CONTRACT FOR THE APPOINTMENT OF A BUILDING CONTROL APPROVER

First Edition 2024

First Edition – 2024 Model Contract for Building Control Approver

Acknowledgements to Beale & Co LLP, Griffiths and Armour Ltd and Howden Insurance

This contract is based on the CIC Contract for the Appointment of an Approved Inspector, Third Edition, 2020.

THIS CONTRACT

is made the [ ] day of [ ] 20[ ]

Between

1. The Client

AND

2. The Building Control Approver

collectively known as (‘**the Parties’**).

Whereas

- The Client is the person intending to carry, or carrying, out the work forming part of the Project and wishes to appoint the Building Control Approver as a building control approver under the Building Act 1984 in connection with the Project.

- The Building Control Approver has agreed to provide the Services for the Project on the terms set out in this Contract.

Signed for and on behalf of the Client
Director/Member:
Signature:

Signed for and on behalf of the Building Control Approver
Director/Member:
Signature:

Acknowledgements to Beale & Co LLP, Griffiths and Armour Ltd and Howden Insurance

PART 1: CONTRACT DETAILS

A.	The Client	<table><tr><td>Name</td><td></td></tr><tr><td>Company Number</td><td></td></tr><tr><td>Registered Office</td><td></td></tr></table>
B.	Building Control Approver	<table><tr><td>Name</td><td></td></tr><tr><td>Company Number</td><td></td></tr><tr><td>Registered Office</td><td></td></tr></table>
C.	The Project	
D.	The Project Value is	£ [ ]
E.	The Site is	
F.	The anticipated programme for the works	
G.	The Building Control Approver's total liability to the Client referred to in clause 16.2 is	the greater of (i) £250,000 or (ii) ten times the Fee, in the aggregate[1]
H.	If an Agent is appointed their details are as follows	<table><tr><td>Company Name and Address</td><td></td></tr><tr><td>Contact Name</td><td></td></tr><tr><td>Telephone Number</td><td></td></tr><tr><td>Email Address</td><td></td></tr></table> If an Agent is appointed to act on behalf of the Client, in signing this Contract, the Agent hereby acknowledges that it is the Agent's responsibility to provide a complete copy of this Contract to the Client and inform the Client of their obligations, duties and/or liabilities under and/or in connection with this Contract and by signing this Contract, the Agent binds the Client to the terms and conditions set out in this Contract.
I.	The Fee	The Fee is exclusive of VAT, which shall be paid in addition to the Fee if applicable. The Fee is: **[Lump Sum:** The Fee shall be lump sum of £[ ]**]** **[Time charges**: The Fee/charge for Additional Work shall be calculated on the basis of the time properly and necessarily spent by the Building Control Approver in performing the Services at the following rates: ..... £..... per hour.

[1] See guidance note 17.

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<table>
<tr><td></td><td></td><td>.....
£..... per hour.
…….....
£..... per hour.
.....
£..... per hour.]</td></tr>
<tr><td>J.</td><td>Expenses and Disbursements</td><td>• If warranty insurance is required (in the case of new homes) this shall be a disbursement additional to the Fee.

• [All other expenses and disbursements, incurred by the Building Control Approver in performing the Services and any Additional Work, are included in the Fee]; or

• [The Building Control Approver shall be entitled to charge for their expenses and disbursements]; or

• [The Building Control Approver shall be entitled to charge for the following expenses and disbursements:]</td></tr>
<tr><td>K.</td><td>Instalment Payments</td><td>Payment shall be made as follows:

<u>Lump Sum</u>

<table><tr><td>[Stage] or [Monthly]</td><td>[Amount] or [% of lump sum]</td></tr><tr><td></td><td></td></tr><tr><td></td><td></td></tr><tr><td></td><td></td></tr></table>
<u>Time Charge:</u>
The following Services shall be charged in accordance with the rates set out in item I:
[…….]
[……..]
[…….]

