



Form of Appointment

Shaping and sharing best practice in construction health and safety risk management

FORM OF APPOINTMENT AS PRINCIPAL DESIGNER (FOAPD2015)

Under the Construction (Design and Management)
Regulations 2015 and for the Provision of Related Services

USE OF THIS FORM OF APPOINTMENT

- This form of appointment should be used for the appointment of a Principal Designer with the necessary skills, knowledge and experience under the Construction (Design and Management) Regulations 2015.
- The Regulations require the Client to take reasonable steps to satisfy themselves that whoever they appoint as Principal Designer has the necessary skills, knowledge and experience.
- The Memorandum of Agreement and the two schedules to which it refers contain some clauses which require completion or deletion of alternatives and provide the opportunity for the definition of additional services.

COMPLETING CLAUSE 6(b)

"6(b) The Principal Designer's liability to the Client in contract for any breach or breaches of this Agreement shall not exceed £ **1000** provided that in the case of claims arising out of or in connection with pollution or asbestos, the liability shall not exceed the amount, if any, recoverable under the Principal Designer's professional indemnity insurance in respect of pollution or asbestos as the case may be."

When completing this clause, consider the following:

1. What is the level of your professional indemnity insurance cover? It is unlikely that you would ever wish to complete the clause with a figure which was higher than your present insurance cover, if that insurance is on an 'each and every claim' basis. If the insurance is on an aggregate basis, the amount to be inserted in the clause should be significantly less than your total yearly cover.
2. Remember that professional indemnity insurance is on a "claims made" basis, ie. the amount of cover you have is the amount for which you are insured in the year in which the claim is made, not in the year in which you carried out the work. If, therefore you are winding down your business or looking to retire shortly, bear this in mind if you are planning to reduce the level of your professional indemnity insurance cover. Run-off insurance is available for those who are retiring, and your broker should be able to advise you on this.
3. If your insurance for acting as a principal designer is linked to other parts of your practice (eg. design consultant) you may not wish to put in the full level of your cover, as it may be considerably higher than normal for a principal designer. To take an extreme example, if a project is relatively straightforward where the works are likely to cost less than £1million, it would be unusual to expect the principal designer to carry professional indemnity insurance cover of, say, £2million.
4. There is no direct correlation between the level of insurance cover and the value of the works being carried out.
5. A principal designer's potential liability, and therefore the appropriate level of his insurance cover, is usually less than that of a designer on the same project. It is not unreasonable, therefore, to limit your liability in clause 6(b) to a figure which is related to the level of your potential liability.
6. It is important to avoid the clause falling foul of the Unfair Contract Terms Act 1977 by making the figure unreasonably low. Insurance cover of, say, £50,000 on a project likely to cost £1million may be too low, particularly if you have insurance cover available for a higher figure.
7. When assessing your potential liability on a project, always bear in mind that the cost of putting something right when it has gone wrong is almost invariably several times greater than the cost of doing it right in the first place. This means that if something does go wrong, and it is necessary to carry out remedial works, these will be relatively expensive and therefore you should allow for this both in fixing the level of your insurance cover, and then in inserting a figure in clause 6(b).
8. The amount of your fee is no guide at all to the appropriate limit on your liability.
9. Think carefully about the level of cover which you are effectively committing yourself to maintain for several years to come, and do not agree to a figure, or a cap on liability, higher than your anticipated cover over that period.



MEMORANDUM OF AGREEMENT

between:

2020 HOUSE (RESIDENTIAL
MANAGEMENT) LTD.

(insert name of Client)

of/whose registered office or principal place of business is situated at

2020 BUILDING, SKINNER
LANE, LEEDS. LS7 1BB.

(hereinafter referred to as the Client)

of the one part; and

BELL SAFETY SERVICES

(insert name of Principal Designer)

the registered office/principal place of business of which is at

OFFICE 7-8, TAYSON HOUSE,
METHLEY ROAD, CASTLEFORD,
WF10 1PA

(hereinafter referred to as the Principal Designer)

MEMORANDUM
OF AGREEMENT

Whereas:

A. The Client presently wishes to proceed with a project for the:

CARDOE MARTIN

(hereinafter referred to as the Project)

situated at:

2020 HOUSE (RESIDENTIAL MANAGEMENT)
2020 BUILDING, SKINNER LANE, (hereinafter referred to as the Site)
LS7 1BB

B. The Project requires the appointment of a principal designer pursuant to the Construction (Design and Management) Regulations 2015 (hereinafter referred to as the Regulations).

