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RACTOR AGREEMENT
ED BY CONTRACTOR, WITH

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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, data or other material, in any form, in whatever medium, in writing or otherwise, which is disclosed to or received by the Contractor pursuant to or in connection with this Agreement, whether 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 <<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 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 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 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 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:

urs 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
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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
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ed to complete the Works except
e Schedule

and all goods and m

satisfactory quality.

4.4 The Sub-Contractor
equipment and pro
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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 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, equipment 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 INSURANCE**
- 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 by the Contractor 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 Employer such amount as is sufficient to compensate the Contractor for the loss or expense incurred by the Contractor.

10. **PAYMENTS TO THE SUB-CONTRACTOR**

- 10.1 The price for the Works shall be payable in a lump sum 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 Sub-Contractor shall submit a payment notice to the Contractor.
- 10.4 The payment notice shall state:
10.4.1 state the sum payable in respect of the relevant month;
10.4.2 set out the basis on which the sum has been calculated.
- 10.5 The Contractor shall pay the sum stated in the payment notice within 14 days of submitting the payment notice to the Sub-Contractor.
- 10.6 If the Contractor has not paid the sum stated in the payment notice to the Sub-Contractor within 14 days after the month following application to the Contractor, the Sub-Contractor may submit a payment application to the Contractor.
- 10.7 The payment application shall state:
10.7.1 state the sum payable in respect of the work carried out in the relevant month;
10.7.2 set out the basis on which the sum has been calculated.
- 10.8 The Contractor shall pay the sum stated in the payment application within 14 days of receipt of the payment application.
- 10.9 Neither party shall submit payment notices or payment applications that in aggregate account for more than 5% of the price until the date 4 months after practical completion or (if later) one month after any defects notified to the Contractor under clause 3.4 have been rectified (the "Final Payment").
- 10.10 After the Final Payment, the Sub-Contractor shall submit a payment notice to the Contractor for 5% of the price.
- 10.11 If the Contractor has not paid the payment notice to the Sub-Contractor within 5 days after the date of submission of the payment application, the Sub-Contractor may submit a payment application for the remaining <<e.g. 5>>% of the price. The payment application shall state that all defects notified to the Sub-Contractor under clause 3.4 have been rectified.
- 10.12 The Contractor shall pay the sum stated in the payment notice or, as the case may be, payment application, within 14 days of submitting the payment notice or receiving the payment application.
- 10.13 All payments made by the Contractor shall be expressed exclusive of any Value Added Tax charged by the Contractor.

- 10.14 If the Contractor has not received payment from the Client by the due date, the Contractor shall pay the Sub-Contractor interest on the amount due at the rate of 10% per annum above the base rate of the Bank of England from the due date until the payment is received.
- 10.15 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.
11. **NON-COMPETITION AND RESTRAINTS**
- 11.1 [The Sub-Contractor shall not, during the term of this Agreement, provide any services to any competitor of the Contractor [within the <<insert radius>>] of the Contractor's business. [The Contractor may waive this restriction entirely or on a per-client basis upon receipt of a written request from the Sub-Contractor.]
- 11.2 [The Sub-Contractor shall not, during the term of this Agreement, solicit or induce any clients or employees with which the Contractor has known or on a per-client basis prior to the date of termination of this Agreement to terminate their relationship with the Contractor or to share confidential information 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.]
12. **DATA PROTECTION [.] [SOLICITING AND PROCESSING]**
- 12.1 In this Clause 12:
- 12.1.1 "Data Protection Legislation" means the Data Protection Act 1998 (as amended) and any subsequent legislation in the UK, GDPR and any national and secondary legislation (as amended) in the UK and subsequently 2) any legislation in the EU;
- 12.1.2 "GDPR" means the General Data Protection Regulation (EU) 2016/679 General Data Protection Regulation;
- 12.1.3 "personal data" means personal data as defined in the Data Protection Legislation;
- 12.1.4 "First Party" means the party to this Agreement;
- 12.1.5 "Other Party" means any party to this Agreement other than the First Party.
- 12.2 All personal data that is collected, processed, and held by that First Party shall be processed in accordance with the provisions of Data Protection Legislation and the Data Protection Legislation of the Other Party.
- 12.3 For complete details of the collection, processing, storage, and retention of personal data, the parties shall refer to the privacy policy or policies which personal data is collected, processed, stored, and retained for and how to exercise them, and the Other Party's (and