[and payment for any time charge incurred shall be invoiced monthly.]</td></tr>
</table>

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PART 2: DEFINITIONS AND INTERPRETATION

2.1. **Definitions**

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

Additional Work	means any additional or varied services as a result of or in consequence of the matters described in clauses 9.1.1-9.1.5 and which are not already covered by the Services set out in Part 4, together with any additional or varied services instructed by the Client and agreed by the Building Control Approver.
Agent	means the person or company as identified as 'Agent' in item H of the Contract Details who may act on the Client's behalf in respect of this Contract.
Building Act	means the Building Act 1984 as amended by the Building Safety Act.
Building Safety Act	means the Building Safety Act 2022, including the Secondary Legislation.
BSR	means the Building Safety Regulator under the Building Safety Act.
Building Regulations	means the building regulations made under the Building Act, including the Building Regulations 2010.
Consumer	means an individual acting for a purpose which is wholly or mainly outside that individual's trade, business, craft or profession.
Defence Costs	means all costs and expenses (other than costs incurred in connection with dishonesty and fraud) which are incurred by the Building Control Approver (with prior written consent of its insurer) or its insurer in connection with the defence, investigation or settlement of any claim made against the Building Control Approver and notified under its insurance policy and in connection with any circumstances which might give rise to a claim.
Domestic Client	means one or more individual(s) who are owners or occupiers of a dwelling.
Fee	means the total amount to be paid to the Building Control Approver for the Services as specified in item I of the Contract Details.
Final Certificate	means a certificate in accordance with Section 51 of the Building Act.
Fire Safety Claims	means any claim, Defence Costs or claimant's costs and expense directly or indirectly arising out of or in any way connected to (i) the combustibility, fire protection performance, fire resistance or fire-retardant characteristics of any external cladding or roofing systems; and/or (ii) any internal fire protection systems and/or (iii) any aspect of the fire safety or fire performance of a building or structure.
Force Majeure	means any event outside of the Building Control Approver's control, including without limitation, war, terrorism, sanctions, prohibitions or restrictions under any laws or regulations (including any trade or economic sanction laws or regulations), acts of God, flood, drought, earthquake or other natural disaster, and any epidemic or pandemic, including any consequences thereof.
HRB Work	means higher risk building work as defined under the Building Act and the Higher-Risk Buildings (Descriptions and Supplementary Provisions) Regulations 2023, as such definition may be amended from time to time.
Initial Notice	means an initial notice to the relevant local authority notifying them of the Project under Section 47 of the Building Act.

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Insolvent	means as defined in section 113, Housing Grants, Construction and Regeneration Act 1996.
Professional Conduct Rules	means the Professional Conduct Rules for Registered Building Control Approvers and the Health and Safety Executive's Building Control Professional Codes and Standards.
Professional Team	means any other party appointed by or to be appointed by the Client and/or the Agent on its behalf in addition to the Building Control Approver to provide services and/or works in relation to the Project.
Relevant Event	means: (a) any change in any law, order, rules, regulations, codes of practice and/or decisions of a government body (including any changes required as a result of and/or in relation to the Building Safety Act and/or any consequences thereof), and/or (b) the UK no longer being a member state of the EU (including the continuing consequences of the UK having left the EU), and/or any trade agreement between the UK and any country being entered into, abandoned, or delayed.
Secondary Legislation	means the secondary legislation enacted under the Building Safety Act, including, but not limited to, The Building (Approved Inspectors etc. and Review of Decisions) (England) Regulations 2023, the Higher-Risk Buildings (Descriptions and Supplementary Provisions) Regulations 2023 and the Building (Registered Building Control Approvers etc.) (England) Regulations 2024.
Services	means the services listed in Part 4 of this Contract.
Statutory Functions	means the duties of a Building Control Approver under the Building Act, the Building Safety Act and any regulations made under these Acts and formal guidelines issued by a government department.

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PART 3: CONDITIONS

3. General

3.1. In this Contract, unless the context otherwise requires:

3.1.1. the word 'include' and any derivations of it shall be construed without limitation;

3.1.2. the singular shall include the plural and vice versa; and

3.1.3. 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.

3.2. This Contract shall commence and take effect on the date the Building Control Approver first commenced the Services.

3.3. This Contract is governed by the laws of England and Wales and the courts of England and Wales shall have exclusive jurisdiction.

3.4. This Contract constitutes the entire agreement between the Parties and supersedes any previous arrangement, understanding or agreement between them relating to or connected with this Contract and/or the Services (whether oral or in writing).

4. Building Control Approver's general obligations

4.1. The Building Control Approver shall carry out the Services and any Additional Work using reasonable skill, care and diligence in accordance with this Contract. Notwithstanding any other provision of this Contract: (i) the Building Control Approver shall have no greater obligation under or in connection with this Contract than to exercise reasonable skill, care and diligence and (ii) nothing in this Contract or otherwise shall impose any obligation, warranty or guarantee (whether express or implied) on or from the Building Control Approver that the Services and/or any Additional Work shall be suitable or fit for any specified purpose.