C. The Client has requested the Principal Designer to act as principal designer for the Project.

NOW IT IS HEREBY AGREED AS FOLLOWS:

1. Except where otherwise stated, words and expressions used in this Agreement which are also used in the Regulations shall have the same meanings as in the Regulations and references to regulation numbers are to the Regulations.

2. APPOINTMENT

(a) The Client hereby appoints the Principal Designer to discharge the requirements placed upon a principal designer by the Regulations (the Requirements) and to carry out the Services listed in Schedule 1 hereto (the Services). In the case of any conflict between the Requirements and the Services the Requirements shall prevail.

(b) The Principal Designer accepts the appointment as principal designer for the Project in accordance with this Agreement.

(c) The appointment shall be deemed to have commenced on the date on which the Principal Designer commenced any work on or in connection with the Requirements or the Services notwithstanding that such work may have been carried out before the Principal Designer's formal appointment, and shall continue, unless earlier terminated in terms of Clause 12, until

- * ~~(i) delivery of the Health & Safety File to the principal contractor on termination of the Principal Designer's appointment before the end of the Project~~
- * (ii) end of the Project or delivery of the Health and Safety File to the Client, whichever is the later;
- * (iii) delivery of the Health and Safety File to the Client within 4 weeks of the end of the Project (state number of weeks)
- * ~~(iv) the agreed provision of partial services up to _____ (**)~~
shall have been completed.

[* delete whichever is not applicable]

[** insert agreed stage or definition of termination of partial service]

Provided always that information required for the Health and Safety File has been made available by the Client, designers and contractors in accordance with Clauses 2 (h) (ii) and 4 hereunder. In the event that necessary information is not delivered to the Principal Designer in accordance with Clauses 2 (h) (ii) and 4 the work of the Principal Designer shall be deemed to have been completed in accordance with whichever of options (i)-(iv) above apply provided that the Principal Designer has delivered to the Client (or in the case of (i) above, to the Principal Contractor) an otherwise completed Health and Safety File and where it has been passed to the Client, has notified the Client of the outstanding information

(d) No proceedings or action arising out of or in connection with a breach of this Agreement shall be brought against the Principal Designer after the expiry of 6 * years from Practical Completion of the Works to which this Agreement relates.

[* 6 years is normally suggested for England and Wales, 5 years is normally suggested for Scotland]

- (e) In carrying out the Requirements and the Services hereunder the Principal Designer, where possible, shall have regard to the constraints imposed by any applicable pre-construction and/or construction programme and to the objective of keeping the overall costs of the Project within any budgetary constraints agreed with the Client, subject to the performance of the Principal Designer's obligations in terms of the Regulations.
- (f) If the Principal Designer considers that there is or may be a conflict between his obligations under sub-clause (e) and the performance of the Requirements and/or the Services he shall immediately give the Client written notice of the same, and the parties shall agree an appropriate course of action.
- (g) If the Principal Designer receives any instruction from the Client under this Agreement which he considers to be inconsistent with the Requirements, or if the Client fails to comply with his duties under the Regulations, the Principal Designer shall immediately give the Client written notice of the same and the parties shall agree an appropriate course of action.
- (h) The Client shall require the principal contractor, under the terms of the principal contractor's contract:
 - (i) to liaise with the Principal Designer and share with the Principal Designer information relevant to the planning, management and monitoring of the pre-construction phase and the coordination of health and safety matters during the pre-construction phase.
 - (ii) to ensure that all the information required for the Health and Safety File is provided promptly to the Principal Designer and to provide 1 (*) copies of that information.

