



Association of Consultant
Approved Inspectors



Construction Industry Council

CONTRACT FOR THE APPOINTMENT OF AN APPROVED INSPECTOR

CIC/AppInsp
first edition 2009

The Construction Industry Council -
Association of Consultant Approved Inspectors
contract for the appointment of an
approved inspector under the Building Act 1984



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The Association of Consultant Approved Inspectors (ACAI) is the body that represents the interests of private sector building control. www.approvedinspectors.org.uk.

The Construction Industry Council is a body designated to approve inspectors under the Building Act 1984 and regulations made under it.

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FORM OF AGREEMENT

THIS CONTRACT

is made the day of 20.....

Between

1. The Client 1 *1 Insert name of Client*

whose address/registered office is at

.....

.....

and

2. The Approved Inspector 2 *2 Insert name of Approved Inspector*

whose address/registered office is at

.....

.....

Whereas

The Client wishes to appoint the Approved Inspector as an approved inspector under the Building Act 1984 in connection with

.....

.....

.....

at

.....

..... 3 *3 Insert details of work and name of Project*

('the Project') and the Approved Inspector has agreed to provide the Services for the Project on the terms set out in this contract.

It is agreed

That under this contract, which comprises this Form of Agreement and the attached Terms and Conditions in four Parts:

1. The Approved Inspector shall perform the Services set out in Part 2: Services and Additional Work (if any) in accordance with the terms of this contract. If there is any conflict between the Statutory Functions and the other services listed in Part 2: Services, the Statutory Functions shall prevail.
2. The Client shall pay the Approved Inspector for the Services and the performance of any Additional Work in accordance with the terms of this contract.
3. This contract is subject to the law of England and Wales and the Client and the Approved Inspector submit to the jurisdiction of the courts of England and Wales.

As witness the hands of the parties hereto

Signed by or on behalf of the Approved Inspector

4 *Name and signature of Approved Inspector or person signing on behalf of Approved Inspector*

..... 4
.....

Signed by or on behalf of the Client

5 *Name and signature of Client or person signing on behalf of Client*

..... 5
.....



TERMS AND CONDITIONS

PART 1: CONTRACT DETAILS AND FEES

1-1 The Client has appointed the following to undertake the following roles:⁶

6 Insert details as appropriate

Architectural design:

Civil and structural design:

Building services design:

Contractor:

Others:

.....

.....

1-2 The Client is / is not a domestic client.⁷

7 Delete as appropriate; a 'domestic client' is one or more individuals who are owners or occupiers of a dwelling

1-3 The anticipated project period up to practical completion of the construction work is

.....

1-4 The company providing professional indemnity insurance in accordance with clause 3-7

is⁸

8 This information is required by the CIC Code of Conduct for Approved Inspectors, available at www.cic.org.uk

1-5 The total limit of the Approved Inspector's liability to the Client referred to in clause 3-13.2

is £.....

9 Delete as appropriate (see Guidance paragraph 9)

1-6 The provisions for novation in clause 3-16 shall / shall not apply.⁹

1-7 The Fee

10 Delete as appropriate

The Fee shall be charged on a lump sum/time charge basis.¹⁰

¹¹**Lump sum:** The Fee shall be the lump sum of

11 Delete or insert details as appropriate

.....

.....

.....

.....

12 If the Fee is charged on a lump sum basis, delete the word 'Fee'. In any event, insert details as appropriate: Additional Work is charged on a time basis, see clause 3-6

12 Time charges: The Fee/charge for Additional Work shall be calculated on the basis of the time properly and necessarily spent by the Approved Inspector in performing the Services at the following rates:

- £..... per hour.
- £..... per hour.
- £..... per hour.
- £..... per hour.

1-8 Expenses and disbursements

13 Also known as building guarantee insurance

If warranty insurance¹³ is required (in the case of new homes) this shall be a disbursement additional to the Fee.

14 Delete the alternatives which do not apply / insert details as appropriate

¹⁴All other expenses and disbursements, incurred by the Approved Inspector in performing the Services and any Additional Work, are included in the Fee; or

The Approved Inspector shall be entitled to charge for his expenses and disbursements; or

The Approved Inspector shall be entitled to charge for the following expenses and disbursements:

-
-
-
-

1-9 Instalment payments

Payment shall be made by instalments as follows:

15 Insert details as appropriate eg last day of each month, completion of specific stages

Instalment date, stage or milestone ¹⁵	Amount or % or time ¹⁶
---	-----------------------------------

16 If time charge applies, insert 'Time'

- | | |
|-------|-------|
| | |
| | |
| | |
| | |
| | |

PART 2: SERVICES

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

¹⁷either undertake the Statutory Functions.

¹⁷ Delete as appropriate

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

Instructions ¹⁸Receive instructions, brief and necessary documentation from the Client.

