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CONSTRUCTION SUB-CONTRACTOR AGREEMENT (FIXED PAYMENT ON COMPLETION OF WORKS, WITHOUT RETENTION)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DATED

1. <xxx >

-AND-

(2) <xxx >

THIS AGREEMENT is made the day of <xxx>

BETWEEN:

(1) <Name of Contractor>, a company registered under number <Company Registration number>> whose registered office is at <Registered office> (the “Contractor”) and

(2) <Name of Sub-Contractor> of <Address> (the “Sub-Contractor”)

IT IS AGREED as follows:

1. DEFINITION

1.1 In this Agreement except where the context otherwise requires the following terms shall have the following meanings:

'Confidential Information' means, in relation to either party, information which is disclosed to that party by the other party pursuant to or in connection with this Agreement (whether orally or in writing or any other medium, and whether or not the information is expressly stated to be confidential or marked as such);

'Main Contract' means the contract dated <Date> between;

(1) <Name of Employer> and

(2) the Contractor for the carrying out of the Main Contract Works;

'Main Contract Works' means <Brief description of main contract works>;

'Works' means the works described in Part 1 of the Schedule.

1. ENGAGEMENT OF SUB-CONTRACTOR

2.1 The Contractor hereby engages the Sub-Contractor to carry out the Works in accordance with the terms and conditions of this Agreement.

2.2 It is understood and agreed that the Sub-Contractor’s activities and those of the workers engaged by him are at all times under the Sub-Contractor’s exclusive direction and control.

2.3 The Sub-Contractor confirms that he is registered with HMRC’s Construction Industry Scheme and has provided 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 sub-contract any of the Works without the Contractor’s prior written consent.

2.6 Neither party to this Agreement may assign the benefit of this Agreement without the other’s prior written consent.

2.7 The grant and acceptance of this appointment do not create any mutual obligations on the part of the Contractor or the Sub-Contractor to offer or accept any further appointment and no continuing relationship shall hereby be created or implied.

1. TIMING

3.1 The Sub-Contractor shall commence the Works [on <Date>] OR [between <Date> and <Date>] OR [within 14 days of the Contractor’s written instruction to commence the works].

3.2 The Sub-Contractor shall use best endeavours to complete the Works [within <Number> weeks of their commencement] OR [according to the following timescale: <Insert timetable, e.g. list of works, target dates>.

3.3 The Contractor shall notify the Sub-Contractor in writing of the date when the Works are practically complete.

3.4 The Sub-Contractor shall at his own expense and within a reasonable period of time rectify any defect in the Works that is notified to him by the Contractor within 3 months from the date of practical completion of the Works.

1. SUB-CONTRACTOR’S OBLIGATIONS

4.1 The Sub-Contractor shall provide suitably skilled and experienced workers to carry out the Works and shall ensure that the Works are carried out in a good and workmanlike manner.

4.2 The Sub-Contractor shall carry out the Works in a manner that does not put the Contractor in breach of any provision of the Main Contract that has been brought to the Sub-Contractor’s attention.

4.3 The Sub-Contractor shall provide:

4.3.1 the goods and materials (if any) listed in Part 2 of the Schedule; and

4.3.2 all other goods and materials required to complete the Works except for those (if any) listed in Part 3 of the Schedule and all goods and materials shall be of a satisfactory quality.

4.4 The Sub-Contractor shall provide all tools, plant and machinery, safety equipment and protective clothing needed to carry out the Works except for those items (if any) listed in part 4 of the Schedule.

4.5 The Sub-Contractor shall remove from the site all waste created during the carrying out of the Works.

4.6 The Sub-Contractor is responsible for organising how and in what order the Works are done, and shall liaise with the Contractor’s representative to ensure that due account is taken of the impact of the timing of the Works upon the activities of the Contractor and any other sub-contractors also engaged by the Contractor.

4.7 The Sub-Contractor shall comply with all laws and regulations relating to the Works.

4.8 The Sub-Contractor shall comply with all reasonable regulations made by the Contractor relating to the site.

1. CONTRACTOR’S OBLIGATIONS

5.1 The Contractor shall ensure that the Sub-Contractor has sufficient access to the site to perform the Sub-Contractor’s obligations under this Agreement.

5.2 The Contractor shall provide the goods and materials (if any) listed in Part 3 of the Schedule and all goods and materials shall be of a satisfactory quality.

5.3 The Contractor shall provide the tools, plant and machinery, safety equipment and protective clothing (if any) listed in part 4 of the Schedule.

5.4 The Contractor shall comply with the Construction (Design and Management) Regulations 2015 as they apply to the Works and the site.