(* insert agreed number of copies of the Health and Safety File to be delivered by the Principal Designer - see Schedules 1 and 2)

- (i) The Principal Designer shall:
 - (i) Co-ordinate its activities with all other duty holders in a manner which ensures as far as is reasonably practicable the health and safety of those carrying out the construction work or affected by it; and
 - (ii) Take account of the general principles of prevention during all stages of the project, in particular:
 - (1) avoiding risks
 - (2) evaluating the risks which cannot be avoided;
 - (3) combating the risks at source;
 - (4) developing a coherent overall prevention policy;
 - (5) giving collective protective measures priority over individual protective measures

3. INFORMATION

The Client shall promptly provide the following information to the Principal Designer:

- (a) the information which the Client is obliged by the Regulations to provide to the Principal Designer; and
- (b) any relevant information prepared by another principal designer previously appointed by the Client to carry out duties on or related to this Project.

All information is to be provided as soon as practicable and in a comprehensible form as required by Regulation 8(6)

4. DESIGNERS

The Client shall ensure that all designers appointed by the Client shall be under a contractual obligation to comply with the provisions of the Regulations as they apply to designers and in particular to co-operate with other designers and the Principal Designer in the performance of their respective duties under the Regulations, including the provision of 1 (*) copies of information for the Health and Safety File, reasonably within the time constraints provided by the Principal Designer and of any applicable programme. The Client shall ensure that the terms of appointment of any designers and the contracts of any contractors engaged directly by the Client allow the Principal Designer reasonable access to all design documents as required to discharge his obligations.

(* insert agreed number of copies of the Health and Safety File)

5. STANDARD OF CARE

The Principal Designer shall exercise reasonable skill and care in carrying out his duties under this Agreement.

6. LIABILITY

- (a) Except as expressly provided by this Agreement, or where required by law, the Principal Designer shall have no liability to the Client by reason of any misrepresentation, or any breach of an implied term (whether a warranty, condition or otherwise) or any breach of a duty at common law (whether there has been negligence by the Principal Designer, its employees or agents or otherwise) arising out of or in connection with the provision of services under this Agreement by the Principal Designer. This exclusion of liability shall not apply in respect of death or personal injury caused by the Principal Designer's negligence.
- (b) The Principal Designer's liability to the Client in contract for any breach or breaches of this Agreement shall not exceed £ 1000 provided that in the case of claims arising out of or in connection with pollution or asbestos, the liability shall not exceed the amount, if any, recoverable under the Principal Designer's professional indemnity insurance in respect of pollution or asbestos as the case may be.
- (c) The Principal Designer shall not be liable for the contributions to the Health and Safety File from any designers or contractors, save as arises from the performance of the Requirements and the Services.
- (d) Subject to other provisions of this clause 6, the Principal Designer's liability to the Client shall be no greater than the sum which the Principal Designer ought reasonably to pay in respect of a claim, assessed on the basis that:
- (i) All the parties involved in the Project had provided contractual undertakings on terms no less onerous than those in this Agreement;
 - (ii) There are no limitations on liability, joint insurance or co-insurance provisions in the contracts between the Client and those other parties; and
 - (iii) Those other parties had paid the Client the proportion of such claim which it was just and equitable for them to pay having regard to the extent of their responsibility.
- (e) Where the "Joint Code of Practice on the Protection from Fire of Construction Sites and Buildings undergoing Renovation", published by Construction Industry Publications Ltd and the Fire Protection Association, applies, the Principal Designer's obligations in respect of the implementation of that Code shall not be greater than the Requirements.
- (f) Except as expressly provided herein nothing in this Agreement confers or purports to confer on any third party any benefit or any right to enforce any term of this Agreement.
- (g) Save in respect of death or personal injury, the Client will look only to the Principal Designer (and not to any individual engaged by the Principal Designer (including any directors or members of the Principal Designer's company or limited liability partnership*)) for redress if the Client considers that there has been any breach of this Agreement. The Client agrees not to pursue any claims in contract, tort or for breach of statutory duty (including negligence) against any individuals working for the Principal Designer in carrying out its obligations under this Agreement at any time, whether named expressly in this Agreement or not.

******The Client acknowledges that such individuals are entitled to enforce this term of the Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999.