4.2. The Building Control Approver shall exercise the standard of skill and care required by clause 4.1 in performing the Services and any Additional Work to have due regard to the Professional Conduct Rules and, where possible, to any programme for the Project (as amended from time to time and provided to the Building Control Approver in writing).

4.3. The Building Control Approver shall have no responsibility and/or liability under or in connection with this Contract for the performance and/or the supervision of any member(s) of the Professional Team in relation to the Project and the Building Control Approver shall have no responsibility and/or liability in respect of quality control of the works.

4.4. The Building Control Approver shall have no responsibility and/or liability for any failure by the Client or any member(s) of the Professional Team to comply with their obligations under the Building Safety Act. Any delay arising as a result of such failure shall entitle the Building Control Approver to an additional fee and extension of time in accordance with clause 9.3.

4.5. Where, prior to the date of this Contract, the Client had previously appointed a party to undertake services the same or substantially similar to the Services in respect of the Project, the Client shall provide (or procure that others in the Professional Team provide) prior to commencement of the Services such information, designs and materials previously prepared or provided by the relevant party to the Building Control Approver as required for the Building Control Approver to perform the Services. The Building Control Approver shall be entitled to rely on any such information, designs, reports or other materials provided to it by or on behalf of the Client (whether or not the same was prepared by or on behalf of the Client).

4.6. The Building Control Approver shall not be responsible and/or liable for (i) the use of any information, and/or (ii) any inaccuracy, discrepancy, errors, or omissions contained in any

materials and/or information, provided to the Building Control Approver pursuant to clause 4.5.

5. Client's information and obligations

5.1. The Client shall provide, or procure that other duty holders under the Building Safety Act provide, such information, documents, assistance and approvals as the Building Control Approver reasonably requires or requests from time to time in order to facilitate the timely provision of the Services and any Additional Work and to allow the Building Control Approver to comply with its obligations under the Building Safety Act.

5.2. The Client shall be responsible for safe access to the Project being provided when the Building Control Approver reasonably requires it and shall procure such access and certification from any consultant, contractor or sub-contractor as is reasonably requested by the Building Control Approver.

5.3. The Client shall give the Building Control Approver not less than 7 days' written notice before any works forming part of the Project are commenced and shall keep the Building Control Approver regularly informed of the progress of the Project.

5.4. The Client shall give advance written to the Building Control Approver at any stage at which an inspection by the Building Control Approver is required.

5.5. The Client shall provide in a timely manner drawings and specifications including Site and block plans at not less than 1:1250 scale, showing all public services on or within 6 metres of the boundaries, and in sufficient detail to facilitate the proper serving of the Initial Notice and other legal documents as may be necessary.

5.6. The Client shall ensure that the details completed in sections 1, 2 and 3 of the Initial Notice are correct before signing (and/or arranging for it to be signed) and returning it to the Building Control Approver for submission to the relevant local authority. The Client shall ensure the Initial Notice is returned to the Building Control Approver in sufficient time so that it can be submitted to the relevant local authority not less than 5 working days before works commence on Site.

5.7. The Client will notify the Building Control Approver in writing of any Agent appointed to act on its behalf and of any change or dismissal of the Agent. Where the Client appoints an Agent to act on its behalf, the Client confirms that the Agent is authorised to sign the Initial Notice (and or any other Notice) on its behalf wherever signed by the Agent.

5.8. The Client shall notify the Building Control Approver immediately if it does not consider itself to be, or ceases to be, the person carrying out the works for the purposes of the Building Regulations and will confirm the identity of the person carrying out the works to the Building Control Approver. The Client will procure the necessary consents and approvals from any other person carrying out the works in a timely manner to enable the Building Control Approver to perform the Services and any Additional Work.

6. Design, permits and approvals

6.1. The Client shall be entirely responsible for the design, construction and management of the Project.

6.2. The Client shall be entirely responsible for obtaining and implementing all necessary permits, licences, consents and approvals, unless the Parties have otherwise agreed in writing and provided always that the obtaining and implementing of any necessary permits, licences, consents and approvals by the Building Control Approver shall be deemed Additional Work for the purposes of this Contract.

7. Compliance with Building Regulations

7.1. The Client and not the Building Control Approver shall be responsible for the Project's compliance with the Building Regulations. The Services do not include and the Building Control Approver 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.

7.2. The Building Control Approver 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 to the Building Control Approver by the Client 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.

7.3. The Building Control Approver shall not be responsible and/or liable to any party under or in connection with this Contract for any delay in issuing the Final Certificate and shall not be responsible and/or liable for any additional fees that are payable to the relevant local authority and/or any other costs, as a result of the Building Control Approver being unable to issue a Final Certificate at any time.

