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(FIXED SUM, INST

RACTOR AGREEMENT  
WITH RETENTION)

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**THIS AGREEMENT** is made the

**BETWEEN:**

- (1) <<Name of Contractor>> a company registered in <<Country of Registration>> under number <<Company Registration Number>> whose registered office is at <<Registered office>> (the "Contractor")
- (2) <<Name of Sub-Contractor>> ("Sub-Contractor")

**IT IS AGREED** as follows:

## 1. DEFINITIONS

- 1.1 In this Agreement the following terms shall have the following meanings unless otherwise requires the following

**'Confidential Information'** means information which is disclosed to the Contractor pursuant to or in connection with this Agreement in writing or any other medium, and which is expressly stated to be confidential or marked as confidential;

**'Main Contract'** means the contract <<Date>> between (1) <<Name of Employer>> and (2) <<Name of Contractor>> for the carrying out of the Main Contract Works;

**'Main Contract Works'** means <<Main contract works>>;

**'Works'** means <<Works>> in Part 1 of the Schedule.

## 2. ENGAGEMENT OF SUB-CONTRACTOR

- 2.1 The Contractor hereby engages the Sub-Contractor to carry out the Works in accordance with the terms of this Agreement.
- 2.2 It is understood and agreed that the Sub-Contractor's activities and those of its employees and the workers engaged by the Sub-Contractor shall be under the exclusive direction and control of the Contractor.
- 2.3 The Sub-Contractor shall be registered with HMRC's Construction Industry Scheme and shall provide evidence of his registration to the Contractor.
- 2.4 Any obligation of the Sub-Contractor to make payment under this Agreement is subject to the provisions of the Construction Industry Scheme.
- 2.5 The Sub-Contractor shall not subcontract any of the Works without the prior written consent of the Contractor.
- 2.6 Neither party to this Agreement shall be entitled to claim the benefit of this Agreement or to enforce it without the other's prior written consent.
- 2.7 The grant and acceptance of this Agreement do not create any mutual

obligations on the  
accept any further a  
created or implied.

or the Sub-Contractor to offer or  
nuing relationship shall hereby be

### 3. TIMING

- 3.1 The Sub-Contractor  
<<Date>> and <<[  
instruction to comm
- 3.2 The Sub-Contractor  
<<Number>> week  
timescale:  
<<Insert timetable,
- 3.3 The Contractor sha  
Works are practical
- 3.4 The Sub-Contractor  
of time rectify any d  
within 3 months from

orks [on <<Date>>] **OR** [between  
days of the Contractor's written

urs to complete the Works [within  
nt] **OR** [according to the following  
ates>>].

tor in writing of the date when the

se and within a reasonable period  
s notified to him by the Contractor  
mpletion of the Works.

### 4. SUB-CONTRACTOR'S OBLIGATIONS

- 4.1 The Sub-Contractor  
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- 4.2 The Sub-Contractor  
the Contractor in b  
brought to the Sub-
- 4.3 The Sub-Contractor
  - 4.3.1 the goods ar
  - 4.3.2 all other goo  
for those (if aand all goods and n
- 4.4 The Sub-Contractor  
equipment and pro  
those items (if any)
- 4.5 The Sub-Contractor  
carrying out of the V
- 4.6 The Sub-Contractor  
Works are done, an  
that due account is  
activities of the Con  
Contractor.
- 4.7 The Sub-Contractor  
Works.
- 4.8 The Sub-Contractor  
Contractor relating t

killed and experienced workers to  
e Works are carried out in a good

ks in a manner that does not put  
f the Main Contract that has been

d in Part 2 of the Schedule; and

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e Schedule

satisfactory quality.

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nising how and in what order the  
ntractor's representative to ensure  
the timing of the Works upon the  
b-contractors also engaged by the