¹⁸ Delete any services not to be undertaken

Advise on procedure and programme for Building Regulation certification.

Carry out obligations under the Warranty Link Rule.¹⁹

¹⁹ Applies in the case of the creation of a new dwelling

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

Assessment of plans Undertake an assessment of plans²⁰ 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.

²⁰ 'plans' is defined by the Building Act 1984 S126 as including drawings of any other description, specifications and other information in any form

Maintain appropriate records of the design assessment process.

Statutory consultations Consult with the fire authority and forward observations to the Client.

Undertake all other statutory consultations and forward observations of consultees to the Client.

Consider the desirability of undertaking additional consultations and communicate to the Client any consultees' observations or advice beyond the scope of the Building Regulations.

Alert the Client to provisions of legislation outside the Building Regulations believed to be relevant.

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

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

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

Adopt an appropriate site inspection regime taking account of relevant factors, and keep under review.

Make inspections of the site to observe compliance with the Building Regulations.

Maintain appropriate records of site inspections, identifying the work inspected and any observed non-compliance.

Communicate any observed contraventions of Building Regulations.

Notify observed significant departures from plans to consultees.

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

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

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

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

Retain statutory records for an appropriate period.

References to the Client include persons designated by the Client.

21 Tick any services to be undertaken

²¹The Approved Inspector shall undertake the following additional services:

- Assist with negotiations and applications for approvals under local Acts.
- Attend design team meetings, as agreed.
- Undertake further consultations, as agreed.
- Attend site meetings, as agreed.
- Make further inspections of the site over and above those identified in the INF, as agreed.
- Witness tests outside the site, as agreed.
- Participate in assessing plans by electronic means (such as web collaboration tools or building information modelling).
- Assist with advice on need for specialist studies and surveys of site.

22 Add additional services as required

22

.....

.....

.....

.....

.....

PART 3: CONDITIONS

3-1 Approved Inspector's general obligations

The Approved Inspector shall carry out the Services and any Additional Work with reasonable skill, care and diligence in accordance with this contract. The Approved Inspector shall have due regard to the CIC Code of Conduct for Approved Inspectors and where possible to any programme for the Project (as amended from time to time).

3-2 Client's information and obligations

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

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

3-3 Design, permits and approvals

3-3.1 Except where permitted by law²³ and to the extent set out in Part 2: Services, the Client shall be entirely responsible for the design, construction and management of the Project and any Additional Work.

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

23 In the case of a domestic client, under Regulation 10 of The Building (Approved Inspectors etc) Regulations 2000, the Approved Inspector may be responsible for some elements of design or construction

3-4 Compliance with Building Regulations

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

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

3-5 Payment

The due date for payment of an instalment of the Fee, 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 28 days after the due date for payment. The Fee is exclusive of VAT, which shall be paid in addition if applicable.

24 Does not apply in the case of a domestic client

²⁴[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.]

3-6 Changes to the Project and Additional Work

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

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

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

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

3-6.4 Additional meetings and/or visits and/or other work is required.

The Client shall pay the Approved Inspector for the Additional Work on a time charge basis, at the rates set out in clause 1-7. The Approved Inspector may include the charge in the next payment instalment after the Additional Work (or part of it) has been performed.

3-7 Insurance

The Approved Inspector shall maintain professional indemnity insurance and public liability insurance in compliance with the guidelines issued by the Department for Communities and Local Government (or any successor Department responsible for the Building Act 1984).²⁵ On the Client's written request, the Approved Inspector shall provide evidence that these insurances are being properly maintained.

25 That is, a scheme approved by the Secretary of State under the Building Act 1984 S47(6)

3-8 Assignment and subcontracting

Either party may assign its rights and benefits under this contract. The Approved Inspector may subcontract any part of the Services and any Additional Work, with the prior approval of the Client, not to be unreasonably withheld or delayed.

3-9 Termination and discharge

The Client may terminate this contract forthwith if:

3-9.1 The Approved Inspector is in material breach of its obligations under this contract and has failed to remedy the breach within 28 days of the date of a notice of the breach from the Client; or

3-9.2 The Approved Inspector becomes insolvent.

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

- 3-10.1 The Client is in material breach of its obligations under this contract and has failed to remedy the breach within 28 days of the date of a notice of the breach from the Approved Inspector;
- 3-10.2 The Approved Inspector reasonably believes that it will not be in a position to issue a final certificate on completion; or
- 3-10.3 The Client becomes insolvent.

3-11 Following termination by the Approved Inspector or the Client, the Approved Inspector is entitled to write to the Local Authority (with a copy to the Client) cancelling the initial notice under the Building Regulations, in which case the approved inspector functions will revert to the Local Authority and the Approved Inspector will be discharged from all requirements to complete the Services or any Additional Work.

The right of either party to terminate for material breach of this contract shall lapse if it has not been exercised within 35 days after giving notice of the breach to the other party.

3-12 Consequences of termination

If this contract has been terminated, the Client shall pay the Approved Inspector any instalments of the Fee due up to the date of termination together with a fair and reasonable proportion of the next instalment of the Fee commensurate with the Services and any Additional Work performed by the Approved Inspector prior to the notice of termination.

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

3-13 Limitations of liability

- 3-13.1 Nothing in this clause 3-13 shall limit the Approved Inspector's liability for negligence resulting in death or personal injury. Subject to that:
- 3-13.2 Notwithstanding any other provisions in this contract (apart from clause 3-13.1), the Approved Inspector's total liability to the Client for any claims arising under or in connection with this contract (whether in contract, in tort (including negligence), for breach of statutory duty or otherwise) shall be limited to the amount set out in clause 1-5.
- 3-13.3 Without prejudice to any other exclusion or limitation of liability, damages, loss, expense or costs, the liability of the Approved Inspector for any loss or damage ('the loss or damage') under this contract shall be limited to that proportion as it would be just and equitable for the

Approved Inspector to pay having regard to the extent of its responsibility for the loss or damage and on the assumptions that:

- all other consultants, contractors, subcontractors, and advisers engaged in connection with the Project have provided contractual undertakings on terms no less onerous than those in clause 3-1 to the Client in respect of the carrying out of their obligations in connection with the Project.
- there are no exclusions of or limitations of liability nor joint insurance or co-insurance provisions between the Client and any other party referred to in this clause and any such other party who is responsible to any extent for the loss or damage is contractually liable to the Client for the loss or damage; and
- all the parties referred to in this clause have paid to the Client such proportion of the loss or damage which it would be just and equitable for them to pay having regard to the extent of their responsibility for the loss or damage.

3-13.4 The Client shall look only to the Approved Inspector (and not to individuals engaged by the Approved Inspector or any individual directors or members of the Approved Inspector) for redress if the Client considers that there has been any breach of this contract. The Client agrees not to pursue any claims in contract, in tort (including negligence), for breach of statutory duty or otherwise against any such individuals as a result of carrying out its obligations under or in connection with this contract at any time. The Client acknowledges that such individuals are entitled to enforce this term of the contract pursuant to the Contracts (Rights of Third Parties) Act 1999.

3-14 Notices

The Client and the Approved Inspector can give notice to each other in writing under this contract by personal delivery. They can also give notice by Recorded Delivery or Special Delivery, in which case delivery is effective two working days after posting. Notices must be sent to the address on page 2 of this contract or any other address notified.

3-15 Disputes and complaints

3-15.1 If the Client is not satisfied with the Approved Inspector's performance of the Services or any Additional Work, it may ask the Approved Inspector to implement the Approved Inspector's complaints handling procedure. The Approved Inspector shall provide a copy of the procedure on request. The operation of the Approved Inspector's complaints handling procedure does not affect the Client's right to refer a dispute to the courts.

3-15.2 ²⁶[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.]

26 Does not apply in the case of a domestic client

3-15.3 ²⁷[Either the Client or the Approved Inspector may at any time refer a dispute or difference arising under or in connection with this contract to adjudication in accordance with the edition of the CIC Model Adjudication Procedure current at the date of the adjudication notice. The Adjudicator shall be appointed by the CIC.]

27 Does not apply in the case of a domestic client

3-16 Novation

²⁸[The Approved Inspector shall, within 14 days of the Client's request, execute and deliver to the Client a novation agreement in favour of the contractor in the form published by the CIC current at the date of the Client's request (with the deletion of clause 4 and amending the recitals as appropriate).

28 Applies if so noted in clause 1-6

With effect from the date of execution of that novation agreement:

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

3-17 Rights of third parties

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

3-18 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 4: DEFINITIONS AND INTERPRETATION

4-1 Definitions

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

<i>Additional Work</i>	means the type or volume of services appropriate for an Approved Inspector to carry out in relation to the Project as a result of or in consequence of the matters described in clause 3-6 and which are not already covered by the Services set out in Part 2, together with any other services instructed by the Client and agreed by the Approved Inspector.
<i>Approved Inspector</i>	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.
<i>CIC</i>	means the Construction Industry Council.
<i>Fee</i>	means the total amount to be paid to the Approved Inspector for the Services and any Additional Work.
<i>Services</i>	means the services listed in Part 2.
<i>Statutory Functions</i>	means the duties of an approved inspector under the Building Act 1984 and regulations made under it.

4-2 Interpretation

In this contract, unless the context otherwise requires:

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

GUIDANCE

1. These notes are for general guidance only and are not intended to affect the interpretation of the contract. Legal/professional advice should be sought to cover any particular situation.
7. In clause 3–13.3, the contract also includes what is called a 'net contribution' clause, which provides that if both the Approved Inspector and another party are liable to the Client in respect of the same loss or damage, the Approved Inspector will only have to pay a fair and reasonable proportion of the Client's losses, having regard to the extent of the Approved Inspector's responsibility for the loss or damage. For a fuller explanation of such clauses, see the CIC *Liability Briefing* 'Net contribution clauses' available at www.cic.org.uk.

Completing the Form of Agreement

2. The form should be completed as follows:
 - On page 2, in the Form of Agreement, the names and addresses of the Client and Approved Inspector should be inserted. A brief description of the work to be done and the address of the Project should also be inserted.
 - On pages 4 and 5, Part 1: Contract Details and Fees should be completed carefully; it is also important that where there are alternatives, the appropriate deletions are made. See notes 3 to 12 below.
 - On pages 6 and 7, Part 2: Services should be marked up carefully to show what the Approved Inspector has agreed to do. See note 13 below.
 - On page 3, the Approved Inspector and the Client should sign the contract and print their names, and the date of the latest signature should be inserted on page 2. It is usual for each party to keep a copy of the contract signed by the other. (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.)
8. In clause 3–13.4, the contract provides that if the Approved Inspector is a firm, company or limited liability partnership (LLP), the Client will only hold that firm, company or LLP responsible for the work done, not any individual (employee, director or member) who works for the firm, company or LLP. See the CIC *Liability Briefing* 'Personal liability of employees' available at www.cic.org.uk.
9. **Novation:** clause 1–6. The provisions for novation will only apply where the Client wishes to transfer the appointment of the Approved Inspector by way of 'novation' to the contractor (for example if a design and build procurement route is used).
10. **The Fee:** in clause 1–7 indicate whether the Fee is to be a lump sum or charged on a time basis. If a lump sum fee is agreed, the appropriate details should be inserted. Time charge rates should be inserted in all cases, since if any Additional Work is undertaken, it is charged on a time basis (see clause 3–6).

Notes on the Terms and Conditions

3. **'Domestic client':** in clause 1–2 'is' or 'is not' should be deleted to indicate whether the Client is a 'domestic client' or not. A 'domestic client' is one or more individuals who are owners or occupiers of a dwelling. In some instances the law relating to approved inspectors is different depending upon whether the Client is a domestic client or not, and some provisions of the contract in Part 3: Conditions do not apply in the case of a domestic client (indicated in the sidenotes).
4. **Project period:** in clause 1–3 insert how long it is anticipated that the Project will take, up until the time when the Client can take possession of the site (practical completion).
5. **Limitations of liability:** clauses 1–5 and 3–13. It is recommended that the parties agree a suitable total (ie overall or aggregate) amount of damages for which the Approved Inspector might become liable to the Client. See the CIC *Liability Briefing* 'Managing liability through financial caps' available at www.cic.org.uk. The agreed amount should be inserted in clause 1–5.
6. In agreeing the amount the parties should have regard to (amongst other things) the following:
 - the level of professional indemnity insurance the Approved Inspector has agreed to maintain;
 - the fact that the cap will apply to all claims, for breach of contract or for breach of a duty to take care (that is, in 'tort') or for breach of statutory duty or otherwise;
 - the nature and scope of the Services provided by the Approved Inspector;
 - the nature, size and complexity of the Project; and
 - the Fee.
11. **Expenses and disbursements:** clause 1–8. Note that there are three alternatives (that expenses and disbursements are included within the fee; that they may be charged in addition to the fee; or that certain specified items may be charged). The unused alternatives must be deleted.
12. **Instalment payments:** clause 1–9 must also be completed.
13. **The Services (Part 2):** Whether the Approved Inspector is to undertake the Statutory Functions only or a fuller service should be indicated by deleting the text as appropriate. In summary, the Statutory Functions comprise serving the initial notice, undertaking an assessment of plans, consulting as appropriate, inspecting the site and issuing a final certificate(s). If the Approved Inspector is to undertake any additional services within the Fee, this should be clearly indicated by ticking the appropriate boxes and/or adding details in the space provided. If the Approved Inspector is to take on any responsibility for the design or construction of a dwelling (see clause 3–3.1), the extent of these responsibilities should be added. Other services requested after the contract has been entered into will be charged on a time basis under clause 3–6.
14. **Insurance:** clause 3–7 provides that the Approved Inspector will maintain professional indemnity insurance and public liability insurance in compliance with guidelines for schemes of insurance for Approved Inspectors pursuant to section 47(6) of the Building Act 1984, issued by the Department for Communities and Local Government (or any successor Department responsible for the Building Act 1984).



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