

# Regional Building Control Limited

## Terms & Conditions

June 2021

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*'committed to quality & excellence'*

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## **Terms & Conditions (as per the CIC/ACAI Approved Inspector Contract Third Edition 2020)**

### **PART 1: CONDITIONS**

#### **1.1 Approved Inspector's general obligations**

**1.1.1** The Approved Inspector shall carry out the Services and any Additional Work with reasonable skill, care and diligence in accordance with this contract. Notwithstanding any other provision of this contract the Approved Inspector shall have no greater obligation under or in connection with this contract than to exercise reasonable skill, care and diligence.

**1.1.2** The Approved Inspector 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 the Approved Inspector in writing).

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

**1.2.1** The Client shall provide such information, documents and assistance as the Approved Inspector reasonably requires or requests from time to time in order to facilitate the timely provision of the Services and any Additional Work 2.2.2. The Client shall be responsible for safe access to the Project being provided when the Approved Inspector 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.

**1.2.2** The Client shall give the Approved Inspector at least 7 days' notice before any works forming part of the Project are commenced and shall keep the Approved Inspector regularly informed of the progress of the Project.

**1.2.3** The Client confirms that it is the person intending to carry out the work forming part of the Project.

#### **1.3 Design, permits and approvals**

**1.3.1** The Client shall be entirely responsible for the design construction management of the Project save to the extent set out in the Services and/or agreed in writing by the Approved Inspector before undertaking Additional Work.

**1.3.2** 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 the Approved Inspector before undertaking Additional Work.

#### **1.4 Compliance with Building Regulations**

- 1.4.1** The Client and not the Approved Inspector shall be responsible for the Project's compliance with the Building Regulations. The Services do not include and the Approved Inspector 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.
- 1.4.2** The Approved Inspector 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 on 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.
- 1.4.3** The Approved Inspector 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 the Approved Inspector 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.

#### **1.5 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 the Approved Inspector's valid invoice for each instalment. The final date for payment of that invoice is 30 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 the Approved Inspector 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.

### **1.5A Non-Payment**

(Any sum due under this contract 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 1.5 the Approved Inspector shall be entitled to:

1.5A.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

1.5A.2 Terminate this contract by giving 14 days' notice.

### **1.6 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:

**1.6.1** Changes in the design, size, scope or complexity of the Project;

**1.6.2** Changes in the timing or programming of the Project;

**1.6.3** A failure by the Client to comply with its obligations under this contract;

**1.6.4** Additional meetings and/or visits and/or other work is required; and/or

**1.6.5** Any change in law (including without limitation any change in the Building Regulations and/or the Building Act 1984).

The Client shall pay the Approved Inspector for any Additional Work and/or if due to circumstances outside the Approved Inspector's control there are any changes in the timing or programming of the Services and/or any Additional Work, *on a time charge basis at the rates agreed*. The Approved Inspector 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 Inspector's control there are any changes in the timing or programming of the Services and/or any Additional Work, the Approved Inspector shall be entitled to a fair and reasonable extension of time for performing the Services and the Additional Work.

**1.7 Insurance**

The Approved Inspector 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), subject to any limitations, exceptions and/or exclusions from cover as are commonly included in professional indemnity insurance and public liability insurance policies. At the date of this contract, 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)).

**1.8 Assignment and subcontracting**

Neither Party may assign its rights and/or benefits under this contract (without the prior written consent of the other Party). 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.

**1.9 Termination and discharge**

The Client may terminate this contract forthwith by written notice to the Approved Inspector if:

**1.9.1** 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

**1.9.2** The Approved Inspector becomes insolvent.

**1.10** The Approved Inspector may terminate this contract forthwith by written notice to the Client if:

**1.10.1** 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;

**1.10.2** The Approved Inspector reasonably believes that it will not be in a position to issue a Final Certificate;

**1.10.3** The Client becomes insolvent;

**1.10.4** The Approved Inspector considers that there is a conflict between its obligations under this contract and Statutory Functions;

**1.10.5** The Approved Inspector considers that it is necessary to cancel the Initial Notice under Section 52(1) of the Building Act 1984;

**1.10.6** The Approved Inspector reasonably believes that it is impossible or impracticable to perform the Services as a result of any circumstances for which Approved Inspector is not responsible; and/or

**1.10.7** The Approved Inspector 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).

**1.11** Following any notice of termination by the Approved Inspector or the Client, the Approved Inspector is entitled to:

**1.11.1** Write to the relevant local authority (with a copy to the Client) cancelling the Initial Notice, in which case the Approved Inspector functions will revert to the relevant local authority and the Approved Inspector will be discharged from all requirements to complete the Services or any Additional Work; and/or

**1.11.2** At the Approved Inspector's discretion, issue a Final Certificate in respect of part of the works forming part of the Project.

