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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 <<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 meanings otherwise requires the following

**'Confidential Information'** means any information, in whatever form, that 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 the works <<Main contract works>>;

**'Works'** means the works set out 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 workers engaged by it 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 <<Date>>  
instruction to comm

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

3.2 The Sub-Contractor  
<<Number>> week  
timescale:

ours to complete the Works [within  
nt] **OR** [according to the following

<<Insert timetable,  
ates>>.

3.3 The Contractor sha  
Works are practical

tor in writing of the date when the

3.4 The Sub-Contractor  
of time rectify any d  
within 3 months from

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

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

4.2 The Sub-Contractor  
the Contractor in b  
brought to the Sub-

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

4.3 The Sub-Contractor

4.3.1 the goods an

d in Part 2 of the Schedule; and

4.3.2 all other goo  
for those (if a

ed to complete the Works except  
e Schedule

and all goods and m

satisfactory quality.

4.4 The Sub-Contractor  
equipment and pro  
those items (if any)

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

4.5 The Sub-Contractor  
carrying out of the V

site all wasted created during the

4.6 The Sub-Contractor  
Works are done, an  
that due account is  
activities of the Con  
Contractor.

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

4.7 The Sub-Contractor  
Works.

ws and regulations relating to the

4.8 The Sub-Contractor  
Contractor relating t

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 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 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**
- 7.1 The Sub-Contractor shall indemnify the Contractor in respect of proceedings in respect of 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 proceedings in respect of the same where such injury or damage is caused by the carrying out of the Works:
- 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 full term of the Works or all or any part of the term of the Works and shall be able to provide evidence of the insurance cover to the Contractor on request.
- 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 the 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. The invoice must state the amount of work done and the goods and materials used.
- 10.4 The amount invoiced shall be the sum payable under clause 6.3.
- 10.5 The Sub-Contractor shall submit an invoice for the amount due more than <<e.g. 90 days>> after completion of the Works or 4 months after practical completion or 4 months after any defects notified to the Sub-Contractor under clause 6.3 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 amount due of the price. The invoice must contain a certificate of completion of the Works to the Sub-Contractor under clause 6.3.
- 10.7 The Contractor shall submit the invoice in the invoices within 14 days of receipt of the invoice.
- 10.8 All payments made shall be exclusive of any Value Added Tax charged.
- 10.9 If the Contractor has not paid the amount due by the due date the Contractor shall pay the Sub-Contractor interest on the amount due 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 to the Contractor for the Works over and above the consideration in 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 SOLICITATION**

- 11.1 [The Sub-Contractor shall not, during the course of carrying out the Works or within the period of time specified in the Agreement, provide any goods, materials or services to any competitor of the Contractor [within <<insert radius>> miles of the Works]. [The Contractor may waive this restriction entirely or partially 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 time specified in the Agreement, solicit any goods, materials or services from any clients and/or employees with which the Contractor has a business relationship.]

the Sub-Contractor  
the date of termin  
Contractor has kno  
or on a per-client  
request from the S  
any prior agreeme  
the sharing of the cl

the <<insert time period>> prior to  
other clients of which the Sub-  
may waive this restriction entirely  
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  
longer directly  
implementing  
amended from  
legislation w

1) unless and until GDPR is no  
UK, GDPR and any national  
and secondary legislation (as  
the UK and subsequently 2) any

12.1.2 "GDPR" means  
Regulation;

16/679 General Data Protection

12.1.3 "personal data"  
Legislation;

as defined in the Data Protection

12.1.4 "First Party"  
this Agreement

instance, either one of the parties to

12.1.5 "Other Party"  
parties is no

for instance, whichever one of the

12.2 All personal data that  
held by that First Party  
Legislation and the  
Party.

will be collected, processed, and  
the provisions of Data Protection  
Protection Legislation of the Other

12.3 For complete details  
retention of personal data  
which personal data  
Other Party's (and  
personal data shared  
Privacy Notice of the

collection, processing, storage, and  
not limited to, the purpose(s) for  
or bases for using it, details of the  
s and how to exercise them, and  
the Other Party should refer to the

12.4 For the purpose of  
to the Other Party of

Notice of a First Party is available  
Party.