- personal data shared with the Other Party should refer to the Privacy Notice of the Other Party.
- 12.4 For the purpose of the Data Processing, the Other Party should refer to the Privacy Notice of a First Party is available to the Other Party.
- 12.5 [All personal data to be processed by the Other Party with the Other Party under this Agreement shall be processed in accordance with the terms of the Data Sharing Agreement entered into on <<insert date>> pursuant to this Agreement.]
- 12.6 ¹[All personal data to be processed by the First Party on behalf of the Other Party under this Agreement shall be processed in accordance with the terms of the Data Processing Agreement entered into on <<insert date>> pursuant to this Agreement.]
13. **CONFIDENTIALITY**
- 13.1 Except as provided in this clause, each party shall keep confidential and [for <<insert period>>] the Confidential Information of the other party authorised in writing by the other party for the continuance of this Agreement and its 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 in this Agreement;
- 13.1.4 not make any Confidential Information available in any way or part with possession of the Confidential Information;
- 13.1.5 ensure that the Confidential Information of its officers, employees, agents, subcontractors, consultants, and contractors does not constitute a breach of any of the Confidential Information 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 the disclosure is for the purposes contemplated by this Agreement (including for the limited to, the carrying out of the Confidential Information in such case that party shall first inform the other party that the Confidential Information is confidential and that the disclosure is to any such body (including any employee or officer of any such body) and that the other party a written confidentiality undertaking. Such undertaking should be as follows: [insert text 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, or at any time, if it is at the date of this Agreement, Confidential Information, or public knowledge through no fault of that party or disclosure, that party must not

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

- disclose any Information which is not public knowledge.
- 13.3 The provisions of this Agreement shall continue in force in accordance with their terms, notwithstanding the termination 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 their obligations when such failure or delay results from any cause that is beyond the reasonable control of the party. Such causes include, but are not limited to: power failure, strike, riot, provider failure, industrial action, civil unrest, fire, flood, epidemic, pestilence, acts of terrorism, acts of war, or any other event 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 may terminate this Agreement by written notice at the discretion of the terminating party. In the event of such termination, the parties shall agree on a reasonable payment for all Works completed up to the date of termination. Such payment shall take into account any prior contractual obligations and the extent of the party's 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 to the other party (the "Other Party") if:
- 15.1.1 the Other Party fails to comply with the terms and obligations of this Agreement and the failure is not remedied within a reasonable time after notice of such failure from the Terminating Party;
- 15.1.2 the Other Party enters into insolvency or liquidation either voluntary or compulsory or the company is dissolved or a receiver is appointed in respect of the whole or substantially the whole of the company's assets;
- 15.2 If the Main Contractor terminates this Agreement automatically;
- 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 obligations of the parties under this Agreement.
16. **DISPUTE RESOLUTION**
- 16.1 If a dispute arises between the parties which cannot be resolved by negotiations between their appointed representatives:

16.1.1 the parties shall submit to the arbitration of the other party to the dispute any dispute arising out of or in connection with the Agreement;

16.1.2 either party may refer the dispute to the arbitration in accordance with the Arbitration Scheme for Construction Disputes (England and Wales) Regulations 1998;

16.1.3 either party may refer the dispute to the arbitration in accordance with the Arbitration Scheme for Construction Disputes (England and Wales) Regulations 1998. In the event that the parties are unable to agree on the arbitrator(s), 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.

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17. MISCELLANEOUS

17.1 This Agreement constitutes the entire agreement between the parties and supersedes any prior agreement or understanding between the parties. All such prior agreements are hereby cancelled as from the date of this Agreement. No claim against the other party shall be made on the basis of any prior agreement.

17.2 Any notice to be sent by one party to 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 such notification. Notices shall be deemed received 48 hours after the date of posting or emailing.

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 body corporate includes a reference to an unincorporated association.

17.5 The parties agree that the arbitration shall be the sole method of enforcing any term of this Agreement.

17.1 This Agreement constitutes the entire agreement between the Sub-Contractor and the Contractor and supersedes any prior agreement or understanding between the parties. All such prior agreements are hereby cancelled as from the date of this Agreement. No claim against the other party shall be made on the basis of any prior agreement.

17.2 Any notice to be sent by one party to 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 such notification. Notices shall be deemed received 48 hours after the date of posting or emailing.

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17.5 The parties agree that the arbitration shall be the sole method of enforcing 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.

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IN WITNESS WHEREOF this Agreement has been signed and sealed 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>>

executed the day and year first

SIGNED by

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

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

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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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