8. Payment

8.1. The Client shall pay the Building Control Approver the Fee for the Services together with any additional fees incurred pursuant to clause 9 and any expenses, disbursements and charges.

8.2. The Building Control Approver shall submit invoices to the Client in accordance with the Instalment Payments specified in item K of the Contract Details and where payment is on a time charge basis, invoices shall be submitted monthly unless otherwise specified in item K of the Contract Details.

8.3. The Fee together with any additional fee incurred pursuant to clause 9 and any expenses, disbursements and charges shall become due on the date of submission of the Building Control Approver's invoice (the "**Due Date"**). The Building Control Approver's invoice shall specify the sum it considers is due on the payment Due Date and the basis on which that sum is calculated.

8.4. The final date for payment of any sum due under this Contract shall be 28 days after the Due Date (the "**Final Date for Payment**").

8.5. The sum stated as being due in the Building Control Approver's invoice shall be paid by the Final Date for Payment unless the Client has not later than seven (7) days before the Final Date for Payment given notice that it intends to pay less specifying the sum that the Client considers to be due on the date the notice is served and the basis on which the sum is calculated (the "**Pay Less Notice**"). The sum stated as due in any Pay Less Notice shall be paid on or before the Final Date for Payment.

8.6. If the Client has appointed an Agent, the Agent shall remain jointly and severally liable with the Client in respect of all sums due to the Building Control Approver under this Contract.

8.7. Save for where the Client is a Domestic Client, any sum due under this Contract which is not paid by the Final Date for Payment shall carry interest at 8% above the Bank of England official dealing rate applicable from the Final Date for Payment until the date on which payment is made.

8.8. In the event that any sum is not paid on or before the Final Date for Payment in accordance with this clause 8 the Building Control Approver shall be entitled to:

8.8.1. Suspend performance of all or any part of the Services by giving not less than 7 days' notice in writing to the Client stating the ground or grounds on which it intends to suspend performance unless, where applicable, the Client has given a valid Pay Less Notice; and/or

8.8.2. Terminate this Contract immediately by notice in the event the Client has not paid any sums due and outstanding to the Building Control Approver in accordance with this clause 8 within 30 days of written notice from the Building Control Approver requiring such sums to be paid.

8.9. The Building Control Approver's right to suspend performance of all or any part of the Services shall cease when the Client makes payment in full of any sums owed to the Building Control Approver in accordance with this clause 8.

8.10. The Building Control Approver shall be entitled on an annual basis to review and revise, in accordance with the Office of National Statistics Consumer Prices Index, its rates set out in item I of the Contract Details or, if none are stated, the Building Control Approver's standard rates applicable at the relevant time. The Fee and any additional fee shall be calculated in accordance with the rates as revised under this clause and the Building Control Approver shall be paid in accordance with such revised rates and Fee.

9. Changes to the Project and Additional Work

9.1. The Building Control Approver shall notify the Client in writing as soon as reasonably possible if it becomes aware that any Additional Work will be required, because of:

9.1.1. Changes in the design, size, scope or complexity of the Project;

9.1.2. Changes in the timing or programming of the Project including without limitation delay, disruption and/or prolongation to the Project and/or Services;

9.1.3. A failure by the Client to comply with its obligations under this Contract;

9.1.4. Additional meetings and/or visits and/or other work is required; and/or

9.1.5. Any change in law (including without limitation any changes required as a result of and/or in relation to the Building Regulations and/or the Building Act and/or Building Safety Act and/or any consequences thereof).

9.2. Where the Client instructs the Building Control Approver to undertake Additional Work, the Client shall pay the Building Control Approver on a time charge basis for undertaking the Additional Work, at the rates set out in item I of the Contract Details and the Building Control Approver shall be entitled to a fair and reasonable adjustment to the programme for performing the Additional Work. The Building Control Approver may include the charge in the next payment instalment after the Additional Work (or part of it) has been performed.

9.3. Notwithstanding the foregoing, if due to circumstances outside of the Building Control Approver's control there are changes in the timing or programming of the Services and/or any Additional Work, or if the Building Control Approver is delayed, disrupted or prolonged in all cases for reasons other than the Building Control Approver's default, then the Client shall pay the Building Control Approver on a time charge basis for the additional work undertaken by the Building Control Approver as a result of the change in the timing or programming of the Services and/or any Additional Work or as a result of any delay, disruption or prolongation, at the rates set out in item I of the Contract Details and the Building Control Approver shall be entitled to a fair and reasonable adjustment to the programme.