12.5 [All personal data to  
Agreement shall be  
Agreement entered

Party with the Other Party under this  
with the terms of the Data Sharing  
pursuant to this Agreement.]

12.6 <sup>1</sup>[All personal data  
Party under this Ag  
of the Data Proces  
to this Agreement.]

First Party on behalf of the Other  
used in accordance with the terms  
into on <<insert date>> pursuant

## 13. CONFIDENTIALITY

13.1 Except as provided  
party, each party shall  
and [for <<insert pe

authorised in writing by the other  
the continuance of this Agreement  
termination:

13.1.1 keep confide

information;

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

ent.

- 13.1.2 not disclose Confidential Information to any other party;
- 13.1.3 not use any Confidential Information for any purpose other than as contemplated in the Terms of this Agreement;
- 13.1.4 not make any Confidential Information available in any way or part with possession of Confidential Information;
- 13.1.5 ensure that any disclosure by its officers, employees, agents, subcontractors or any other person, which, if done by that party, would constitute a breach of any of the 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;
  - c) any other person of that party or of any of the subcontractors or bodies;
- provided that, for the purposes contemplated by this clause, Confidential Information is limited to, the carrying out of the Works (including any such case that party shall first inform the other party that the Confidential Information to be disclosed is to any such body (including any employee or officer of any such body) and that the party a written confidentiality undertaking should be given. Such undertaking should be as to the Confidential Information of this clause 13, to keep the Confidential Information and to use it only for the purposes for which the Confidential Information is disclosed.
- 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, Confidential Information, or, in any case, 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 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 liable for any failure or delay in performing its obligations under this Agreement if such failure or delay 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 in question.
- 14.2 [In the event that a party cannot perform their obligations hereunder as a result of a continuous period of <<insert period>>, the other party shall terminate this Agreement by written notice at the expiration of such period. In the event of such termination, the parties shall agree on a reasonable payment for all Works completed up to the date of termination, which payment shall take into account any prior contractual obligations and be in reliance on the performance

of this Agreement.]

## 15. TERMINATION

15.1 This Agreement may be terminated by either party (the "Terminating Party") with immediate effect by giving written notice to the other party (the "Other Party") if:

15.1.1 the Other Party has failed to comply with the terms and obligations of this Agreement, and the Contractor, if capable of remedy, is not able to remedy the failure within 14 days of written notice of such failure from the Terminating Party;

15.1.2 the Other Party has entered into or liquidation either voluntary or compulsory or has been placed into administration or has appointed a receiver or a receiver is appointed in respect of the whole or substantially the whole of the assets of the Other Party;

15.2 If the Main Contract is terminated:

15.2.1 this Agreement shall terminate automatically;

15.2.2 the Contractor shall notify the Sub-Contractor of the termination;

15.2.3 the Sub-Contractor shall leave the site.

15.3 [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.]

15.4 The termination of this Agreement shall be without prejudice to any rights, claims or damages which may be claimed by 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, the dispute shall be referred to the appointed representatives:

16.1.1 the parties shall attempt to reach a settlement by negotiation to a request made by the other party to do so;

16.1.2 either party may refer the dispute to the adjudication in accordance with the Scheme for Construction Adjudication (England and Wales) Regulations 2010;

16.1.3 either party may refer the dispute to arbitration in accordance with the Arbitration Act 1996 as amended. If the parties are unable to agree on the arbitration, either party may, upon giving written notice to the other party, 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.

## 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 and such prior agreements are hereby cancelled as from the date of this Agreement. The parties acknowledge they have no claim against the other party in respect of any previous agreement.



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

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

17.4 In this agreement, unless the context otherwise requires, words in the singular include the plural and vice versa, and a reference to a gender includes any other gender, and a reference to a body corporate includes a reference to an unincorporated body.

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

## 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.

**IN WITNESS WHEREOF** this Agreement has been executed before written

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>>

ties on the other shall be sent by post to the address shown in this Agreement or to such other address as the Contractor shall have notified to the other in writing taking effect from the date of such notification. Notices shall be deemed received 48 hours after the date of posting.

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

executed the day and year first

S

Part 1 – Description of the Works

<<Insert detailed description of Works and any other relevant 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>>

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