ws and regulations relating to the

asonable regulations made by the

### 5. CONTRACTOR'S OBLIGATIONS

- 5.1 The Contractor sha

contractor has sufficient access to

- the site to perform the Works in accordance with the obligations under this Agreement.
- 5.2 The Contractor shall supply all the materials (if any) listed in Part 3 of the Schedule and all materials shall be of a satisfactory quality.
- 5.3 The Contractor shall supply all tools, plant and machinery, safety equipment and protective clothing and the Contractor shall comply with the provisions of the Schedule.
- 5.4 The Contractor shall comply with the Construction (Design and Management) Regulations 2015 and the site.
- 6. VARIATIONS**
- 6.1 If the Contractor wishes to vary the Works the Contractor shall notify the Sub-Contractor in writing.
- 6.2 The Sub-Contractor shall agree or disagree to reasonable variations notified by the Contractor.
- 6.3 The Sub-Contractor shall agree or disagree to a reasonable price determined by the Contractor for the variations and the price shall reflect any losses or expenses incurred by the Contractor due to the variations.
- 7. LIABILITY, INDEMNITY AND LIMITATION OF REMEDY**
- 7.1 The Sub-Contractor shall indemnify the Contractor in respect of any liability, damages, loss, claims or proceedings in respect of the Works or death of any person where the same:
- 7.1.1 arises out of the performance of the Works; and
- 7.1.2 is due to the negligence, omission or default of the Sub-Contractor or agents or any person for whom the Sub-Contractor is responsible.
- 7.2 The Sub-Contractor shall indemnify the Contractor in respect of any liability, damages, loss, claims or proceedings in respect of the Works or death of any person where such injury or damage whatsoever to any property:
- 7.2.1 arises out of the performance of the Works; and
- 7.2.2 is due to the negligence, omission or default of the Sub-Contractor or agents or any person for whom the Sub-Contractor is responsible.
- 7.3 [The total liability of the Sub-Contractor under clauses 7.1 and 7.2 shall be limited to £<<sum>>]
- 7.4 The Sub-Contractor shall maintain professional indemnity and public liability insurance cover for the Works for the full or any part of the period of the insurance cover to the satisfaction of the Contractor.
- 8. EXTENSIONS OF TIME**
- 8.1 If completion of the Works is delayed by reasons beyond the control of the Sub-Contractor, the Contractor shall be notified in writing and the Contractor shall give an appropriate extension of time.

## 9. DAMAGES FOR LATE COMPLETION

- 9.1 If the Works are not completed by the later timescale as set out in clause 3.2 or to such later timescale as may be agreed in writing under clause 8.1, the Sub-Contractor shall pay or allow to be paid by the Contractor such amount as is sufficient to compensate the Contractor for the Contractor's loss or expense incurred by the Contractor.

## 10. PAYMENTS TO THE SUB-CONTRACTOR

- 10.1 The price for the Works shall be payable in instalments, the first instalment being payable under clause 6.3.
- 10.2 Interim payments shall be made on a monthly basis with a final payment on completion in accordance with the provisions below.
- 10.3 After the end of each month following commencement of the Works and thereafter at one month intervals, the Contractor shall submit an invoice to the Sub-Contractor for the work that has been carried out.
- 10.4 The amount invoiced shall be for the work that has been carried out. The invoice must state the amount of work done and the goods and materials used.
- 10.5 The Sub-Contractor shall submit invoices that in aggregate account for the total price of the Works by the date 4 months after practical completion of the Works and 1 month after any defects notified to the Sub-Contractor under clause 11.2 have been rectified (the "Final Payment Date").
- 10.6 After the Final Payment Date, the Contractor shall submit an invoice to the Sub-Contractor for the balance of the price. The invoice must contain a certificate stating that the work under clause 3.4 has been rectified.
- 10.7 The Contractor shall submit the invoice within 14 days of receipt of the invoice from the Sub-Contractor.
- 10.8 All payments made shall be exclusive of any Value Added Tax charged by the Sub-Contractor.
- 10.9 If the Contractor has not paid the Sub-Contractor by the due date the Contractor shall pay the Sub-Contractor interest at the rate of 5% per annum above the base rate of Barclays Bank plc from the due date until the payment is made.
- 10.10 No further payment shall be made above the consideration for the Works over and above the consideration for the Works under clause 6.3 and without limitation no payment will be made in respect of any goods, materials or other expenses incurred by the Contractor in carrying out the Works.

## 11. NON-COMPETITION AND RESTRICTIONS

- 11.1 [The Sub-Contractor shall not, during the course of carrying out the Works or within the period of 12 months following the termination or expiry of this Agreement, provide services to any competitor of the Contractor [within the radius of <<insert radius>>] [The Contractor may waive this restriction entirely upon receipt of a written request from the Sub-Contractor].
- 11.2 [The Sub-Contractor shall not, during the course of carrying out the Works or within the period of 12 months following the termination or expiry of this Agreement, solicit or employ any persons, agents and/or employees with which

the Sub-Contractor  
the date of termin  
Contractor has know  
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request from the S  
any prior agreemen  
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the <<insert time period>> prior to  
other clients of which the Sub-  
may waive this restriction entirely  
or basis upon receipt of a written  
er may be given if it shall violate  
or and the client in question as to

## 12. DATA PROTECTION [,] [S PROCESSING]

12.1 In this Clause 12:

12.1.1 "Data Protection Le  
to time in the United Kingd  
not limited to, the UK G  
Protection Regulation ((EU  
Wales, Scotland, and Nort  
(Withdrawal) Act 2018);  
thereunder); and the Priv  
amended;

12.1.2 "personal data" m  
Legislation;

12.1.3 "First Party" means  
Agreement; and

12.1.4 "Other Party" mean  
is not the First Party.