10. Intellectual Property

10.1. The intellectual property rights in all documents produced and/or prepared by the Building Control Approver under or in connection with this Contract (the "**Documents**") shall vest or remain vested in the Building Control Approver. Subject to payment in full by the Client of all sums owed to the Building Control Approver under this Contract, the Building Control Approver grants to the Client an irrevocable, non-exclusive, royalty free licence to copy and use the Documents for any purpose related to the Project.

10.2. The Building Control Approver shall not be liable for any use of any of the Documents for any purpose other than that for which they were prepared and provided by the Building Control Approver.

11. Insurance

11.1. The Building Control Approver shall, provided it is available at commercially reasonable rates and on commercially reasonable terms, maintain professional indemnity insurance and public liability insurance with such aggregate limit of indemnity as is sufficient to cover its liability under this Contract, subject to any limitations, exceptions and/or exclusions from cover as are commonly included in professional indemnity insurance and public liability insurance policies.

12. Assignment and subcontracting

12.1. Neither Party may assign its rights and/or benefits under this Contract without the prior written consent of the other Party. The Building Control Approver may subcontract any part of the Services and/or any Additional Work, with the prior approval of the Client, such approval not to be unreasonably withheld or delayed.

13. Rights of third parties

13.1. A person who is not a party to this Contract may not by virtue of the Contracts (Rights of Third Parties) Act 1999 enforce any of its terms.

13.2. It is agreed and acknowledged that the Building Control Approver 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.

13.3. The Building Control Approver shall not be required to comply with any agreement between the Client and any third party and the Building Control Approver shall have no obligations and/or liabilities arising out of or in connection with any agreement between the Client and any third party.

14. Termination and discharge

14.1. The Client may terminate this Contract forthwith by written notice to the Building Control Approver if:

14.1.1. The Building Control Approver is in material breach of its obligations under this Contract and has failed to remedy the breach within 28 days of the Client notifying the Building Control Approver of the same; or

14.1.2. The Building Control Approver becomes Insolvent.

14.2. The Building Control Approver may terminate this Contract forthwith by written notice to the Client if:

14.2.1. The Client is in breach of its obligations under this Contract and has failed to remedy the breach within 28 days of the Building Control Approver notifying the Client of the same;

14.2.2. The Building Control Approver is prevented or impeded in performing the Services as a result of (i) Force Majeure and/or (ii) a Relevant Event;

14.2.3. The Client becomes Insolvent;

14.2.4. The Building Control Approver reasonably believes that it will not be in a position to issue a Final Certificate;

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14.2.5. The Building Control Approver considers that there is a conflict between its obligations under this Contract and the Statutory Functions;

14.2.6. The Building Control Approver considers that it is necessary to cancel the Initial Notice under Section 52(1) of the Building Act 1984;

14.2.7. The Building Control Approver is unable to maintain professional indemnity insurance and/or public liability insurance as required under this Contract;

14.2.8. The BSR suspends, terminates or places restrictions on the Building Control Approver's registration which prevents the Building Control Approver from carrying out the Services or from undertaking any Additional Work instructed pursuant to clause 9; and/or

14.2.9. The Project constitutes or involves HRB Work.

14.3. Following any notice of termination by the Building Control Approver or the Client, the Building Control Approver is entitled to:

14.3.1. Write to the relevant local authority (with a copy to the Client) cancelling the Initial Notice, in which case the Building Control Approver functions will revert to the relevant local authority or to a different Building Control Approver, as may be notified by the Client, and the Building Control Approver will be discharged from all requirements to complete the Services or any Additional Work; and/or

14.3.2. Except in the case of termination under clause 14.1.2 or 14.2.8 or 14.2.9, at the Building Control Approver's discretion, issue a Final Certificate in respect of part of the works forming part of the Project.

15. Consequences of termination

15.1. If this Contract has been terminated, the Client shall pay to the Building Control Approver all sums owed under this Contract in respect of Services and/or Additional Work carried out up to the date of termination and not previously paid to the Building Control Approver by the Client at the date of termination along with any costs or expenses incurred by the Building Control Approver as a result of termination where the Contract is terminated in accordance with clauses 8.8 and/or 14.2.

15.2. Termination of this Contract shall not affect any rights or remedies of the Client or the Building Control Approver which exist at the date of termination.

