

## Terms of Appointment

(based on the CIC/ACAI Contract for the Appointment of an Approved Inspector, Third Edition 2020)

### Definitions and Interpretation

1. In this Agreement, unless the context otherwise requires, the following expressions have the following meanings:

**Agreement** means the Proposal (including any documentation attached to or referred to therein) together with these Terms of Appointment.

**Additional Work** means any services provided by BRCS which are additional or different to the Service and/or any prolongation of the Services.

**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 (as may be amended or replaced from time to time).

**Client** means as stated in the Proposal.

**CIC** means the Construction Industry Council.

**BRCS** means BRCS (Building Control) Limited, a company registered in England and Wales with company number 03194795 with its registered office at Amber Court, 51 Church Street, Elsecar, Barnsley, South Yorkshire, S74 8HT.

**Fee** means the amounts to be paid to BRCS for the Services in accordance with the Proposal and any sums payable for any Additional Work.

**Final Certificate** means a certificate in accordance with Section 51 of the Building Act 1984 confirming the Project's general compliance with the Building Regulations in so far as it is reasonable to determine on the basis of the information and documents provided to BRCS.

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

**Parties** means BRCS and the Client.

**Project** means the project stated in the Proposal.

**Services** means the services specified in the Proposal.

**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.

**Works** means the works forming part of the Project.

2. In this Agreement, 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.

3. In the event of any conflict, ambiguity or inconsistency between the documents forming part of the Agreement, these Terms of Appointment shall take precedence. This Agreement constitutes the entire agreement between the Parties and supersedes any previous arrangement, understanding or agreement between them relating to or connected with this Agreement and/or the Services (whether oral or in writing) and any terms and conditions submitted by the Client (whether before or after the date of the Proposal) or contained in any letter, purchase order.

### Appointment & Commencement of Work

4. If BRCS is appointed to undertake Approved Inspector services, permission for BRCS to sign an Initial Notice on behalf of the person carrying out the Works is automatically assumed. If BRCS is appointed on behalf of the person carrying out the Works, the person carrying out the Works shall be informed of BRCS's appointment. If BRCS becomes aware that the person carrying out the Works did not agree to or permit BRCS to be appointed BRCS may terminate this Agreement on immediate written notice.

5. If a third party has appointed BRCS on behalf of the Client, the third party should ensure that the Client is made fully aware of our terms and conditions, including payments arrangements. If the third party fails to do so, they are jointly and severally responsible for payment of all sums due under this Agreement.

### Invoicing & Payment Arrangements

6. Invoices may be submitted by BRCS in respect of the Fee at the intervals stated in the Proposal and shall specify the sum considered to be due and the basis on which that is calculated. All invoices will be due for payment on the date of the invoice and the final date for payment will be 14 days from the due date (**final 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 BRCS of its intention to pay less stating the sum considered to be due and the basis on which that is calculated (**pay less notice**) and the sum stated as due in any pay less notice shall be paid on or before the final date for payment.
7. In the event that the sum stated as due in any invoice or in any pay less notice is not paid on or before the final date for payment BRCS shall be entitled to:
  - 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;
  - terminate this Agreement by giving 14 days' notice; or
  - withhold issue of the Final Certificate.
8. Interest will be payable to BRCS on all sums which are not paid by the final date for payment in accordance with clause 6 at an interest rate of 8% above the Bank of England base rate and BRCS will also be entitled to recover all costs incurred recovering the debt. All amounts due and payable to BRCS shall be paid in full without any set off, counterclaim or deduction (other than deduction or withholding of tax as required by law).

### BRCS's General Obligations

9. BRCS shall carry out the Services and any Additional Work exercising reasonable skill, care and diligence. Notwithstanding any other provision of this Agreement BRCS shall have no greater obligation under or in connection with this Agreement than to exercise reasonable skill, care and diligence. Nothing in this Agreement or otherwise shall impose any obligation, warranty or guarantee that the Services shall be fit for any particular purpose or suitable for use (whether express or implied).
10. In performing the Services and any Additional Work, BRCS shall exercise reasonable skill, care and diligence to have regard to the CIC Approved Inspectors Register's Code of Conduct for Approved Inspectors.
11. Any timescales included in the Agreement are indicative only. BRCS shall exercise reasonable skill, care and diligence to perform the Services having regard to any agreed programme or timescales, which are provided to BRCS in writing.