(* delete if not applicable)

(** applicable to England and Wales only)

7. INSURANCE

The Principal Designer warrants to the Client that he has and will continue to maintain professional indemnity insurance cover for a period of 6 (*) years after the date of practical completion of the Project provided that cover is generally available at commercially reasonable rates and subject to the exclusions and limitations on the scope of cover commonly found in such insurance at the time it is taken out. The Principal Designer agrees to provide the Client upon reasonable request with documentary evidence that such insurance is being maintained. In the event that professional indemnity insurance is not generally available at reasonable rates the Principal Designer shall immediately advise the Client.

(* insert period referred to in Clause 2 (d))

8. TERRORISM

- (a) The parties acknowledge that it is the responsibility of both of them to be vigilant and take appropriate action should they become aware of, or are concerned that there may be, a threat from a terrorist source.
- (b) The Principal Designer shall have no liability to the Client for any claims, costs, loss or expense arising out of or in connection with the threat of or acts of terrorism.

9. PAYMENT

- (a) The Principal Designer's fee and expenses shall be as set out in Schedule 2 to this Agreement. The cost of any surveys or other work arranged or carried out by the Principal Designer at the Client's request shall be paid by the Client in addition to the fee.
- (b) If the Principal Designer is required to perform any additional service by reason of a significant increase in the scope or complexity of the Project for which no payment would be due under the provisions of Schedule 2, the Client shall allow a fair and reasonable adjustment to the fee commensurate with the additional service and based upon the terms outlined in Schedule 2, which shall be payable at the stage next following completion of the relevant service.
- (c) The Principal Designer shall submit accounts to the Client in respect of any instalments of the fee and expenses as they become due under this Agreement showing amounts which the Principal Designer considers to be due and the basis on which the amounts have been calculated.
- (d) All instalments of fees set out herein are exclusive of any Value Added Tax which shall be paid by the Client at the same time as payment of the instalment to which it relates and upon payment of Value Added Tax the Principal Designer will issue a tax receipt.
- (e) All payments to be made under this Agreement become due 14 days after the date of an account rendered by the Principal Designer. The final date for payment in respect of each payment is 14 days after that payment becomes due.
- (f) The Client shall, not later than 5 days after the date on which a payment becomes due, give a notice to the Principal Designer specifying the amount (if any) of the payment that the Client considers to be due at the payment due date in respect of the payment and the basis on which that sum is calculated.
- (g) The Client shall not be entitled to pay less than any sum due under this Agreement or to pay no amount at all unless, not later than seven days before the final date for payment of that sum, the Client has given a notice specifying:
 - (i) the amount that the Client considers to be due on the date the notice is served, and
 - (ii) the basis on which that amount is calculated.

10. ASSIGNMENT AND NOVATION

- (a) The Client is the client for the purposes of the Regulations and shall notify the Principal Designer immediately if he ceases to be so.
- (b) The Principal Designer shall not assign this agreement without the prior written consent of the Client, such consent not to be unreasonably withheld or delayed.
- (c) The Principal Designer shall, at the request of the Client, agree to the novation of this Agreement or, at the option of the Client, enter into an agreement in identical terms to this Agreement, with any person, firm or company who has made an election under Regulation 4(8), the effect of which is that such person, firm or company will act as client for all the purposes of the Regulations in respect of the Project provided that the Principal Designer has been paid all fees and expenses together with VAT (if applicable) due at the date of such novation or agreement.

11. COPYRIGHT

The copyright of all documents originated by the Principal Designer in connection with the appointment hereunder shall remain vested in the Principal Designer but the Client shall have an irrevocable royalty-free licence to copy and use such documents for any purpose related to the Project including, without limitation, the construction, completion, maintenance, letting, promotion, advertisement, reinstatement, repair, extension, refurbishment, sale and/or demolition of the Project and notwithstanding any termination of the Principal Designer's appointment, and provided that the Principal Designer has been paid for all work properly carried out in accordance with this Agreement. Such licence shall include the right to grant sub-licences in like terms for any tenant, owner or licensees of the whole or any part of the Project as constructed. The Principal Designer shall not be liable for any use of such documents for any purpose other than that for which they were prepared by the Principal Designer.