16. Limitations of liability

16.1. Nothing in this clause 16 shall limit the Building Control Approver's liability for negligence resulting in death or personal injury and/or for fraud or fraudulent misrepresentation.

16.2. Notwithstanding anything to the contrary contained in this Contract and without prejudice to any other provision of this Contract whereby the Building Control Approver's liability is excluded or limited to a lesser amount, the Building Control Approver's total aggregate liability (including, without limitation, legal costs and interest) under or in connection with this Contract, whether in contract, tort (including negligence), for breach of statutory duty or otherwise, shall be limited to the amount set out in item G of the Contract Details.

16.3. Subject to clause 16.2, the Building Control Approver's liability (including, without limitation, legal costs and interest) under or in connection with this Contract in respect of Fire Safety Claims shall be limited to the amount, if any, recoverable by the Building Control Approver by way of indemnity against the Fire Safety Claim in question under the Building Control Approver's professional indemnity insurance policy in force at the time that the Fire Safety Claim is notified.

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16.4. The Building Control Approver shall have no liability whatsoever and however so arising out of or in connection with war, civil disorder, terrorism, mould, spores, asbestos, pollution and/or contamination and any fitness for purpose requirement in relation to the Project.

16.5. The Building Control Approver shall not be liable for any loss of income, loss of actual or anticipated profits, loss of business, loss of contracts, loss of goodwill or reputation, wasted management time, loss of anticipated savings, loss of, damage to or corruption of data, or for any special, indirect or consequential loss or damage of any kind, in each case howsoever arising, whether foreseeable or in the contemplation of the Parties and whether arising in or for breach of contract, tort (including negligence), breach of statutory duty, or otherwise.

16.6. The Building Control Approver's liability to the Client under or in connection with this Contract shall not exceed such sum as it would be just and equitable for the Building Control Approver to pay having regard to the extent of the Building Control Approver's responsibility for the loss and/or damage and on the assumption that all members of the Professional Team and/or other persons involved in the Project have paid to the Client such sums as it would be just and equitable for them to pay.

16.7. Without prejudice to any shorter statutory limitation period, no action, claim or proceedings arising out of or in connection with this Contract (howsoever arising) shall be commenced, and the Building Control Approver shall have no liability for a claim arising out of or in connection with this Contract (howsoever arising) after the expiry of six years from the date of completion of the Services or the termination of this Contract, whichever is earlier.

17. Force Majeure and Relevant Events

17.1. If as a result of (i) a Relevant Event, and/or (ii) any Force Majeure, any Additional Work is required to be carried out by the Building Control Approver, the Client shall pay the Building Control Approver on a time charge basis for the Additional Work undertaken by the Building Control Approver as a result of the Relevant Event and/or Force Majeure, at the rates set out in item I of the Contract Details and the Building Control Approver shall be entitled to a fair and reasonable adjustment to the programme to reflect any delay and/or disruption as a result of the Relevant Event and/or any Force Majeure.

17.2. If any Relevant Event and/or Force Majeure prevents or significantly impedes the performance by the Building Control Approver of the Services and/or any Additional Work under this Contract, materially impacts the performance of the Services and/or Additional Work and/or materially increases the cost of performing the Services and/or any Additional Work, the Building Control Approver may forthwith by written notice terminate this Contract.

17.3. The Building Control Approver shall not be in breach of this Contract and shall have no liability under or in connection with this Contract as a result of (i) any act, omission, or default, (ii) any failure to perform the Services and/or Additional Work in accordance with this Contract (iii) any prolongation or delay to the Services and/or Additional Work, and/or (iv) any termination of the Building Control Approver's appointment under this Contract, to the extent that any of the preceding is caused or contributed to by any Relevant Event and/or Force Majeure.

17.4. The existence of a Relevant Event and/or Force Majeure shall not relieve the Client from any obligation to make payment to the Building Control Approver under this Contract.

18. Consumer Clients

18.1. Where the Client is a Consumer, the Client shall have the right to cancel this Contract for any reason by sending the Building Control Approver notice of cancellation in the form set out in Part 5 of this Contract within 14 days of the date this Contract takes effect. If the Client has instructed the Building Control Approver to perform Services and/or Additional Work at any time before the expiry of the 14-day period provided for in this clause, the Client shall pay the Building Control any Fee and/or any expenses incurred up to the date the Building Control Approver received the notice of cancellation of the Contract.

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19. Notices

19.1. The Client and the Building Control Approver can give notice to each other in writing under this 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 specified in the Contract Details or any other address notified by the Party.

