



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

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)

- (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]

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.

For use in England and Wales (*)



AS WITNESS the hands of the parties the 10 day of SEPTEMBER 20 20

Signature

The duly authorised representative of the Client

Name and position NICK MADDINGHAM

Witness Signature

Name and address

BRUCE DARRAL TAYLOR, 3 KINGSLAY AVE, WF2 7EA

Signature

The duly authorised representative of the Principal Designer

Name and position

RICHARD G. WILKINSON Dir HSE.

Witness Signature

Name and address

ABBIE FOZZARD. 148 SOOTHILL LANE, WF17 6HP

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

Director/Partner

Full Name

Address

(*Delete whichever is not applicable)

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

16/9/2020

Signed on behalf of the Client

Signed on behalf of the Principal Designer

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)