

S

A

M

CONSTRUCTION AGREEMENT
(FIXED SUM, INSTALMENT PAID BY CONTRACTOR, NO

P

L

E

THIS AGREEMENT is made the
BETWEEN:

- (1) <<Name of Contractor>> a <<Country of Registration>> under number <<Company Registration Number>> whose registered office is at <<Registered office>> (the
- (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 such;

'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 the works <<Main Contract Works>>;

'Works' means the works <<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 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 against the other without the other's prior written consent.
- 2.7 The grant and acceptance of this Agreement do not create any mutual obligations between the parties.

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
carry out the Works
and workmanlike m
- 4.2 The Sub-Contractor
the Contractor in br
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 Cor
Contractor.
- 4.7 The Sub-Contractor
Works.
- 4.8 The Sub-Contractor
Contractor relating t

skilled 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
ed to complete the Works except
e Schedule
satisfactory quality.

ls, plant and machinery, safety
to carry out the Works except for
edule.

site all wasted created during the

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 ensure that all materials (if any) listed in Part 3 of the Schedule and all materials used shall be of a satisfactory quality.
- 5.3 The Contractor shall ensure that all plant and machinery, safety equipment and protective clothing used shall be of the Schedule.
- 5.4 The Contractor shall ensure that all construction (Design and Management) complies with the Regulations 2015 and the site.
- 6. LIABILITY, INDEMNITY AND LIMITATION OF REMEDY**
- 6.1 The Sub-Contractor shall indemnify the Contractor in respect of all proceedings in respect of the same:
- 6.1.1 arises out of the performance of the Works; and
- 6.1.2 is due to the negligence, omission or default of the Sub-Contractor or any person for whom the Sub-Contractor is responsible.
- 6.2 The Sub-Contractor shall indemnify the Contractor in respect of all proceedings in respect of the same where such injury or damage is caused by the carrying out of the Works:
- 6.2.1 arises out of the performance of the Works; and
- 6.2.2 is due to the negligence, omission or default of the Sub-Contractor or any person for whom the Sub-Contractor is responsible.
- 6.3 [The total liability of the Sub-Contractor under clauses 6.1 and 6.2 shall be limited to £<<sum>>]
- 6.4 The Sub-Contractor shall maintain liability insurance cover for all or any part of the Works and shall be required to provide evidence of the insurance cover to the Contractor.
- 7. PAYMENTS TO THE SUB-CONTRACTOR**
- 7.1 The price for the Works shall be payable on a monthly basis with a final payment on completion in accordance with the provisions below.
- 7.2 Interim payments shall be made on a monthly basis with a final payment on completion in accordance with the provisions below.
- 7.3 After the end of the month of commencement of the Works and thereafter at one month intervals the Contractor shall submit a payment notice to the Sub-Contractor.
- 7.4 The payment notices shall state the sum to be due to the Sub-Contractor in respect of the relevant month; and shall set out the basis on which the sum has been calculated.
- 7.5 The Contractor shall be required to pay the sum stated in the payment notice within 14 days of submitting the payment notice to the Sub-Contractor.

- 7.6 If the Contractor has not received payment from the Client within 5 days after the month end, the Contractor may submit a payment application to the Client.
- 7.7 The payment application shall state the sum considered to be due in respect of the work carried out in the month; and shall set out the basis on which the sum has been calculated.
- 7.8 The Contractor shall submit the payment application within 14 days of receipt of the payment application by the Client.
- 7.9 All payments made by the Client to the Contractor shall be expressed exclusive of any Value Added Tax chargeable on the payment.
- 7.10 If the Contractor has not received payment from the Client by the date of the payment application, the Contractor shall pay the Sub-Contractor interest on the amount due at the rate of 5% per annum above the base rate of the Bank of England from the due date until the payment is received.
- 7.11 No further payment shall be made by the Contractor for the Works over and above the consideration payable under this clause and without limitation no payment will be made by the Contractor in respect of any goods, materials or services supplied by the Sub-Contractor in carrying out the Works.

8. NON-COMPETITION AND RESTRICTIONS

- 8.1 [The Sub-Contractor shall not, during the term of the Agreement, provide any goods, materials or services to any person who is a competitor of the Contractor within a radius of <<insert radius>> miles of the Works. The Contractor may waive this restriction entirely or on a per-client basis upon receipt of a written request from the Sub-Contractor.]
- 8.2 [The Sub-Contractor shall not, during the term of the Agreement, solicit or induce any person who is a client of the Contractor to terminate the contract with the Contractor or to enter into a contract with the Sub-Contractor. The Contractor may waive this restriction entirely or on a per-client basis upon receipt of a written request from the Sub-Contractor. The Contractor may also be given if it shall violate the restriction and the client in question as to the sharing of the client's business.]

9. DATA PROTECTION [.] [SOLICITATION AND BUSINESS DEVELOPMENT] [PROCESSING]

- 9.1 In this Clause 9:
- 9.1.1 "Data Protection Legislation" means all applicable legislation in force from time to time, including but not limited to, the UK GDPR (the retained EU law version of the General Data Protection Regulation ((EU) 2016/679), and the Data Protection Act 2018 (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003.

S

A

M

P

L

E

9.1.2 “personal data” means information as defined in the Data Protection Legislation;

9.1.3 “First Party” means, in any instance, either one of the parties to this Agreement;

9.1.4 “Other Party” means, in any instance, whichever one of the parties is not the First Party;

9.2 All personal data that is collected, processed, and held by that First Party shall be subject to the provisions of Data Protection Legislation and the Privacy Notice of that First Party.