12.2 All personal data that a Fir  
that First Party in accordance with  
under the Data Protection Legislat

12.3 For complete details of a F  
personal data including, but not lin  
legal basis or bases for using it, de  
how to exercise them, and person  
refer to the Privacy Notice of that F

12.4 For the purpose of Clause  
Other Party on request to that Firs

12.5 [All personal data to be s  
Agreement shall be shared in ac  
entered into on <<insert date>> pu

12.6 <sup>1</sup>[All personal data to be pr  
this Agreement shall be process  
Agreement entered into on <<inse

## 13. CONFIDENTIALITY

13.1 Except as provided  
party, each party sh

<sup>1</sup> See the notes about Clause 12 in the inf

cable legislation in force from time  
tection and privacy including, but  
law version of the General Data  
s part of the law of England and  
section 3 of the European Union  
ct 2018 (and regulations made  
munications Regulations 2003 as

defined in the Data Protection

e, either one of the parties to this

nce, whichever one of the parties

collected, processed, and held by  
rotection Legislation and the rights

rocessing, storage, and retention of  
or which personal data is used, the  
s (and any third parties') rights and  
pplicable), the Other Party should

of a First Party is available to the

with the Other Party under this  
s of the Data Sharing Agreement  
t.]

on behalf of the Other Party under  
he terms of the Data Processing  
s Agreement.]

authorised in writing by the other  
ne continuance of this Agreement

ent.

- and [for <<insert period>> termination:
- 13.1.1 keep confidential the Confidential Information;
- 13.1.2 not disclose the Confidential Information to any other party;
- 13.1.3 not use any Confidential Information for any purpose other than as contemplated by the terms of this Agreement;
- 13.1.4 not make any Confidential Information available in any way or part with possession of any Confidential Information by any officers, employees, agents, sub-contractors or subcontractors, which, if done by that party, would be a breach of any of the Confidential Clauses 13.1.1 to 13.1.4 above.
- 13.2 Either party may:
- 13.2.1 disclose any Confidential Information to:
- a) any subcontractor of that party;
  - b) any government authority or regulatory body; or
  - c) any other body of that party or of any of the subcontractors or bodies;
- provided that, for the purposes contemplated by this Agreement (including the Works), or as a result of the carrying out of the Works, in each case that party shall first inform the other party in writing that the Confidential Information to be disclosed is to any such body (other than an employee or officer of any such body) and that the party a written confidentiality undertaking should be obtained from such body. Such undertaking should be as to the Confidential Information of this clause 13, to keep the Confidential Information confidential and to use it only for the purposes contemplated by this Agreement.
- 13.2.2 use any Confidential Information for any purpose, or disclose it to any other person, if it is at the date of this Agreement, or has become, or becomes, public knowledge through no fault of that party, or disclosure, that party must not disclose any Confidential Information which is not public knowledge.
- 13.3 The provisions of this clause 13 shall continue in force in accordance with the terms of this Agreement for any reason.
- 14. FORCE MAJEURE**
- 14.1 No party to this Agreement shall be in breach of its obligations when failure to perform its obligations results from any cause that is beyond the reasonable control of that party. Such causes include, but are not limited to: power failure, industrial action, civil unrest, fire, flood, acts of terrorism, acts of war, governmental action or any other cause which is beyond the control of the party.
- 14.2 [In the event that a party cannot perform its obligations hereunder as a result of a continuous period of <<insert period>>, the other party shall terminate this Agreement by written notice at the event of such termination, the

parties shall agree to complete up to the date of any prior contractual obligations of this Agreement.].

reasonable payment for all Works completed up to the date of such payment shall take into account any prior contractual obligations into in reliance on the performance

## 15. TERMINATION

15.1 This Agreement may be terminated with immediate effect by either party (the “Terminating Party”) if:

the other party (the “Terminating Party”) fails to give notice to the other party (the “Other Party”)

15.1.1 the Other Party has failed to comply with the terms and obligations of this Agreement, and, if capable of remedy, is not taking such steps as are required by notice of such failure from the Terminating Party;

the Other Party has failed to comply with the terms and obligations of this Agreement, and, if capable of remedy, is not taking such steps as are required by notice of such failure from the Terminating Party;

15.1.2 the Other Party has failed to comply with the terms and obligations of this Agreement, and, if capable of remedy, is not taking such steps as are required by notice of such failure from the Terminating Party;

the Other Party has failed to comply with the terms and obligations of this Agreement, and, if capable of remedy, is not taking such steps as are required by notice of such failure from the Terminating Party;

15.2 If the Main Contract is terminated, then this Agreement shall also be terminated.

15.2.1 this Agreement shall be terminated automatically;

the Other Party shall be terminated automatically;

15.2.2 the Contractor shall be notified of the termination;

the Contractor shall be notified of the termination;

15.2.3 the Sub-Contractor shall be notified of the termination;

the Sub-Contractor shall be notified of the termination.

