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CONSTRUCTION AGREEMENT  
(FIXED PAYMENT ON COMPLETION, 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
- (2) <<Name of Sub-Contractor>> (“Sub-Contractor”)

**IT IS AGREED** as follows:

**1. DEFINITIONS**

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

**'Confidential Information'** means any information, whether or not confidential, that is disclosed to any party, 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

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

**'Main Contract Works'** means the <<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 the workers engaged by the Sub-Contractor shall be carried out in 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 Contractor's prior written consent.

2.6 Neither party to this Agreement shall assign the benefit of this Agreement to any third party without the written consent of the other party.

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  
ngoing 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:

hours 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

skilled 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  
of 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.

inising 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

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- 5.2 The Contractor shall provide all materials (if any) listed in Part 3 of the Schedule and all shall be of a satisfactory quality.
- 5.3 The Contractor shall provide all tools, equipment and machinery, safety equipment and protective clothing of the Schedule.
- 5.4 The Contractor shall comply with the Construction (Design and Management) Regulations 2015 and the site.

**6. LIABILITY, INDEMNITY AND**

- 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 Works; and
  - 6.1.2 is due to the statutory duty, omission or default of the Sub-Contractor or agents or any person for whom the Sub-Contractor is acting.
- 6.2 The Sub-Contractor shall indemnify the Contractor in respect of all proceedings in respect of the same where such injury or damage whatsoever to any property:
  - 6.2.1 arises out of the Works; and
  - 6.2.2 is due to the statutory duty, omission or default of the Sub-Contractor or agents or any person for whom the Sub-Contractor is acting.
- 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 to the satisfaction of the Contractor.

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

- 7.1 The price for the Works shall be made following practical completion of the Works.
- 7.2 Payment of <<e.g. 10% of the price>> shall be payable 4 months after practical completion (or later) one month after any defects notified to the Sub-Contractor under clause 3.4 have been rectified (the "Final Payment Date").
- 7.3 The remaining <<e.g. 90% of the price>> shall be payable 4 months after practical completion (or later) one month after any defects notified to the Sub-Contractor under clause 3.4 have been rectified (the "Final Payment Date").
- 7.4 After practical completion the Sub-Contractor shall submit an invoice to the Contractor for <<e.g. 10% of the price>> that has been carried out. The invoice must specify the work and materials used.
- 7.5 After the Final Payment Date the Sub-Contractor shall submit an invoice to the Contractor for the balance of the price. The invoice must contain a certificate of completion of the Works to the Sub-Contractor under clause



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Party.

9.3 For complete details of the collection, processing, storage, and retention of personal data, 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) rights and how to exercise them, and personal data sharing arrangements, the Other Party should refer to the Privacy Notice of the Other Party.

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

9.5 [All personal data transferred to 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.]

9.6 <sup>1</sup>[All personal data transferred to 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.]

10. **CONFIDENTIALITY**

10.1 Except as provided in this Agreement, each party shall keep confidential and [for <<insert period>>] the Confidential Information:

10.1.1 keep confidential the Confidential Information;

10.1.2 not disclose the Confidential Information to any other party;

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

10.1.4 not make any Confidential Information available in any way or part with possession of the Confidential Information;

10.1.5 ensure that the Confidential Information of its contractors or subcontractors does not become a breach of this Agreement.

10.2 Either party may:

10.2.1 disclose any Confidential Information to:

a) any subcontractor of that party;

b) any government authority or regulatory body; or

c) any other person of that party or of any of the subcontractors or bodies;

provided that such disclosure is for the purposes contemplated by this Agreement (including for the carrying out of the Works), or as required by law (including in such case that party shall first inform the person, to whom the Confidential Information is confidential, that the Confidential Information is confidential under clause 10.1.1 and obtain and agree to a written confidentiality undertaking from that party) and, in such undertaking, to use it only for the purposes of this clause 10, to keep the Confidential Information confidential and to use it only for the purposes of this clause 10.

<sup>1</sup> See the notes about Clause 9 in the information pack.

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for which the

10.2.2 use any Confidential Information for any purpose, or disclose it to any other person, or at any time, without the fault of that party, or disclose any Confidential Information which is not public knowledge.

10.3 The provisions of this Agreement shall continue in force in accordance with their terms, notwithstanding the termination of this Agreement for any reason.

**11. FORCE MAJEURE**

11.1 No party to this Agreement shall be liable for any failure or delay in performing their obligations which 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.

11.2 [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 terminating party shall make reasonable payment for all Works completed up to the date of termination, which payment shall take into account any prior contractual obligations into in reliance on the performance of this Agreement.]

**12. TERMINATION**

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

12.1.1 the Other Party has failed to comply with the terms and obligations of this Agreement, and the failure has not been remedied within the period specified in written notice of such failure from the Terminating Party;

12.1.2 the Other Party has become insolvent, or is in liquidation either voluntary or compulsory, or has been placed in receivership or a receiver is appointed in respect of the whole or substantially the whole of its assets;

12.2 If the Main Contract is terminated, this Agreement shall terminate automatically;

12.2.1 this Agreement shall terminate automatically;

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 to the other party.]

12.4 The termination of this Agreement shall be without prejudice to any rights, claims or obligations of the parties under this Agreement.

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13. DISPUTE RESOLUTION

13.1 If a dispute arises between the parties which cannot be resolved by negotiations between the appointed representatives:

13.1.1 the parties shall refer the dispute to mediation in accordance with the provisions of the ADR (Arbitration) Regulations 2003 in response to a request made by the other party to mediate;

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

13.1.3 either party may refer the dispute to arbitration in accordance with the Arbitration Act 1996 as amended. In the event that the parties are unable to agree on the appointment of an arbitrator(s), either party may, upon giving written notice to the other party, apply to the President or Deputy President for 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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14. MISCELLANEOUS

14.1 This Agreement shall supersede any prior agreement between the Sub-Contractor and the Contractor 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.

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14.2 Any notice to be served by either party on the other shall be sent by prepaid recorded delivery post 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 posting.

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

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

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14.5 The parties agree that the right to enforce any term of this Agreement shall be enforceable by either party to this Agreement has no liability to the other party under the (Rights of Third Parties) Act 1999.

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15. GOVERNING LAW AND JURISDICTION

15.1 This Agreement shall be governed by the laws 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 executed before written

executed the day and year first

SIGNED by

<<Name and Title of person signing

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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>>

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Part 1 – Description of the Works

<<Insert detailed description of Works to be carried out in this document, e.g. a tender>>

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

<<Insert list>>

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

<<Insert list>>

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

<<Insert list>>

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