnership (LLP), the Client will only hold that firm, company or LLP responsible for the work done, not any individual (employee, director or member) who works for the firm, company or LLP. See the CIC Liability Briefing ‘Personal liability of employees’ available at www.cic.org.uk.

6. Novation: The provisions for novation will only apply where the Client wishes to transfer the appointment of the Approved Inspector by way of ‘novation’ to the contractor (for example if a design and build procurement route is used).

7. The Fee: in clause 1–3 note that the Fee is to be a lump sum unless otherwise agreed. If any Additional Work is undertaken, it is charged on a time basis (see clause 3–6).

8. The Services (Part 2): the Statutory Functions comprise serving the initial notice, undertaking an assessment of plans, consulting as appropriate, inspecting the site and issuing a final certificate(s).

9. Insurance: clause 3–7 provides that the Approved Inspector will maintain professional indemnity insurance and public liability insurance in compliance with guidelines for schemes of insurance for Approved Inspectors pursuant to section 47(6) of the Building Act 1984, issued by the Department for Communities and Local Government (or any successor Department responsible for the Building Act 1984).

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I hope you find this satisfactory, however; if any of the above is of concern, you wish to appoint an alternative Building Control provider or you have any questions please do not hesitate to contact me.



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