### Client's information and obligations

12. The Client shall provide such information, documents and assistance as BRCS reasonably requires from time to time in order to facilitate the timely provision of the Services and any Additional Work, including any plans, details or calculations that are necessary for BRCS to carry out an assessment of the Project in respect of compliance with the Building Act 1984 and the Building Regulations and/or perform the Services.
13. BRCS is entitled to inspect the Works at agreed stages, to request certification from any contractor, consultant or subconsultant upon completion of the Works and to request witnessing of any part/service or system of construction to verify that the Works are being constructed in accordance with the Building Regulations. The Client shall procure that BRCS is able to inspect the Works, obtain such certification and witness any part/service or system of construction as requested by BRCS.
14. The Client shall be responsible for providing safe access to the Project when BRCS reasonably requires it.
15. The Client shall notify BRCS at least 5 working days prior to i) any Works commencing and ii) at the agreed key inspection stages for the project in order to arrange site inspections. Inspections should be requested at least 24 hours prior to the visit being undertaken. Where notice is not provided BRCS may require part of the Works to be uncovered and/or other evidence provided. BRCS will not be liable for any costs associated with aborted Works, and/or opening up of any Works for inspection and/or any delay to the Project as a result of opening up any Works. The Client is responsible for contacting BRCS to arrange a final inspection upon completion of the works and for the provision of all necessary information, certification or any other evidence required to allow the issue of a Final Certificate within the prescribed time limits of either 4 or 8 weeks of completion (Regulation 17 of The Building (Approved Inspectors etc.) Regulations 2010). The Client shall keep BRCS regularly informed of the progress of the Project.
16. The Client acknowledges that the Initial Notice must be accepted by the relevant local authority or presumed to have been accepted under Section 47(3) of the Building Act 1984 (**Accepted**) prior to any Works commencing and that should any Works commence before the Initial Notice is Accepted the Initial Notice may be deemed invalid and the Client may be charged a fee. BRCS will not have any responsibility or liability for any costs incurred by the Client as a result of the Works starting before an Initial Notice is accepted.

17. BRCS will not be responsible for any costs associated with the provision of certification, testing and commissioning of building systems where BRCS have requested to witness or be provided with certification. The Client shall be responsible for payment of the fee for submitting the initial notice and all other fees payable to the relevant local authority.
18. The Client shall ensure that:
  - suitably qualified consultants are employed for the design of the Works and any additional supervisory role for quality assurance or project management.
  - competent persons are employed for undertaking the Works and that appropriate contracts are in place for the completion of the Works.
  - all domestic electrical works, where Part P of the Building Regulations 2010 applies, are carried out by a competent person covered by one of the Self-certification schemes contained within Schedule 3 or 3A of the Building Regulations 2010;
  - gas installations are certified by a GAS SAFE registered contractor;
  - oil fired appliances must also be certified by a third party scheme;
  - cladding specified and/or used complies with the Building (Amendment) Regulations 2018 and all applicable legislation; and
  - competent persons are certifying all electrical, gas and oil installations and the Client shall obtain relevant certificates upon completion.

#### Design, permits and approvals

19. Except where permitted by law and agreed in writing by BRCS, the Client and not BRCS shall be entirely responsible for the design, construction and management of the Project and for all design information, calculations and certification that may be required to satisfy the Building Regulations 2010.
20. The Client and not BRCS shall also be entirely responsible for obtaining and implementing all necessary permits, licenses and approvals in connection with the Project except those which form part of the Services or any Additional Work.

#### Compliance with Building Regulations

21. The Client (and not BRCS) shall be responsible for the Project's compliance with the Building Regulations, and the Services do not include (and BRCS shall not be responsible for) (i) confirming whether the Building Regulations have been complied with, and/or (ii) advising the Client or managing the Project to ensure that compliance is achieved.
22. BRCS shall take such steps as are reasonable to enable it to determine that in BRCS's opinion a Final Certificate can be issued and if so determined, BRCS 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. BRCS 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 or any other costs as a result of BRCS being unable to issue a Final Certificate at any time. The Client shall not (and shall ensure that any third party shall not) take possession of the Works and/or issue any certificate of completion under the building contract in respect of the Works, unless the Final Certificate has been issued.

#### Changes to the Project and Additional Work

23. BRCS shall notify the Client in writing as soon as reasonably practicable if BRCS becomes aware that Additional Work will or has been required or that additional costs will be or have been incurred in providing the Services or any Additional Work, because of:
  - instructions from the Client;
  - changes in the design, size, scope or complexity of the Project;
  - changes in the timing or programming of the Project;
  - any change in law (including without limitation any change in law as a result of or in connection with the Independent Review of Building Regulations and Fire Safety led by Dame Judith Hackitt and/or any change in the Building Regulations and/or the Building Act 1984) (**Change in Law**);
  - the UK having ceased to be a member state of the European Union (**Brexit**) and/or any consequences of Brexit;
  - any inspections or other services on behalf of any building warranty or insurance providers being required;
  - a failure by the Client to comply with its obligations under this Agreement;
  - additional meetings and/or visits and/or other additional work; and/or
  - any changes in the timing and/or programming of any Services and/or any Additional Work due to circumstances outside of BRCS's control.