1. LIABILITY, INDEMNITY AND INSURANCE

6.1 The Sub-Contractor shall [subject to clause 6.3] be liable for, and shall indemnify the Contractor against, any costs, liability, damages, loss, claims or proceedings in respect of personal injury to or death of any person where the same:

6.1.1 arises out of or in the course of or is caused by the carrying out of the Works; and

6.1.2 is due to the negligence, breach of statutory duty, omission or default of the Sub-Contractor, his servants or agents or any person for whom the Sub-Contractor is responsible.

6.2 The Sub-Contractor shall [subject to clause 6.3] be liable for, and shall indemnify the Contractor against, any costs, liability, damages, loss, claims or proceedings in respect of any injury or damage whatsoever to any property where such injury or damage:

6.2.1 arises out of or in the course of or by reason of the performance of the Works; and

6.2.2 is due to the negligence, breach of statutory duty, omission or default of the Sub-Contractor, his servants or agents 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 £<xxx>.]

6.4 The Sub-Contractor shall maintain adequate professional indemnity and public liability insurance cover for himself and anyone authorised by him to carry out all or any part of the Works and shall when requested provide evidence of the insurance cover to the Contractor.

1. PAYMENTS TO THE SUB-CONTRACTOR

7.1 The price for the Works is fixed at £<xxx >.

7.2 Payment will be made in one lump sum following practical completion of the Works.

7.3 After practical completion the Sub-Contractor shall submit an invoice to the Contractor for the fixed price. The invoice must specify the work that has been carried out and the goods and materials used.

7.4 The Contractor shall pay the sum specified in the invoice within 14 days of receipt of the invoice.

7.5 All payments made under this Agreement are expressed exclusive of any Value Added Tax chargeable thereon.

7.6 If the Contractor has not settled an invoice 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 for the time being of Barclays Bank plc from the due date until the payment is received.

7.7 No further payment will be made to the Sub-Contractor for the Works over and above the consideration referred to in this clause and without limitation no payment will be made to the Sub-Contractor in respect of any goods, materials or other expenses incurred by the Sub-Contractor in carrying out the Works.

1. NON-COMPETITION AND NON-SOLICITATION

8.1 [The Sub-Contractor shall not, during the course of carrying out the Works or for a period of <insert time period> following the termination or expiry of this Agreement, provide like services to any competitor of the Contractor [within <insert radius> of <insert location>]. [The Contractor may waive this restriction entirely or on a per-competitor basis upon receipt of a written request from the Sub-Contractor.]]

8.2 [The Sub-Contractor shall not, during the course of carrying out the Works or for a period of <insert time period> following the termination or expiry of this Agreement, solicit any of the Contractor’s clients and/or employees with which the Sub-Contractor has had dealings during the <insert time period> prior to the date of termination or expiry or any other clients of which the Sub-Contractor has knowledge.

[The Contractor may waive this restriction entirely or on a per-client and/or per-staff-member basis upon receipt of a written request from the Sub-Contractor. No waiver may be given if it shall violate any prior agreement between the Contractor and the client in question as to the sharing of the client’s details.]]

1. DATA PROTECTION [,] [SHARING][AND][PROCESSING]

9.1 In this Clause 9:

9.1.1 “Data Protection Legislation” means 1) unless and until GDPR is no longer directly applicable in the UK, GDPR and any national implementing laws, regulations, and secondary legislation (as amended from time to time), in the UK and subsequently 2) any legislation which succeeds GDPR;

9.1.2 “GDPR” means EU Regulation 2016/679 General Data Protection Regulation;

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

9.1.4 “First Party” means, in a particular instance, either one of the parties to this Agreement; and

9.1.5 “Other Party” means, in that particular instance, whichever one of the parties is not the First Party.

9.2 All personal data that a First Party may use will be collected, processed, and held by that First Party in accordance with the provisions of Data Protection Legislation and the rights under the Data Protection Legislation of the Other Party.

9.3 For complete details of a First Party’s collection, processing, storage, and retention of personal data including, but not limited to, the purpose(s) for which personal data is used, the legal basis or bases for using it, details of the Other Party’s (and any third parties’) rights and how to exercise them, and personal data sharing (where applicable), the Other Party should refer to the Privacy Notice of that First Party.

9.4 For the purpose of Clause 9.3, the Privacy Notice of a First Party is available to the Other Party on request to that First Party.

9.5 [All personal data to be shared by a First Party with the Other Party under this Agreement shall be shared in accordance with the terms of the Data Sharing Agreement entered into on <insert date> pursuant to this Agreement.]

9.6 [All personal data to be processed by a 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.]

1. CONFIDENTIALITY

10.1 Except as provided by clause 10.2 or as authorised in writing by the other party, each party shall, at all times during the continuance of this Agreement and [for <insert period> years] after its termination:

10.1.1 keep confidential all Confidential Information;

10.1.2 not disclose any Confidential Information to any other party;

10.1.3 not use any Confidential Information for any purpose other than as contemplated by and subject to the terms of this Agreement;

10.1.4 not make any copies of, record in any way or part with possession of any Confidential Information; and

10.1.5 ensure that none of its directors, officers, employees, agents, sub-contractors or advisers does any act which, if done by that party, would be a breach of the provisions of sub-Clauses 10.1.1 to 10.1.4 above.