12. SUSPENSION AND TERMINATION

Without prejudice to the accrued rights of the parties hereunder:

- (a) If the Project is suspended or terminated for any reason, the Client may forthwith by written notice suspend or terminate as the case may be the Principal Designer's appointment hereunder.
- (b) If the Project has not been recommenced within 13 weeks of the suspension referred to in sub-clause (a), either party may on 4 weeks' notice terminate the Principal Designer's appointment hereunder.
- (c) If the Client is in breach of any of the Client's obligations under the Regulations or this Agreement, and fails to remedy the breach within 14 days of receipt of a notice from the Principal Designer identifying the breach and requiring its remedy, the Principal Designer may:
 - (i) forthwith by notice in writing to the Client terminate his appointment hereunder; or
 - (ii) if the Client's breach consists of a failure to pay any sum due by the final date for payment, at the Principal Designer's option suspend the performance of the Services until the sum due has been paid in full.

Any period during which performance of the Services is suspended under (ii) above shall be disregarded in calculating the time allowed to the Principal Designer to carry out the Services.

- (d) Either party may terminate the appointment of the Principal Designer under this Agreement by giving reasonable notice to the other.
- (e) On termination under clauses (a) - (d) above the Principal Designer shall be entitled to a reasonable proportion of the fee for the Services provided between the period covered by previous payments and the date of termination together with all expenses accrued and VAT as applicable.

13. DISPUTES

- (a) The parties shall attempt in good faith to resolve any disputes or claims arising out of or relating to this Agreement by negotiation between representatives of the parties who have authority to settle the dispute.
- (b) Either party shall be entitled to give notice to the other referring a dispute to adjudication. Any such reference shall be governed by the latest edition of the Construction Industry Council Model Adjudication Procedure at the date of notice.
- (c) If neither party wishes to refer a dispute to adjudication or if either party is dissatisfied with the decision of an adjudicator the dispute shall be and is hereby referred to arbitration in the manner set out in (d) below.
- (d) Any difference or dispute arising out of the Agreement referred by either of the parties to arbitration shall be a reference to a person to be agreed between the parties or, failing agreement within fourteen days after either party has given the other a written request to concur in the appointment of an arbitrator (or arbiter in Scotland), a person to be nominated at the request of either party by the President or his nominee of the Association for Project Safety.

14. NOTICES

Any notices or information to be supplied hereunder shall be provided in writing to the address of the other party stated in this Agreement or as otherwise specified subsequently in accordance with this clause. Such notices or other information shall be deemed to have been delivered either on the day of delivery, if delivered personally, or if sent by post, two working days later.

15. GOVERNING LAW

This Agreement shall be governed by the law of England and Wales/Scotland.*

(* delete whichever is not applicable)

For use in England and Wales (*)



AS WITNESS the hands of the parties the 16 day of SEPTEMBER 20 20

Signature

The duly authorised representative of the Client

Name and position

Witness Signature

Name and address

Signature

The duly authorised representative of the Principal Designer

Name and position

Witness Signature

Name and address

For use in Scotland (*)

IN WITNESS WHEREOF this Agreement comprising this and the previous eight pages together with the Schedules 1 and 2 annexed is executed as follows:

Subscribed for and on behalf of

by

[a Director/Partner].

at

the

day of

20

in the presence of the following witness:

Witness

Full Name

Director/Partner

Address

Subscribed for and on behalf of

by

[a Director/Partner].

at

the

day of

20

in the presence of the following witness:

Witness

Full Name

Director/Partner

Address

(*Delete whichever is not applicable)

SCHEDULE 1

SCHEDULE OF SERVICES

Project: ☒ 20:20

Location: ☒ LEEDS

The services which are summarised below are derived from the duties laid on the Principal Designer by the Regulations and other related requirements of the Regulations. Reference should be made to the Regulations for the precise scope of each service and this schedule must be read within the context of the Regulations as a whole.

Part 1

1. Cooperate with any other person working on or in relation to a project at the same or an adjoining construction site to the extent necessary to enable any person with a duty or function to fulfil that duty or function. [Regulation 8(4)]
2. Report to the Client anything the Principal Designer is aware of in relation to the Project which is likely to endanger their own health or safety or that of others. [Regulation 8(5)]
3. Provide any information or instructions as soon as is practicable and in a comprehensible form. [Regulation 8(6)]
4. Plan, manage and monitor the pre-construction phase and coordinate matters relating to health and safety during the pre-construction phase to ensure that, so far as is reasonably practicable, the Project is carried out without risks to health or safety. [Regulation 11(1)]
5. When
 - a. design, technical and organisational aspects are being decided in order to plan the various items or stages of work which are to take place simultaneously or in succession; and
 - b. estimating the period of time required to complete such work or work stages,
 take into account the general principles of prevention and, where relevant, the content of any construction phase plan and any health and safety file. [Regulation 11(2)]
6. Identify and eliminate or control, so far as is reasonably practicable, foreseeable risks to the health and safety of any person-
 - a. carrying out or liable to be affected by construction work;
 - b. maintaining or cleaning a structure; or
 - c. using a structure designed as a workplace. [Regulation 11(3)]
7. Ensure all designers comply with their duties in Regulation 9. [Regulation 11(4)]
8. Cooperate with and ensure that all persons working in relation to the pre-construction phase cooperate with the Client, the Principal Designer and each other. [Regulation 11(5)]
9.
 - a. Assist the Client in provision of the pre-construction information required by Regulation 4(4); and
 - b. So far as it is within the Principal Designer's control, provide pre-construction information, promptly and in a convenient form, to every designer and contractor appointed, or being considered for appointment, to the Project. [Regulation 11(6)]
10. Liaise with the principal contractor for the duration of the Principal Designer's appointment and share with the principal contractor information relevant to the planning, management and monitoring of the construction phase and the coordination of health and safety matters during the construction phase. [Regulation 11(7)]
11. Assist the principal contractor in preparing the construction phase plan by providing to the principal contractor all information the Principal Designer holds that is relevant to the construction phase plan including pre-construction information obtained from the Client and any information obtained from designers under Regulation 9(3)(b). [Regulation 12(3)]

12. During the pre-construction phase prepare a health and safety file appropriate to the characteristics of the Project which must contain information relating to the Project which is likely to be needed during any subsequent project to ensure the health and safety of any person. [Regulation 12(5)]
13. Ensure that the health and safety file is appropriately reviewed, updated and revised from time to time, up to the date the Principal Designer's appointment has ended to take account of the work and any changes that have occurred. [Regulation 12(6)]
14. If the Principal Designer's appointment concludes before the end of the Project, pass the draft health and safety file to the principal contractor. [Regulation 12(8)]
15. Deliver [] copy/copies of the health and safety file at the end of the Project to the Client. [Regulation 12(10)]

Part 2 - Additional related services

- ☒ 16. Provide advice to the Client on the health and safety skills, knowledge and experience and, if they are an organisation, the organisational capability and resources of up to [0] proposed designers prior to arrangements being made for design work to begin*.
- ☒ 17. a. Provide advice to the Client on the health and safety skills, knowledge and experience and, if they are an organisation, the organisational capability and resources of up to [0] proposed contractors before an approved list of tenderers is agreed*.
b. Provide advice to the Client on the health and safety skills, knowledge and experience and, if they are an organisation, the organisational capability and resources of the lowest or preferred tendering/ negotiating prospective principal contractor before arrangements are made for the work to be carried out or managed.
- ☒ 18. Advising the client on the suitability or otherwise of the construction phase plan and the provision of the proposed welfare facilities, prior to construction work starting on site.
- ☒ 19. Prepare [] additional copies of the health and safety file.
- ☒ 20. Prepare [] copies of abstracts of the health and safety file for delivery to tenants by the Client. (The contents of these abstracts to be determined in consultation with the Client's legal advisers).
- ☒ 21. Keep a record copy of the health and safety file.
- ☒ 22. Update the health and safety file to incorporate information from previous non-notifiable works to premises or structures.
- ☒ 23. Convert health and safety files on other projects to match client's current electronic format
- ☒ 24. AID WITH CDM PLAN & 3rd INSPECTIONS
- ☒ 25. AID WITH CDM H&S FILE.

(* Insert number of designers/principal contractors/contractors)

This is the Schedule 1 referred to in the foregoing Memorandum of Agreement dated 16/9/20 20

Signed on behalf of the Client

Signed on behalf of the Principal Designer

SCHEDULE 2

FEES AND EXPENSES

1. The Principal Designer shall be paid in accordance with the following:
(sections to be completed or deleted as appropriate for each project)

LUMP SUM

Services 1 - 15 (of Schedule 1) £ 3960 + VAT

Services 16 - 25 (of Schedule 1) £ 3970 + VAT.