#### **(Variations).**

24. The Client shall pay BRCS for any Variation on a time charge basis at the rates stated in the Proposal to reflect any Additional Work carried out by BRCS plus any additional costs incurred by BRCS as a result of any Additional Work carried out and/or the performance of the Services by BRCS, and BRCS shall include such charges and/or any additional costs incurred in any invoice submitted after the Variation has had effect.
25. If any Additional Work is carried out and/or if due to circumstances outside the BRCS's control there are any changes in the timing or programming of the Services and/or any Additional Work, BRCS shall be entitled to a fair and reasonable extension of time for performing the Services and the Additional Work.  
Intellectual Property
26. The intellectual property rights in all documents produced by BRCS under this Agreement (**Documents**) shall vest or remain vested in BRCS. The Client shall have a licence to use the Documents for any purpose connected with the Project provided that BRCS shall not be liable for the use of any of the Documents for any purpose other than that for which they were prepared.

#### **Insurance**

27. BRCS shall, provided it is available at commercially reasonable rates and terms, maintain professional indemnity insurance and public liability insurance in compliance with the Criteria for Schemes of Insurance for Approved Inspector 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 Agreement evidence as to whether these insurances are being maintained is available in the CICAIR Approved Inspector's Register (publicised at [www.cicair.org.uk/approved-inspectors-register](http://www.cicair.org.uk/approved-inspectors-register)). On the Client's written request, BRCS shall provide evidence that such insurances are being maintained in the form of broker's certificates.

#### **Assignment and subcontracting**

28. Neither Party may assign or transfer its rights, benefits and/or obligations under this Agreement without prior written consent. BRCS may subcontract any part of the Services and any Additional Work without consent. It is agreed and acknowledged that it is not intended that the Client's rights and obligations under this Agreement shall be novated to any third party.

#### **Termination and discharge**

29. The Client may terminate this Agreement by immediate written notice if:
  - BRCS is in material breach of its obligations under this Agreement and has failed to remedy the breach within 28 days of the date of a notice of the breach from the Client; or
  - BRCS becomes insolvent (as defined in section 113, Housing Grants, Construction and Regeneration Act 1996).
30. BRCS may terminate this Agreement by immediate written notice if:
  - the Client is in material breach of its obligations under this Agreement and has failed to remedy the breach within 28 days of the date of a notice of the breach from BRCS;
  - BRCS considers that there is a conflict between its obligations under this Agreement and the Statutory Functions;
  - BRCS considers that it will not be in a position to issue a Final Certificate on completion of the Works;
  - BRCS considers that it is necessary to cancel the Initial Notice under Section 52(1) of the Building Act 1984;
  - Brexit and/or any delay to and/or the cancellation of Brexit materially impacts the performance of the Services and/or materially increases the cost of performing the Services;
  - the Client becomes insolvent (as defined in section 113, Housing Grants, Construction and Regeneration Act 1996); and/or
  - BRCS reasonably believes that it is impossible or impracticable to perform the Services as a result of any circumstances for which BRCS is not responsible; and/or
  - BRCS 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).
31. Following any notice of termination by BRCS or the Client, BRCS is entitled to: (i) write to the relevant local authority (with a copy to the Client) cancelling the Initial Notice, in which case BRCS will revert to the relevant local authority and BRCS shall be discharged from all requirements to complete the Services or any Additional Work; and/or (ii) at BRCS's discretion, issue a Final Certificate in respect of part of the Works. BRCS shall not be liable for any losses, costs, expenses, damages, or liabilities that the Client may incur as a result of any notice of termination issued by BRCS pursuant to this clause 31.

### Consequences of termination

32. If this Agreement has been terminated, the Client shall pay BRCS 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, any sums payable for Additional Work performed by BRCS prior to the notice of termination and any costs incurred by BRCS as a result of termination.
33. Termination of this Agreement shall not affect any rights or remedies of the Client or BRCS which exist at the date of termination.

### Force Majeure

34. BRCS may upon the occurrence of any circumstances beyond their control (which for the avoidance of doubt includes COVID-19, any pandemic, any epidemic and/or the consequences of COVID-19, any pandemic, and/or any epidemic) (Force Majeure) which prevents or significantly impedes the performance of the Services, without prejudice to any other remedy and upon the giving of not less than [four weeks'] Notice, suspend for a period of up to [twenty-six weeks] the performance of the Services in respect of all or part of the Services affected. For the avoidance of doubt, BRCS shall not be in breach of this Agreement and shall have no liability under or in connection with this Agreement as a result of i) any act, omission, or default ii) any failure to perform the Services in accordance with this Agreement and/or iii) any prolongation or delay to the Services, to the extent it is caused or contributed to by any Force Majeure.
35. BRCS will be entitled to reasonable additional fees if required to carry out additional and/or varied services or if they incur additional costs as a result of the Force Majeure.
36. BRCS will be entitled to an extension of time to perform their obligations if they are prevented, prolonged and/or delayed in or from performing all or any of their obligations under or in connection with this Agreement as a result of any Force Majeure. The extension of time agreed must be commensurate with the prevention, prolongation and/or delay, to perform such obligations.