9.3 For complete details of the collection, processing, storage, and retention of personal data, which are not limited to, the purpose(s) for which personal data is collected, or bases for using it, details of the Other Party’s (and its subsidiaries’) policies and how to exercise them, and personal data shared with third parties, the Other Party should refer to the Privacy Notice of that First Party.

9.4 For the purpose of this Agreement, the Privacy Notice of a First Party is available to the Other Party on request.

9.5 [All personal data to be shared with the Other Party under this Agreement shall be subject to the terms of the Data Sharing Agreement entered into between the parties pursuant to this Agreement.]

9.6 ¹[All personal data to be shared with the Other Party under this Agreement shall be subject to the terms of the Data Processing Agreement entered into on <<insert date>> pursuant to this Agreement.]

10. CONFIDENTIALITY

10.1 Except as provided otherwise in writing by the other party, each party shall maintain the confidentiality of the information and [for <<insert period>>] after the termination or expiration of this Agreement:

10.1.1 keep confidential the information;

10.1.2 not disclose the information to any other party;

10.1.3 not use any information for any purpose other than as contemplated in this Agreement;

10.1.4 not make any disclosure of information in any way or part with possession of the information;

10.1.5 ensure that the information is not disclosed to any officers, employees, agents, subcontractors or third parties, which, if done by that party, would constitute a breach of any of the provisions of Clauses 10.1.1 to 10.1.4 above.

10.2 Either party may:

10.2.1 disclose any information to:

a) any subsidiary or affiliate of that party;

b) any governmental authority or regulatory body; or

c) any other person, if that party or of any of the parties or bodies;

¹ See the notes about Clause 9 in the information pack.

S

A

M

P

for the purposes contemplated by limited to, the carrying out of the such case that party shall first inform n that the Confidential Information e disclosure is to any such body (yee or officer of any such body) party a written confidentiality n. Such undertaking should be as of this clause 10, to keep the and to use it only for the purposes

any purpose, or disclose it to any
it is at the date of this Agreement,
nes, public knowledge through no
e or disclosure, that party must not
al Information which is not public

continue in force in accordance with
of this Agreement for any reason.

any failure or delay in performing any results from any cause that is beyond the control of the party. Such causes include, but are not limited to, natural disasters, government order, provider failure, industrial action, civil unrest, acts of terrorism, acts of war, and any other cause that is beyond the control of the party.

It cannot perform their obligations for a continuous period of <<insert>> days, the Parties shall have the right to terminate this Agreement by written notice. In the event of such termination, the Contractor shall make a reasonable payment for all Works performed. Such payment shall take into account the value of the Works performed in reliance on the performance of the Contractor.

er party (the “Terminating Party”)
ice to the other party (the “Other

ply with the terms and obligations
e, if capable of remedy, is not
en notice of such failure from the

y or liquidation either voluntary or
poses of bona fide corporate
a receiver is appointed in respect

F

- 12.2.2 the Contractor shall notify the Sub-Contractor of the termination;
- 12.2.3 the Sub-Contractor shall leave the site.
- 12.3 [This Agreement may be terminated by either party at any time and without giving any reason for termination, by giving 28 days' notice in writing to the other party.]
- 12.4 The termination of this Agreement shall be without prejudice to any rights, claims or damages which have already accrued to either party under this Agreement.
- 13. DISPUTE RESOLUTION**
- 13.1 If a dispute arises between the parties which cannot be resolved by negotiations between appointed representatives:
- 13.1.1 the parties shall agree to refer the dispute to a request made by the other party to the appointed representatives;
- 13.1.2 either party may refer the dispute to adjudication in accordance with the Scheme for Construction Adjudication (England and Wales) Regulations 1998;
- 13.1.3 either party may refer the dispute to arbitration in accordance with the Arbitration Act 1996. If the parties are unable to agree on the arbitration, either party may, upon giving written notice to the other, apply to the President or Deputy President of the Chartered Institute of Arbitrators for the appointment of an arbitrator and for any decision on the rules that may apply.
- 14. MISCELLANEOUS**
- 14.1 This Agreement constitutes the entire agreement between the Sub-Contractor and the Contractor and shall supersede any prior agreement between the parties. All such prior agreements are hereby cancelled as from the date of this Agreement and such prior agreements are hereby acknowledged by the parties to have no effect.
- 14.2 Any notice to be sent by either party to the other shall be sent by prepaid recorded delivery 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 such notification. Clause or Agreement, and shall be deemed received 48 hours after the date of such notification.
- 14.3 The headings in this Agreement are for reference purposes only and shall not be incorporated into the Agreement.
- 14.4 In this agreement, unless otherwise requires, words in the singular include the plural and vice versa, and a reference to a gender include any reference to a body corporate and to an unincorporated association.
- 14.5 The parties agree that the Contractor shall have no right arising solely by virtue of this Agreement to enforce any term of this Agreement.
- 15. GOVERNING LAW AND JURISDICTION**
- 15.1 This Agreement shall be governed by the laws of England and Wales and any dispute shall be referred to the courts of England and Wales and any

dispute concerning
jurisdiction.

n shall be adjudicated in that

IN WITNESS WHEREOF this Ag
before written

executed the day and year first

SIGNED by

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

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

SIGNED by

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

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

S

A

M

P

L

E

S

Part 1 – Description of the Works

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

A

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>>

L

E