PERCENTAGE FEES

Services 1 - 15 (of Schedule 1)

% of the total construction cost

Services 16 - 25 (of Schedule 1)

% of the total construction cost

HOURLY RATES

Principal/Director £ 100 /hr RICHARD WILK (name)

Principal Designer £ 90 /hr PHILIP BAKER (name)

H+S LEAD £ 80 /hr MARION LAKE (name)

H+S ADMIN £ 30 /hr ADDIE FOZZARD (name)

£ /hr (name)

£ /hr (name)

With an upper limit to the time charges of £ 1000 which will not be exceeded without prior agreement.

Hourly rates shall be revised on 1/1 each year.

2. The Principal Designer shall perform his duties under this Agreement for the agreed sum within the following Agreed Programme:

Commencement of Principal Designer's Services 16/8/2020 (date)

Commencement of Construction 5/10/2020 (date)

Practical Completion of Construction 5/3/2021 (date)

Delivery of Health and Safety File 6/4/2021 (date)

3. The terms of this Agreement assume that the form of construction contract will be:

TRADITIONAL.

4. Where percentage fees are stated, the fees shall be based upon the Total Construction Cost of the Works. On issue of the Final Certificate by the Contract Administrator, the fees shall be recalculated on the actual Total Construction Cost. Until that stage is reached the Total Construction Cost (exclusive of professional fees) will be taken to be the following:

- | | |
|----------------------------------|-------------------------------------|
| until tenders are obtained | - the latest agreed cost estimate; |
| after tenders have been obtained | - the lowest acceptable tender; and |
| after the contract is let | - the contract sum. |

Form of Appointment as Principal Designer

Should the project not proceed or the Appointments be terminated for any reason, the fees shall be based upon the definition of Total Construction Cost as appropriate to each stage given above.

5. The Principal Designer will render accounts at intervals of 1 months, or on completion of the stages noted in paragraph 2 above. In the former case the balance of the fee due at the date of such account will be on the basis of the Principal Designer's estimate of the percentage of completion of the project.

6. Expenses shall be paid as follows (*delete as appropriate).

AS INCURRED including printing, photocopying, travel (by rail, air, or vehicle mileage @ 55 p/mile*), facsimile, courier services, subsistence, hotel charges, postage, photographs, telephone calls, extraordinary materials costs and other relevant disbursements at cost.

(*Mileage rates shall be reviewed on 1/1 each year)

~~LUMP SUM~~

of £ _____

~~ADDITIONAL PERCENTAGE~~ (of total construction cost) of _____ %

7. Adjustment to the payments to the Principal Designer will be due for the following:

- a. Assessing the resources, skills, knowledge, experience and organisational capability of other designers, principal contractors and contractors beyond the number specified in Schedule 1 £ 200 per single assessment
- b. Repetition of any duty or service due to changes in design after Client approval for work to commence and/or Building Regulations approvals £ 200 per repetition
- c. Provision of Additional Copies of the Health and Safety File beyond the number specified in Schedule 1 £ 800 per copy
- d. Provision of abstracts from Health and Safety File for delivery by the Client to tenants beyond the number specified in Schedule 1 £ 300 per copy
- e. Extended duration of the agreed programme £ 700 per month (or pro rata for part thereof).

8. Where applicable VAT shall be payable in addition to the fees and expenses at the appropriate rate.

9. Payments shall be made within 28 days of the date of issue of any fee note, after which time interest will accrue on the amount outstanding at 10 %* per annum above the current base rate set by the BANK OF ENGLAND (Bank), until payment is made.

This is the Schedule 2 referred to in the foregoing Memorandum of Agreement

dated

16 SEPTEMBER

20 20

Signed on behalf of the Client

Signed on behalf of the Principal Designer

(* Where the Late Payment of Commercial Debts (Interest) Act 1998 applies the rate must be a "substantial remedy" and 8% over base rate is specified as meeting this criterion)