15.3 [This Agreement may be terminated by either party at any time and without giving any reason for termination to the other party.]

the other party at any time and without giving 28 days’ notice in writing to the other party.

15.4 The termination of this Agreement shall not affect any rights or obligations which have already accrued to either party under this Agreement.

the termination of this Agreement shall not affect any rights, obligations or liabilities of either party under this Agreement.

## 16. DISPUTE RESOLUTION

16.1 If a dispute arises between the parties which cannot be resolved by negotiations between the parties, then the dispute shall be referred to the appointed representatives:

the dispute which cannot be resolved by negotiations between the parties shall be referred to the appointed representatives:

16.1.1 the parties shall refer the dispute to the appointed representatives for their consideration to a request made by the parties;

the parties shall refer the dispute to the appointed representatives for their consideration to a request made by the parties;

16.1.2 either party may refer the dispute to the appointed representatives for their consideration to a request made by the parties;

either party may refer the dispute to the appointed representatives for their consideration to a request made by the parties;

16.1.3 either party may refer the dispute to the appointed representatives for their consideration to a request made by the parties;

either party may refer the dispute to the appointed representatives for their consideration to a request made by the parties;

## 17. MISCELLANEOUS

17.1 This Agreement constitutes the entire agreement between the Sub-Contractor and the Contractor and shall supersede any prior agreement or understanding between the parties.

the entire agreement between the Sub-Contractor and the Contractor and shall supersede any prior agreement or understanding between the parties.



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cancelled as from the date of termination of the contract and no claim against the other party shall be allowed.

parties acknowledge they have no claim against the other party in respect of any previous agreement.

17.2 Any notice to be sent by either party shall be sent by prepaid recorded delivery or by email to the address shown in this Agreement or to such other address as the party shall have notified to the other in writing taking effect from the date of notification. Notice shall be deemed received 48 hours after the date of sending.

parties on the other shall be sent by prepaid recorded delivery or by email to the address shown in this Agreement or to such other address as the party shall have notified to the other in writing taking effect from the date of notification. Notice shall be deemed received 48 hours after the date of sending.

17.3 The headings in this Agreement are for reference purposes only and shall not be incorporated into the contract.

reference purposes only and shall not be incorporated into the contract.

17.4 In this agreement, unless the context otherwise requires, words in the singular shall include the plural and vice versa, and a reference to a person shall include a reference to a body corporate and to an unincorporated association.

otherwise requires, words in the singular shall include the plural and vice versa, and a reference to a person shall include a reference to a body corporate and to an unincorporated association.

17.5 The parties agree that the sole right arising solely by virtue of this Agreement to enforce any term of the Agreement shall be reserved to the party to this Agreement has no right to enforce any term of the Agreement (Rights of Third Parties) Act 1999.

a party to this Agreement has no right to enforce any term of the Agreement (Rights of Third Parties) Act 1999.

## 18. GOVERNING LAW AND JURISDICTION

18.1 This Agreement shall be governed by the law of England and Wales and any dispute concerning its interpretation or performance shall be adjudicated in that jurisdiction.

laws of England and Wales and any dispute concerning its interpretation or performance shall be adjudicated in that jurisdiction.

**IN WITNESS WHEREOF** this Agreement has been signed and sealed before written

executed the day and year first

SIGNED by

<<Name and Title of person signing for and on behalf of <<Contractor's name>>>

In the presence of  
<<Name & Address of Witness>>

SIGNED by

<<Name and Title of person signing for and on behalf of <<Sub-Contractor's name>>>

In the presence of  
<<Name & Address of Witness>>

S

Part 1 – Description of the Works

<<Insert detailed description of Works and any other relevant document, e.g. a tender>>

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Part 2 – List of goods and materials to be supplied by Sub-Contractor

<<Insert list>>

M

Part 3 – List of goods and materials to be supplied by Contractor

<<Insert list>>

P

Part 4 – List of tools, plant and machinery to be supplied and protective clothing to be supplied by the Contractor

<<Insert list>>

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