### Limitations of Liability

37. Nothing in this Agreement shall limit BRCS's liability for negligence resulting in death or personal injury.
38. Subject to clause 37, without prejudice to any other exclusion or limitation of liability, the liability of BRCS for any loss or damage under this Agreement shall be limited to that proportion as it would be just and equitable for BRCS 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 made by BRCS 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 38 (other than BRCS) 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 38 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.
39. Subject to clause 37: (i) notwithstanding anything to the contrary in this Agreement BRCS's total liability, including without limitation legal costs and interest whether in contract or in tort, in negligence, for breach of statutory duty or otherwise (other than in respect of personal injury or death arising out of negligence), in respect of any losses, claims, damages, costs, expenses, demands and/or any other liability directly and/or indirectly arising under or in connection with this Agreement (Liability), shall not exceed ten times the total Fee, and (ii) provided always that and without prejudice to clause 39(i), BRCS's total Liability in respect of fire resistant and/or fire retardant characteristics or external cladding systems, shall not exceed either the lesser of ten times the total Fee or the amount recovered under BRCS's professional indemnity insurance policy by way of indemnity.
40. BRCS shall only be liable under or in connection with this Agreement to extent that BRCS has failed to exercise reasonable skill, care and diligence.
41. Under in connection with this Agreement, BRCS shall have no liability whatsoever and however so arising out of or in connection with asbestos.
42. BRCS shall not be in breach of the Agreement and shall have no liability arising under or in connection with the Agreement as a result of (i) any failure to perform the Services and/or any Additional Services, and/or (ii) delay and/or prolongation to the Services and/or any Additional Services, as a result of a Change in Law, Brexit and/or a Force Majeure.
43. For the avoidance of doubt the Services do not include and BRCS are not responsible for quality assurance, providing a warranty/guarantee that Works free from defects, providing a clerk of works/project management service and/or supervision of any contractor, consultant or subcontractor. BRCS shall not be liable under this agreement 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).

Part of

**hickton group.**

Championing Excellence in the Built Environment

44. The Client agrees not to pursue any claims in contract, in tort (including negligence), for breach of statutory duty or otherwise against any individuals engaged by BRCS or any individual directors or members of BRCS as a result of carrying out its obligations under or in connection with this Agreement at any time. The Client acknowledges that such individuals are entitled to enforce this clause 44 pursuant to the Contracts (Rights of Third Parties) Act 1999.
45. 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 Agreement.
46. No action or proceedings under or in respect of this Agreement whether in contract, in tort, in negligence, for breach of statutory duty or otherwise shall be commenced against BRCS after the expiry of six years from the date of completion of Services or the termination of this Agreement if earlier. The Client shall indemnify BRCS for and against any cost, loss, expense or liability incurred to any third party under or in connection with this Agreement.

#### Miscellaneous

47. The Client and BRCS can give notice to each other in writing under this Agreement 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 BRCS must be sent to the registered office of BRCS.
48. Save as provided in clause 44, no third party shall be entitled to enforce any term of this contract under the Contracts (Rights of Third Parties) Act 1999. BRCS shall not be required to provide 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 Agreement.
49. Whatever the date of this contract, it shall have effect as if it had been signed on the date when BRCS commenced the Services.
50. BRCS has in place at the date of the Agreement policies and procedures relating to compliance with legislation concerning bribery and corruption, modern slavery, data protection and health and safety. BRCS shall use its reasonable endeavours to comply with these policies and procedures (as they may be amended). The Client shall comply with all applicable legislation in relation to the matters set out in this clause 50.

#### Disputes and complaints

51. If the Client is not satisfied with BRCS's performance of the Services or any Additional Work, it may ask BRCS to implement their complaints handling procedure. BRCS shall provide a copy of the procedure on request.
52. The Client and BRCS 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.
53. Either the Client or BRCS may at any time refer a dispute or difference arising under or in connection with this Agreement 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.
54. This Agreement shall be governed by English law and the English courts shall have exclusive jurisdiction with regard to all matters arising under it.

#### Notice of Cancellation

Dear BRCS (Building Control) Limited,

Project Reference Number:

Project Address:

The Client (Client's name) hereby gives notice that the contract with BRCS (Building Control) Limited dated [date stated in Project Appointment Form] is cancelled.

Yours sincerely,

[Client's signature]

[Date]

Version: