



**Building Act 1984  
The Building (Approved Inspectors etc.) Regulations 2010**

**CICAIR Limited hereby gives notice that, in accordance with section 49(1) of the above Act and regulation 4(1) of the above Regulations, it has approved**

***Clarke Banks (Building Control) Limited***

**as an approved inspector for the purposes of Part II of the above Act**

This approval takes effect on

***30 July 2023***

and, by virtue of regulation 6(1) of the above Regulations, it will continue in force for five years from the date of this notice unless it is withdrawn by virtue of any of the other provisions of regulation 6

This approval is for all types of building work and buildings in England and Wales

**CIC Chief Executive**

**CICAIR Registrar**

The Secretary of State in England and Welsh Ministers in Wales have, with effect from 31 March 2014 designated CICAIR Limited, with its consent, under section 49 of the Building Act 1984 and regulations 3 and 5 of the Building (Approved Inspectors etc.) Regulations 2010, for the purpose of approving individuals and bodies corporate as inspectors for the purposes of Part II of that Act.

CICAIR Limited is a wholly owned subsidiary of the Construction Industry Council. Registered in England and Wales No. 8881582. Registered Office: The Building Centre, 26 Store Street, London, WC1E 7BT.

**APPROVED INSPECTOR REGISTRATION NUMBER: 167**

Our Ref 298927 / EGE / 0026923503

Ref P23A298927P

**TO WHOM IT MAY CONCERN**  
**VERIFICATION OF PROFESSIONAL INDEMNITY INSURANCE**

We, the undersigned Insurance Broker, hereby certify that the following described insurance is in force at this date:

Name and principal address of Insured:	Clarke Banks (Building Control) Ltd  1 The Old Forge South Road Weybridge KT13 9DZ
Registration Number:	141
Business:	Approved Inspectors
Period of Insurance:	From: 5 <sup>th</sup> April 2023 To: 4 <sup>th</sup> April 2024 (both days inclusive at the address stated above)
Primary Policy number:	P23A298927P

The policy is subject to the insuring agreements, sub-limits, exclusions, conditions and declarations contained therein. The above is accurate at the date of signature.

This document is furnished to you as a matter of information only and is valid at today's date. The issuance of this document does not make the person or organisation to whom it is issued an additional Insured, nor does it modify in any manner the contracts of insurance between the Insured and Insurers. Any amendment, change or extension of such contracts can only be effected by specific endorsement thereto.

Should the above-mentioned contract of insurance be cancelled, assigned or changed during the above policy period in such manner as to affect this document, no obligation to inform the holder of this document is accepted by the undersigned or by Insurers.

Signed on behalf of Howden

Signed: 

Dated: 6<sup>th</sup> April 2023

# **CLARKE BANKS (BUILDING CONTROL)**

## **INDEPENDENT BUILDING CONTROL**

### TERMS AND CONDITIONS

## VERSION HISTORY

Version	Status	Date Issued	Comment	Prepared By	Reviewed By	Verified By
01	Superseded	2018		SW	AM	SW
02	Superseded	22/03/2019	Updated to reflect Insurance Requirements	SW	AM	SW
03	Superseded	09/07/2019	Updated to reflect revised Insurance Requirements	JM	SW	AM
04	Superseded	13/03/2020	Updated to reflect revised Insurance Requirements	JM	SW	AM
05	Superseded	25/02/2021	Updated to reflect revised CIC Standard Terms for Appointment of Approved Inspector	SW	AM	SW
06	Superseded	22/02/2022	Update – regular review to reflect comments from Griffith and Armour.	SW	AM	SW
07	Superseded	01/03/2023	Update to Payment Terms for small projects with a fee < £2,000- and third-party checking	RL	JM	SW
08	Current	07/09/2023	Update to terms following review by Howden.	JM	AM	SW

## EXECUTIVE SUMMARY

1. The Clarke Banks (Building Control) Limited [Herein known as the Company] proposal is based strictly on the "Clarke Banks - Standard Form of Appointment", "Terms and Conditions" and "Scope of Services."
2. As a condition of the company's Professional Indemnity Insurance Policy please note the following:
  - a. The Company does not sign collateral warranties.
  - b. The Company does not sign contracts intended for designers.
3. In order for us to progress with any works on the project, our appointment form must be completed and returned.
4. Legally the Initial Notice must be served 5 working days prior to commencement of works on site, late appointment may result in rejection of the Initial Notice. This will mean that the project will have to be overseen by the Local Authority Building Control.
5. Third party reviews – In order for the Company to determine if a proposal demonstrates compliance with the Building Regulations, third party specialist support may be required depending on the complexity of the application. Should a Third-Party Review be required by, or requested at the discretion of the Company, the costs will be reclaimed from the Client before the Third Party process can be undertaken. Any fees will be presented to the client for agreement. The Third Party review process is contingent on the Company being able to grant Building Regulation Approval or issue any Final Certificate. The Third-Party Review process can apply to any area of Regulation but more commonly:
  - a. Façade Design
  - b. Structural Design
  - c. Fire Engineering Design
6. Small projects where the fee is less than £2000 will be invoiced upon appointment.
7. Any overdue invoices will be subject to 5% interest per 7days over 28 days.
8. Fees are based on a professional design team for the full duration of the project including a minimum of (for relevant project technical support)
  - a. RIBA Chartered Architect / Competent technician
  - b. Technical Project / Design Manager
  - c. Structural Engineer
  - d. Fire Engineering Consultant (Where relevant)
  - e. Mechanical and Electrical Engineer
  - f. The company reserves the right to withdraw from the scheme should a suitable professional team not be maintained to support the project to all relevant stages.
9. The company fee(s) are based on electronic submission of all design information. (The company excludes project portal management from its standard fee offers).
10. Novation is not permitted by this form of agreement. Should the client wish to novate the Company this agreement must be terminated, and a new agreement created with the new client.
11. Once a project is complete and a Final Certificate has been issued the company's appointment / scope of services is deemed completed. Any works required post completion will be chargeable and fees will be charged as per section 3.6.3.
12. These Terms and Conditions are subject to the law of England and Wales and the parties hereto submit to the exclusive jurisdiction of the courts of England and Wales.

13. If any part of these Terms and Conditions are held to be invalid or unenforceable, the remaining terms will continue in full force and effect.

## TERMS AND CONDITIONS

### 1. PART 1 | APPOINTMENT SPECIFICS

- 1.1. The company providing Professional Indemnity & Public Liability Insurance in accordance with clause 3.7. is Howden.
- 1.2. The total limit of the Company liability to the client referred to in clause 3.11.2 is 10 times the agreed fee for the Services or £1,000,000, whichever is the lesser.
- 1.3. There are no provisions for novation as per clause 3.14.
- 1.4. Expenses and disbursements.
  - 1.4.1. All expenses and disbursements incurred by The Company, in performing the Services as part of the appointment are included in the agreed fee (unless otherwise stated).

### 2. PART 2 | SERVICES

- 2.1. Taking such steps as are reasonable to enable the Company 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 2010, the Company shall exercise reasonable skill and care to undertake the following services listed within 2.2 - 2.8 (where appropriate to the project).

#### 2.2. Instructions

- 2.2.1. Receive instructions, brief and necessary documentation from the client.
- 2.2.2. As a condition of the Company's Professional Indemnity Insurance Policy please note the following:
  - i) The Company does not sign collateral warranties.
  - ii) The Company does not sign contracts intended for designers.
- 2.2.3. Advise on procedure and programme for Building Regulation certification.
- 2.2.4. The Company must receive a completed appointment form which has been signed by the client (or a representative) before an Initial Notice can be served on the relevant local authority.
- 2.2.5. The appointment form and details must be received in good time so an Initial Notice can be served at least five (working) days before any building works commence on site.
- 2.2.6. All details of the person/company paying the invoice(s) for the scheme must be provided upon appointment. Details must include the person responsible for payment and their email address, correspondence address, and telephone number.

#### 2.3. Initial Notice

- 2.3.1. Submit an Initial Notice(s) to relevant Local Authorities and copy the client.
- 2.3.2. The Company must receive all relevant and suitable information including site location plans so the Initial Notice can be served on the relevant Local Authority at least five (working) days before any building works start on site.

## 2.4. Assessment of Plans

- 2.4.1. Undertake an assessment of plans or details and communicate to the client observed non-compliance with The Building Regulations 2010, conditions pertaining to the approval or passing of plans and remedies available in the event of a dispute over compliance.
- 2.4.2. Compile a schedule of modifications specified and/or further plans or information required to demonstrate compliance of plans.
- 2.4.3. Maintain appropriate records of the design assessment process.

## 2.5. Statutory consultations

- 2.5.1. Consult with the fire authority (on one occasion) and forward observations to the client.
- 2.5.2. Undertake all other relevant statutory consultations and forward observations of consultees to the client.
- 2.5.3. Consider the desirability of undertaking additional consultations and communicate to the client any consultees observations or advice beyond the scope of The Building Regulations 2010 at additional costs.
- 2.5.4. Alert the client to provisions of legislation outside The Building Regulations 2010 believed to be relevant.

## 2.6. Plans certificate

- 2.6.1. If requested by the client, when satisfied that the plans show no observed contraventions of The Building Regulations 2010, issue a plans certificate.

## 2.7. Inspection notification framework

- 2.7.1. Prepare an inspection notification framework (INF) and if requested provide a copy to the client.
- 2.7.2. Adopt an appropriate site inspection regime taking account of relevant factors and keep under review.
- 2.7.3. Make inspections of the site to observe compliance with The Building Regulations 2010.
- 2.7.4. Any repeated INF Stage inspections that are required due to abortive inspections, contraventions, or non-compliance, will be subject to additional fee(s) and the Company will not proceed with any works without prior consent of the client. All client approvals for additional work must be issued to [hello@clarkebanks.com](mailto:hello@clarkebanks.com).
- 2.7.5. Maintain appropriate records of site inspections, identifying the work inspected and any observed non-compliance.
- 2.7.6. Communicate any observed contraventions of The Building Regulations 2010.
- 2.7.7. Notify observed significant departures from plans to the relevant bodies.
- 2.7.8. Consider the need for tests throughout construction and at completion, inform the client of the requirements; witness tests and receive certificates as appropriate.
- 2.7.9. Request copies of such plans as are necessary in relation to the commissioning of service prior to issue a final certificate(s).



## 2.8. Final certificate

- 2.8.1. 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.
- 2.8.2. Final Certificates can only be issued if the Company has been paid in full.
- 2.8.3. If requested by the client, provide a list of inspections carried out.
- 2.8.4. Retain statutory records for an appropriate period.
- 2.8.5. References to the client include persons designated by the client.
- 2.8.6. The Company shall undertake the following additional services if requested and agreed as part of the appointment.
  - iii) Additional design team meetings, as agreed.
  - iv) Undertake further statutory consultations as agreed.
  - v) Additional site meetings, as agreed.
  - vi) Witness tests outside the site, as agreed.
  - vii) Participate in assessing plans by electronic means (such as web collaboration tools or building information modelling).
- 2.8.7. **Add additional services as required (To be formally agreed with the Company)**

Once a project is complete and a Final Certificate has been issued the companies appointment / scope of services is deemed completed. Any works required post completion will be chargeable and fees will be charged as per section 3.6.3.

### 3. PART 3 | CONDITIONS

#### 3.1. Approved Inspector's general obligations

- 3.1.1. The Company shall carry out the services and any additional work with the reasonable skill and care in accordance with these Terms and Conditions. Notwithstanding anything to the contrary, the Company shall have no greater obligation under or in connection with this contract than to exercise reasonable skill and care.
- 3.1.2. The Company shall exercise reasonable skill and care in performing the Services and Additional Services to have regard to the CIC Code of Conduct for Approved Inspectors and where possible to any programme for the Project (as amended from time to time). Please note should a project scope or duration extend additional application fees may apply in accordance with clause, it is the applicant's responsibility to inform the Company in writing of any changes to scope or project duration.
- 3.1.3. English law is applicable to the services provided and all claims, disputes etc are subject to the jurisdiction of the UK Courts.

#### 3.2. Client's information and obligations

- 3.2.1. The client shall provide such information and assistance as Clarke Banks (Building Control) Limited reasonably requires from time to time in order to facilitate the timely provisions 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 Company reasonably requires it.
- 3.2.3. The relevant application fee(s) are based on an electronic submission of all design information (The company excludes project portal management from its standard fee offers).
- 3.2.4. The design information submittals must be made to discharge specific conditions from the Building Regulations Assessment Document. The company does not accept large submittals of mass design information.
- 3.2.5. The client shall ensure a suitable project team is maintained for the duration of the project including a minimum of (for relevant project technical support.)
  - i) RIBA Chartered Architect / Competent technician
  - ii) Technical Project / Design Manager
  - iii) Structural Engineer
  - iv) Fire Engineering Consultant (where relevant)
  - v) Mechanical and Electrical Engineer
- 3.2.6. The client shall ensure that designs presented to the Company must be presented as a confident compliant design rather than an offer for Clarke Banks to consider and offer advice as to whether compliance has been reached or whether change is needed. Clarke Banks will not take a role of providing detailed ongoing commentary (e.g., on a daily or weekly basis) to the project team to advise on the emerging design. It is the design team's responsibility to ensure they are capable of delivering a design that demonstrates compliance with The Building Regulations. Any advisory role will need to be provided separately from Clarke Banks (Building Control) Limited.
- 3.2.7. The client shall be responsible to inform the Company of any significant design team member

changes which may result in repeat / extra work. Repeat / extra work will be subject to additional fee(s) and the Company will not proceed with any works without prior agreement and written consent of the client.

- 3.2.8. The Client shall be responsible for checking if the work is notifiable under the Construction Design and Management (CDM 2015) Regulations. If the work is notifiable you will need to ensure that a suitably qualified Principal Designer is appointed prior to works commencing on site.
- 3.2.9. External Wall System (EWS) - A detailed review of each EWS iteration forming part of the overall proposal is required along with a statement from the relevant designer to confirm the proposals comply with the relevant requirements. Please be aware that each review may result in the request for an independent, suitably qualified, third-party facade validation as part of the Building Regulations approval to demonstrate compliance, the Company will retain control of this responsibility. A fee quote will be requested for this service and The Company will issue an updated fee quote to the client. Payment for this service must be made before works commence.
- 3.2.10. The client / applicant should be responsible for checking the scope, description of works on the Initial Notice and for confirming that any supplementary design information submitted at the time of submittal of the Initial Notice is true and valid and covers the works that will be taking place. Anything additional which is included in project works after submittal of the Initial Notice should be confirmed in writing by the client to the Company.
- 3.2.11. Where relevant, to allow the Company to validate and approve the structural design submitted as part of a Building Regulations Application we reserve the right to engage an independent consultant (MIStructE Chartered Structural Engineer) to check the structural design and ensure compliance with Part A of the Building Regulations 2010. If this is required it will be communicated to the applicant along with the associated costs. The applicant will be charged additional fees to cover the structural checking services required to validate their application. The Company will communicate the findings of this process to the client, so that any required amendments to the design can be made. All fee payments relating to third party structural checking will be required to be made before any works commence.
- 3.2.12. If, due to the nature of the project, there is a requirement for Third Party Fire Engineer checks or support, the Company will retain control of this responsibility. A suitably qualified, independent, third-party consultant will be engaged to carry out the checks or give support and the Company will ensure that the outcome of any checks is communicated to the applicant. A fee quote will be requested for this service and the Company will issue an updated fee quote to the client. Payment for this service must be made before works commence.

### 3.3. Design, permits and approvals

- 3.3.1. Except where permitted by law and to the extent set out in Part 2 | Services, the client shall be entirely responsible for the design, construction and management of the project and any additional work.
- 3.3.2. The client shall also be entirely responsible for obtaining and implementing all necessary permits, licences, and approvals, except those which form part of the services provided

by the Company or any additional work.

### **3.4. Compliance with The Building Regulations 2010**

- 3.4.1. The client and not the Company shall be responsible for the Project's compliance with the Building Regulations. The Services do not include, and the Company 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.
- 3.4.2. The Company shall take such steps as are reasonable to enable it to determine that a Final Certificate can be issued, and if so determined, it shall issue a Final Certificate. Any Final Certificate is based on the information and documents provided and the Services and Additional Work performed and is not a representation that every aspect of the Project complies with the Building Regulations and/or is conclusive proof of the Project's compliance with the Building Regulations.
- 3.4.3. The Company shall not be responsible or liable for any delay in issuing the Final Certificate and shall not be responsible or liable for any additional fees that are payable to the relevant local authority and/or any other costs, as a result of the Company being unable to issue a Final Certificate at any time. The Client shall not (and shall ensure that a third party shall not) take possession of the works forming part of the Project and/or issue any certificate of completion under the building contract in respect of the works forming part of the Project unless the Final Certificate has been issued.

### **3.5. Payment**

- 3.5.1. In principle application fees are payable at the commencement of the relevant RIBA Stage or design / construction stage of a project in accordance with the fee proposal.
- 3.5.2. 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 Company's valid invoice for each instalment. The final date for payment of that invoice is 14 days after the due date for the payment. The fee is exclusive of VAT, which shall be paid in addition to the main fee.
- 3.5.3. Non-payment of fees on time will result in the service being suspended, and therefore any details submitted to us will not be checked for compliance and site inspections will not be undertaken. All work will therefore be undertaken at the client's own risk. Non-payment of fees on time will result in Clarke Banks (Building Control) Limited being unwilling to provide the service and as such under Section 52(3) of the Building Act 1984 the person undertaking the work will be required to cancel the Initial Notice and the control of the work will revert to the Local Authority.
- 3.5.4. Any sum due under the appointment 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.

- 3.5.5. Please note that fees totalling less than £2000 plus VAT will be invoiced upon our acceptance of your Building Regulations application. Your application will be accepted once a signed appointment form has been received.
- 3.5.6. All other application fees will be invoiced upon commencement of relevant RIBA Stage of Work, based on the project programme provided at time of quote. The Company will confirm the anticipated date of invoice based on the programme provided at time of application, by completing the application form the client agrees to application fees being charged on 1<sup>st</sup> of the relevant month (or the next working day).
- 3.5.7. In all cases where a RIBA Aligned Application Fee has been confirmed, the first RIBA Stage Fee will be invoiced on appointment (unless otherwise agreed between the applicant and the Company).

### **3.6. Changes to the Project and Additional Work**

- 3.6.1. The applicant shall notify the Company in writing as soon as it becomes aware that any additional work will form part of the application, because of:
  - i) Changes in the design, size, scope or complexity of the project
  - ii) Changes in the timing or programming of the project;
- 3.6.2. A failure by the client to comply with its obligations under this contract;
  - i) Additional meetings and / or visits and / or other work is required.
- 3.6.3. The Company shall notify the client in writing as soon as it becomes aware that any additional work will be required, because of:
  - i) Changes in the design, size, scope or complexity of the project;
  - ii) Changes in the timing or programming of the project;
  - iii) A failure by the client to comply with its obligations under this contract;
  - iv) Additional meetings and / or visits and / or other work is required.
- 3.6.4. The client shall pay the Company for the additional work on a time charge basis, at the rates set out in the table below, or for an agreed additional lump sum fee. The Company may charge these additional fees in full in the next payment instalment after the additional work (or part of it) has been performed.
- 3.6.5. The fee / charge for Additional Work shall be calculated on the basis of the time properly, and necessarily, spent by the Company in performing the Services at the following rates.

*NB These additional charges will not be charged without formal agreement with the client and would only be applicable where the following occurs: - Substantial extension of programme or complexity of project work / increase in construction cost / change of design team / non-compliance of work / Additional items included within the application eg ReRoofing or Additional Façade Work*

Table 1 - Additional charges schedule

TIME PERIOD	RATE
Additional Day Rate	£ 1,250.00 plus VAT
Additional Half Day Rate	£ 750.00 plus VAT
Additional Hourly Rate (Director)	£ 250.00 plus VAT
Additional Hourly Rate (Consultant)	£ 150.00 plus VAT

### 3.7. Insurance

3.7.1. The Company shall maintain, provided it is available at commercially reasonable rates, Professional Indemnity Insurance of £1,000,000 and Public Liability Insurance of £10,000,000 for a period of 6 years, in compliance with the guidelines issued by the Department of Levelling Up Housing and Communities (Ministry of Housing, Communities and Local Government) (or any successor Department responsible for the Building Act 1984). On the client's written request, the Company shall provide a Broker's certificate evidencing cover.

### 3.8. Assignment and subcontracting

3.8.1. Neither party may assign its rights and benefits under this contract. The Company may subcontract any part of the services and any additional work, without the prior approval of the client, not to be unreasonably withheld or delayed.

### 3.9. Termination and discharge

- 3.9.1. The client may terminate the appointment forthwith if:
- i) The Company is in material breach of its obligations under these terms and conditions and has failed to remedy the breach within 28 days of the date of the notice of the breach from the client; or
  - ii) The Company becomes insolvent.
- 3.9.2. The Company may terminate the appointment forthwith if:
- i) The client is in material breach of its obligations under the appointment and has failed to remedy the breach within 28 days of the date of the notice of the breach from The Company;
  - ii) The Company reasonably believes that it will not be in a position to issue a final certificate on completion; or
  - iii) The client becomes insolvent.
- 3.9.3. Following termination by the Company or the client, the Company is entitled to write to the Local Authority (with a copy to the client) cancelling the Initial Notice under The Building Regulations 2010, in which case the Company's functions will revert to the Local Authority and the Company will be discharged from all requirements to complete the services or any additional work.
- 3.9.4. The right of either party to terminate for material breach of these terms shall lapse if it has not been exercised within 35 days after giving notice of the breach to the other party.

### 3.10. Consequences of termination

- 3.10.1. If the appointment has been terminated, the client shall pay the Company any instalments of the fee due 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 Company prior to the notice of termination.
- 3.10.2. Termination of this contract shall not affect any rights or remedies of the Client or the Company which exist at the date of termination.

### 3.11. Limitations of liability

- 3.11.1. Nothing in clause 3.11 shall limit the Company's liability for negligence resulting in death or personal injury.
- 3.11.2. Notwithstanding any other provisions in these terms (apart from Clause 3.11), the Company's total liability to the client for any claims arising under or in connection with the appointment whether in contract, in tort (including negligence), for breach of statutory duty or otherwise) shall be limited to the amount set out in clause 1.2 in the aggregate.
- 3.11.3. Without prejudice to any other exclusion or limitation of liability, damages, loss, expense or cost, the liability of the Company for any loss or damage ('the loss or damage') under the appointment shall be limited to that proportion as it would be just and equitable for the Company to pay having regard to the extent of its responsibility for the loss or damage and on the assumptions that:
  - i) 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.
  - ii) 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
  - iii) 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.
- 3.11.4. The Company shall not be responsible for the supervision of any contractor or subcontractor, nor shall the Company have any liability for ensuring the performance or adequate standard of workmanship of any contractor or subcontractor. The company shall not be liable under or in connection with this contract for, or as a result of any work and/or services provided by and/or any act or omission of any third party (including within limitation, any contractor, consultant or sub-contractor).  
The client shall look only to the Company (and not to individuals engaged by the Company or an individual directors or member of the company) for redress if the client considers that there has been any breach of these terms. 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 pursuant to the contracts (Rights of Third Parties) Act 1999.

- 3.11.5. The Company's liability, under, or in connection with this contract shall be limited to the exercise of reasonable skill, care and diligence and the Company shall not be liable unless it has failed to exercise such skill, care and diligence.
- 3.11.6. Neither Party shall under any circumstances whatsoever be liable to the other for any direct or indirect loss of profit, loss of business or anticipated saving or special, indirect or consequential damage suffered by the other Party that arises under or in connection with this contract / terms of appointment.
- 3.11.7. No action or proceeding under or in respect of this contract whether in contract, in tort, in negligence, for breach of statutory duty or otherwise shall be commenced after the expiry of six years from the date of completion of services or the termination of this contract if earlier.

### 3.12. Notices

- 3.12.1. The client and the Company can give notice to each other in writing in accordance with these terms 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 Clarke Banks (Building Control) Limited, 1 The Old Forge, South Road, Weybridge, KT13 9DZ or any other address notified.

### 3.13. Disputes and complaints

- 3.13.1. If the client is not satisfied with the Company's performance of the services or any additional work, it may ask the Company to implement the Company's complaints handling procedure. The Company shall provide a copy of the procedure on request. The operation of the Company's complaints handling procedure does not affect the client's right to refer a dispute to The Courts.
- 3.13.2. The client and the Company 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.
- 3.13.3. Either the client or the Company may at the time refer a dispute or difference arising under, or in connection with, the appointment adjudication in accordance with the edition of the CICAIR Model Adjudication Procedure current at the date of the adjudication notice. The Adjudicator shall be appointed by the CICAIR.

### 3.14. Novation

- 3.14.1. Novation is not permitted by this form of agreement. Should the client wish to novate the Company this agreement must be terminated, and a new agreement created with the new client. Services performed prior to the new agreement will not be considered as part of the agreement with the new client.

### 3.15. Rights of third parties

- 3.15.1. 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 3.9. This does not affect the rights of the client and the Company in relation to these terms and the appointment.

### **3.16. Commencement**

- 3.16.1. Whatever the date of appointment, these terms shall have effect commencing on the date when the Company commenced services.

### **3.17. Intellectual Property Rights**

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

### **3.18. Set off / Withholding of Fees**

- 3.18.1. The client will pay the sums invoiced by the Company without right of set-off, deduction or withholding in any circumstances.

## **4. PART 4 | DEFINITIONS AND INTERPRETATIONS**

### **4.1. Definitions**

4.1.1. In these Terms and Conditions, unless the context otherwise requires, the following expressions have the following meanings:

### **4.2. Additional Work**

4.2.1. Means the type or volume of services appropriate for the Company 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 Company.

### **4.3. Approved Inspector**

4.3.1. Means a licensed individual or organisation carrying out the duties given to the Company by The Building Act 1984 and regulations made under it.

### **4.4. CICAIR**

4.4.1. Means the Construction Industry Council Approved Inspectors Register, responsible for the Building (Approved Inspectors etc.) Regulations 2010.

### **4.5. Fee**

4.5.1. Means the total amount to be paid to Clarke Banks (Building Control) Limited for the services and any additional work.

### **4.6. Services**

4.6.1. Means the services listed in Part 2.

### **4.7. Statutory Functions**

4.7.1. Means the duties of the Company under The Building Act 1984, Regulations made under it and formal guidelines issued by a Government Department.

### **4.8. Interpretation**

4.8.1. In these Terms and Conditions, unless the context otherwise requires:

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

## **5. PART 5 GUIDANCE | ADDITIONAL NOTES**

### **Notes on the Terms and Conditions**

#### **5.1. Domestic client**

5.1.1. Depending on 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 terms in Part 3: Conditions do not apply in the case of a domestic client.

#### **5.2. Project period**

5.2.1. Is anticipated that the project will take, up until the time when the client can take possession of the site (practical completion).

#### **5.3. Limitations of liability**

5.3.1. Clause 3.9 - It is recommended that the parties agree a suitable total (i.e. overall or aggregate) amount of the damages for which the Approved Inspector might become liable to the client. See the CICAIR Liability Briefing "Managing liability through financial caps" available at [www.cic.org.uk](http://www.cic.org.uk). The agreed amount should be inserted in clause 1.2.

5.3.2. In agreeing the amount the parties should have regard to (amongst other things) the following:

- i) the level of Professional Indemnity Insurance the Approved Inspector has agreed to maintain;
- ii) the fact that the cap will apply to all claims, for breach of terms or for breach of a duty to take care (that is, in 'tort') or for breach of statutory duty or otherwise;
- iii) the nature and scope of the services provided by the Approved Inspector;
- iv) the nature, size, and complexity of the project; and
- v) the fee

5.3.3. In clause 3.11, the Terms and Conditions also include what is called a 'net contribution' clause, which provides that if both the Company and another party are liable to the client in respect of the same loss or damage, the Company will only have to pay a fair and reasonable proportion of the client's losses, having regard to the extent of the Company's responsibility for the loss or damage. For fuller explanation of such clauses, see the CICAIR Liability Briefing 'Net contribution clause' available at [www.cic.org.uk](http://www.cic.org.uk).

5.3.4. In clause 3.11, the Terms and Conditions provide that if Clarke Banks (Building Control) Limited 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 CICAIR Liability Briefing 'Personal liability of employees' available at [www.cic.org.uk](http://www.cic.org.uk).

#### **5.4. Novation**

- 5.4.1. Clause 3.14 - The provisions for transfer of our services is not possible via novation. To transfer the Company's services to a "Contractor" requires a new agreement for that scope of work. (for example if a design and build procurement route is used).

#### **5.5. The Fee**

- 5.5.1. The fee is to be a lump sum or charged on a time basis. If a lump sum 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).

#### **5.6. Expenses and disbursements**

- 5.6.1. 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.

#### **5.7. Instalment Payments**

- 5.7.1. In accordance with the Company's service proposal fee schedule or otherwise agreed schedule.

#### **5.8. The Services (Part 2)**

- 5.8.1. Whether the Company is to undertake the statutory functions only or a fuller service should be agreed as part of the appointed scope. In summary, the statutory functions comprise; serving the Initial Notice, undertaking an assessment of plans, undertaking statutory consultations as appropriate, inspecting the site and issuing a final certificate(s). If the Company is to undertake any additional services within the fee, this should be agreed as part of the appointment and scheduled. If the Company is to take on any responsibility for the design or construction of a dwelling (see clause 3.3), the extent of these responsibilities should be added. Other services requested after the appointment has been confirmed will be charged on a time basis under clause 3.6.

#### **5.9. Insurance**

- 5.9.1. Clause 3.7 provides that the Company will maintain Professional Indemnity Insurance and Public Liability Insurance in the compliance with guidelines for schemes of insurance for The Company's pursuant to section 47(6) of The Building Act 1984, issued by the Ministry of Housing, Communities and Local Government (Department of Communities and Local Government) (or any successor Department responsible for The Building Act 1984).