10.2 Either party may:

10.2.1 disclose any Confidential Information to:

a) any sub-contractor or supplier of that party;

b) any governmental or other authority or regulatory body; or

c) any employee or officer of that party or of any of the aforementioned persons, parties or bodies; to such extent only as is necessary for the purposes contemplated by this Agreement (including, but not limited to, the carrying out of the Works), or as required by law. In each case that party shall first inform the person, party or body in question that the Confidential Information is confidential and (except where the disclosure is to any such body under clause 10.2.1(b) or any employee or officer of any such body) obtain and submit to the other party a written confidentiality undertaking from the party in question. Such undertaking should be as nearly as practicable in the terms of this clause 10, to keep the Confidential Information confidential and to use it only for the purposes for which the disclosure is made;

and 10.2.2 use any Confidential Information for any purpose, or disclose it to any other person, to the extent only that it is at the date of this Agreement, or at any time after that date becomes, public knowledge through no fault of that party. In making such use or disclosure, that party must not disclose any part of the Confidential Information which is not public knowledge.

10.3 The provisions of this Clause 10 shall continue in force in accordance with their terms, notwithstanding the termination of this Agreement for any reason.

1. FORCE MAJEURE

11.1 No party to this Agreement will be liable for any failure or delay in performing their obligations where 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, internet service provider failure, industrial action, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war, governmental action or any other event that is beyond the control of the party in question.

11.2 [In the event that a party to this Agreement cannot perform their obligations hereunder as a result of force majeure for a continuous period of <insert period>, the other party may at its discretion terminate this Agreement by written notice at the end of that period. In the event of such termination, the parties shall agree upon a fair and reasonable payment for all Works completed up to the date of termination. Such payment shall take into account any prior contractual commitments entered into in reliance on the performance of this Agreement.]

1. TERMINATION

12.1 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:

12.1.1 the Other Party materially fails to comply with the terms and obligations of this Agreement and such failure, if capable of remedy, is not remedied within seven days of written notice of such failure from the Terminating Party;

12.1.2 the Other Party goes into bankruptcy or liquidation either voluntary or compulsory (save for the purposes of bona fide corporate reconstruction or amalgamation) or if a receiver is appointed in respect of the whole or any part of its assets.

12.2 If the Main Contract is terminated:

12.2.1 this Agreement shall terminate automatically;

12.2.2 the Contractor shall immediately notify the Sub-Contractor of the termination;

12.2.3 the Sub-Contractor shall immediately leave the site.

12.3 [This Agreement may be terminated by either party at any time and without giving any reason for such 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, which have already accrued, to either of the parties under this Agreement.

1. DISPUTE RESOLUTION

13.1 If a dispute arises under this Agreement which cannot be resolved by negotiations between the parties or by their appointed representatives:

13.1.1 the parties shall give serious consideration to a request made by the other party to refer the matter to mediation;

13.1.2 either party may refer the matter to adjudication in accordance with the Scheme for Construction Contracts (England and Wales) Regulations 1998;

13.1.3 either party may refer the matter to arbitration in accordance with the Arbitration Act 1996 and rules for arbitration as agreed between the parties. In the event that the parties are unable to agree on the arbitrator(s) or the rules for arbitration, either party may, upon giving written notice to the other party, apply to the President or Deputy President for the time being of the Chartered Institute of Arbitrators for the appointment of an arbitrator or arbitrators and for any decision on rules that may be required.

1. MISCELLANEOUS

14.1 This Agreement contains the whole agreement between the Sub-Contractor and the Contractor relating to the Works and supersedes any prior agreement between the parties whether written or oral and such prior agreements are cancelled as from the date hereof and both parties acknowledge they have no claim against the other in respect of any previous agreement.

14.2 Any notice to be served by either of the parties on the other shall be sent by prepaid recorded delivery or registered post to the address shown in this Agreement or to such address as that party shall have notified to the other in writing taking effect for the purposes of this Clause or Agreement, and shall be deemed received 48 hours after posting.

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

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

14.5 The parties agree that a person who is not a party to this Agreement has no right arising solely by virtue of the Contracts (Rights of Third Parties) Act 1999 to enforce any terms of this Agreement.

1. GOVERNING LAW AND JURISDICTION

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

IN WITNESS WHEREOF this Agreement has been duly executed the day and year first before written

SIGNED: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

In the presence of <Name & Address of Witness>

SIGNED: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

In the presence of <Name & Address of Witness>

Schedule

Part 1 – Description of the Works

<Insert detailed description of Works or refer to another document, e.g. a tender>

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

<Insert list>

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

<Insert list>

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

<Insert list>