20. Disputes and complaints

20.1. If the Client is not satisfied with the Building Control Approver's performance of the Services or any Additional Work, it may ask the Building Control Approver to implement the Building Control Approver's complaints handling procedure. The Building Control Approver shall provide a copy of the procedure on request.

20.2. The Client and the Building Control Approver 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. Subject to clause 16.7, either Party may, at any time, commence court proceedings to resolve any dispute.

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PART 4: SCHEDULE OF SERVICES

Exercising the reasonable skill and care set out in clause 4.1, the Building Control Approver shall undertake the following services:

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 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 forming part of the Statutory Functions 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	Prepare an inspection and intervention plan (IIP) and if requested provide a copy to the Client.
Framework	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

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	to the Client. If requested by the Client, provide a list of inspections carried out. Retain statutory records for an appropriate period.
Negotiations	Assist with negotiations and applications for approvals under local Acts
Design Team Meetings	Attend design team meetings, as agreed.
Consultation	Undertake further consultations, as agreed.
Site Meetings	Attend number [ ] site meetings, as agreed.
Further Inspection	Make further inspections of the site over and above those identified in the IIP, as agreed.
Outside Tests	Witness tests outside the site, as agreed.
Plans	Participate in assessing plans by electronic means (such as web collaboration tools or building information modelling).
Specialist Studies	Assist with advice on need for specialist studies and surveys of site.

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[Part 5: Template Consumer Notice of Cancellation

Dear Building Control Approver,

Notice of Cancellation

We [insert name of Client] or [insert name of Agent acting on behalf of the Client], hereby gives notice that the Contract between the [Client] and the Building Control Approver on [enter date of the contract] is cancelled.

Yours sincerely,

[Client's Name] or [Agent's name for and on behalf of the Client]

[Signature]

[Date]]**[2]**

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.

2. This Contract should be used for all Projects where the Client is a non-Domestic Client (irrespective of Project Value) and/or where the Client is a Domestic Client but the anticipated and/or actual Project Value is greater than £500,000. Where the anticipated and/or actual Project Value is £500,000 or lower and the Client is a Domestic Client, the ABCA Short Form Contract for the Appointment of a Building Control Approver should be used.

3. It should be noted that this Contract is an interim draft which has been prepared to comply with the Building Safety Act as in force at the time of writing. It is acknowledged that the Building Safety Act may be subject to further amendment and that this Contract may need to be revised if substantive changes are made to the role of the Building Control Approver under the Building Safety Act or if further guidance is issued by the BSR.

4. On page 1, the Client and the Building Control Approver should sign the Contract and print their names. The date of the latest signature should be inserted at the top of page 1. It is usual for each party to keep a copy of the Contract signed by the other party. (Note that when a contract has been concluded, the parties and their advisers are permitted to photocopy the signed contract for their use. Otherwise, it is a breach of copyright to photocopy the contract or reproduce or transmit it in any way without the publishers' permission.)

Completing the Contract Details

5. Items A and B the Client and the Building Control Approver: Insert the name, company number and registered office of the Client and Building Control Approver.

6. Item C – the Project: Insert a description of the project and any Client requirements.

7. Item E – the Site: Insert details on the site, including the address of the site where the Project is to be carried out.

8. Item F – the programme: Insert details on the anticipated programme of the works up to practical completion of the Project.

9. Item H – Agents: If the Client is appointing an agent, details of the agent including their name and contact information should be included. The Agent shall become responsible for managing the Client in relation to this Contract, including ensuring the Client is aware of its duties, liabilities and obligations under this Contract. It is important the Client is clear that they wish an Agent to be appointed, as if the Agent signs the Contract on the behalf of the Client, the Client will be bound by the terms and conditions of this Contract.

10. Item I – the Fee: Select the basis of payment, either lump sum or time charges. Where the Fee is a lump sum, the fixed amount should be specified. Where the

[2] Part 5 to be included if the Client is a Consumer.

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Fee is on a time charge basis, the applicable hourly rates should be included. Time charge rates must be included in all cases, since if any Additional Works is undertaken, it is charged on a time basis (see clause 9).

11. Item J – Expenses and Disbursements: There are three optional statements in respect of Expenses and Disbursements for the Parties to agree: (1) expenses and disbursements may be included in the Fee, or (2) the Building Control Approver may be entitled to charge for them, or (3) the Client may agree to the Building Control Approver charging for specific expenses and disbursements which are to be listed in the Contract Details. The options that do not apply should be deleted. If Option 3 is selected, insert the expenses and disbursements the Building Control Approver is entitled to charge.