**1.12 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 performed, sums payable in respect of any Additional Work performed by the Approved Inspector prior to the notice of termination and, following termination under clause 1.5A and/or 1.10, any costs or expenses incurred by the Approved Inspector as a result 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.

**1.13 Limitations of liability**

**1.13.1** Nothing in this clause 1.13 shall limit the Approved Inspector's liability for negligence resulting in death or personal injury.

**1.13.2** Notwithstanding any other provisions in this contract (apart from clause 1.13.1):  
**(i)** the Approved Inspector's total liability under or in connection with this contract (whether in contract, in tort (including negligence), for breach of statutory duty or otherwise) including without limitation interest and legal costs shall be limited to the amount set out in the Certificate of Insurance.

(ii) without prejudice to the aggregate limit of liability under clause 1.13.2 (i), the Approved Inspector's liability in respect of any excluded or limited matters as notified.

**1.13.3** 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 assumption 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 1.1 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.

**1.13.4** The Approved Inspector 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. The Approved Inspector shall not be liable under or in connection with this contract for or as a result of any work and/or services provided by ad/or any act or omission of any third party (including without limitation any contractor, consultant or subcontractor).

**1.13.5** The Client agrees not to pursue any claims under or in connection with this contract (whether in contract, in tort (including negligence), for breach of statutory duty or otherwise) against any individuals engaged by the Approved Inspector 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.

**1.13.6** The Approved Inspector's liability under or in connection with this contract shall be limited to the exercise of reasonable skill, care and diligence and the Approved Inspector shall not be liable unless it has failed to exercise such skill, care and diligence.

**1.13.7** 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 this contract.

- 1.13.8** No action or proceedings under or in respect of this contract 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 this contract, if earlier.

**1.14 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 post - effective two working days after posting or electronically by e-mail.

**1.15 Disputes and complaints**

- 1.15.1** If the Client is not satisfied with the Approved Inspector's performance of the Service 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.

- 1.15.2** 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.

- 1.15.3** 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 Adjudication shall be appointed by the CIC.

**1.16 Intellectual property**

The intellectual property rights in all documents produced by the Approved Inspector under this contract ('Documents') shall vest or remain vested in the Approved Inspector. The Client shall have a revocable, non-exclusive, terminable, royalty free licence to use the Documents for the purpose for which they were prepared and the Approved Inspector shall not be liable for the use of any of the Documents for any purpose other than that for which they were prepared.



**1.17 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 1.13.15. It is agreed and acknowledged that the Approved Inspector 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 this contract.

**1.18 Commencement**

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

## PART 2: DEFINITIONS AND INTERPRETATION

### 2.1 Definitions

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

<b>Additional Work</b>	means any additional or varied services <i>as instructed by the Client and agreed by the Approved Inspector.</i>
<b>Approved Inspector</b>	means a licensed individual or organization carrying out the duties given to an approved inspector by the Building Act 1984 and regulations made under it.
<b>Building Regulations</b>	means the building regulations made under the Building Act 1984, including the Building Regulations 2010.
<b>CIC</b>	means Construction Industry Council
<b>Fee</b>	means the total amount to be paid to the Approved Inspector for the Services and any Additional Work.
<b>Final Certificate</b>	means a certificate in accordance with Section 51 of the Building Act 1984.
<b>Initial Notice</b>	means an initial notice to the relevant local authority notifying them of the Project under Section 47 of the Building Act 1984.
<b>Insolvent</b>	means as defined in Section 113, Housing Grants, Construction and Regeneration Act 1996.
<b>Services</b>	means the services to be provided by the Approved Inspector and confirmed in the fee quotation issued
<b>Statutory Functions</b>	means the duties of an approved inspector under the Building Act 1984, regulations made under it and formal guidelines issued by a government department.

### 2.2 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.

RBC Application Pack

**GUIDANCE**

Please refer to the following link for the ACAI/CIC Contract for the Appointment of an Approved Inspector:

<https://www.cicair.org.uk/wp-content/uploads/2020/10/CIC-FORM-OF-AGREEMENT-CIC-Form-of-Agreement-21-05-2020-002.pdf>