12. Item K – Instalment Payments: Payment may be made in stage or monthly instalments where the Fee is a lump sum. Users should insert the stages/months where invoices should be submitted along with the amount that is payable. Where payment is on a time charge basis, users should set out the Services which will be charged on a time basis and unless otherwise specified time charge payment shall be invoiced monthly. Please note item K is designed to be flexible to allow payment to be on both a lump sum and time charge basis.

Notes on the Terms and Conditions

13. The Contract is governed by English Law and any disputes arising out of or in connection with the Contract shall be resolved exclusively by the courts of England and Wales.

14. There is uncertainty over who is 'the person carrying out the works' for the purposes of the Building Regulations and so there is an assumption in clause 5.8 that this is the Client. If the Client does not consider that this is correct then they shall notify the Building Control Approver.

15. In Clause 6, if the Parties agree in writing that the Building Control Approver shall be responsible for the obtaining and implementing all necessary permits, licences, consents and approvals, then such services will be outside the statutory functions of the Building Control Approver. Note that typical Building Control Approver professional indemnity insurance only covers liability arising from the statutory obligations of a Building Control Approver. Therefore, if any non-statutory services are provided (including pursuant to clause 6), the Building Control Approver will need to maintain separate professional indemnity insurance to cover any liability arising under or in connection with any non-statutory services.

16. In Clause 8.7, there is an entitlement for the Building Control Approver to charge interest at 8% above the Bank of England dealing rate on any sum which is not paid by the Client to the Building Control Approver by the Final Date for Payment. This entitlement does not apply where the Client is one or more individual(s) who are owners or occupiers of a dwelling (i.e., 'domestic' clients). This is because in some instances the law relating to Building Control Bodies is different depending upon whether the Client is a domestic client or not.

17. In Clause 16.2, the Building Control Approver's total aggregate limit on liability is limited to the greater of (i) ten times the fee or (ii) £250,000. This will need to be reviewed on a case-by-case basis to ensure that the cap on liability will not be deemed unreasonable and unenforceable (for example, where the project value is significantly higher and where it is a domestic client). The limit on liability must be no higher than the level of insurance maintained by the Building Control Approver, otherwise the Building Control Approver will be exposed to uninsured liability.

18. Following recent issues regarding fire safety, the insurance market has hardened and there is less cover available for fire safety claims. Therefore, the Contract (in clause 16.3) includes an evaporation clause whereby the Building Control Approver's liability for fire safety and/or cladding claims, has been limited to the lesser of the financial cap on liability stated in item G of the Contract Details or the amount (if any) recoverable by way of indemnity under the Building Control Approver's professional indemnity insurance.

19. As with fire safety, there is very limited insurance cover available in the market for asbestos, and in respect of pollution and contamination it is common for typical professional indemnity insurance to exclude liability for these all together. In clause 16.4, liability in respect of asbestos, pollution and contamination have been excluded in their entirety.

20. In Clause 16.5, there is an exclusion of liability in respect of indirect and consequential losses, which provides that the Building Control Approver shall not be liable for losses which are far removed from its services.

21. In Clause 16.6, the Contract also includes what is called a 'net contribution' clause, which provides that if both the Building Control Approver and another party are liable to the Client in respect of the same loss or damage, the Building Control Approver will only have to pay a fair and reasonable proportion of the Client's losses, having regard to the extent of the Building Control Approver's responsibility for the loss or damage. This is needed because a number of different parties will be working on the Project and it is unreasonable for the Building Control Approver to be liable for all the loss suffered by the Client if another party was partially responsible for the same loss.

22. In Clause 18.1, where the Client is an individual acting for a purpose which is wholly or mainly outside that individual's trade, business, craft or profession (the "Consumer"), the Consumer Contracts Regulations gives them a right to cancel the Contract for any reason by issuing a notice of cancellation within 14 days of the commencement of the Contract. The Consumer will issue their cancellation notice using the

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template form provided in Part 5. The form in Part 5 is simple to use and only requires the user to insert details of the client (or where an Agent is appointed, the agent's details) and the date of the Contract. It is important that where the Client is a Consumer, the Registered Building Control Approver talks through any key points of the contract and arranges for the document to be signed by both parties before it commences work.

The Services (Part 4)

23. The Services to be provided should be clearly set out in Part 4 and should reflect what the Parties have agreed. If the Building Control Approver is to undertake any Additional Work, this should also be clearly set out in Part 4. Any services requested after the Contract has been entered into will be charged on a time basis (see clause 9).

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