DATED

1. << >>

-AND-

(2) << >>

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

SUB-CONTRACTOR AGREEMENT FOR CONSTRUCTION (PAYMENT UPON COMPLETION BASED ON DAILY RATES, NO RETENTION)

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

THIS AGREEMENT is made on the day of

BETWEEN:

(1) <Name of Contractor>, a company registered under registration number <Company Registration number> with its registered office at <Registered office> (hereinafter referred to as the “Contractor”) and

(2) <Name of Sub-Contractor> with an address at <Address> (hereinafter referred to as the “Sub-Contractor”)

IT IS AGREED as follows:

1. DEFINITIONS 1.1 In this Agreement, unless the context requires otherwise, the following terms shall have the following meanings:

'Confidential Information' means information disclosed by one party to the other party under this Agreement (whether verbally, in writing, or by any other means, and whether or not 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 performance 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 engages the Sub-Contractor to perform the Works by the terms and conditions of this Agreement.

2.2 The Sub-Contractor’s activities and those of the workers he engages are always under the Sub-Contractor’s sole direction and control.

2.3 The Sub-Contractor confirms his registration with HMRC’s Construction Industry Scheme and has provided evidence of this registration to the Contractor.

2.4 The Contractor’s payment obligation under this Agreement is subject to the provisions of the Construction Industry Scheme.

2.5 The Sub-Contractor shall not sub-contract any portion of the Works without the Contractor’s prior written consent.

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

2.7 This Agreement does not create any obligation for the Contractor or the Sub-Contractor to offer or accept further appointments, nor does it imply any continuing relationship beyond this Agreement.

1. TIMING

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

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

3.3 The Contractor will notify the Sub-Contractor in writing when the Works are practically complete.

3.4 The Sub-Contractor shall, at his own cost and within a reasonable time frame, correct any defects in the Works reported by the Contractor within 3 months from the practical completion date.

1. SUBCONTRACTORS OBLIGATIONS

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

4.2 The Sub-Contractor shall perform the Works in a manner that does not cause the Contractor to breach any provision of the Main Contract that has been disclosed to the Sub-Contractor.

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 those listed in Part 3 of the Schedule, if any goods and materials shall be of satisfactory quality.

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

4.5 The Sub-Contractor shall remove all waste from the site generated during the Works.

4.6 The Sub-Contractor is responsible for organising how and in what order the Works are performed and shall coordinate with the Contractor’s representative to consider the impact of the Works' timing on the activities of the Contractor and other sub-contractors.

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

4.8 The Sub-Contractor shall adhere to all reasonable site regulations the Contractor sets.

1. CONTRACTOR’S OBLIGATIONS

5.1 The Contractor shall ensure that the Sub-Contractor has sufficient access to the site to fulfil 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 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 indemnify the Contractor against, any costs, liabilities, damages, losses, claims, or proceedings in respect of personal injury 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 employees, agents, or anyone for whom the Sub-Contractor is responsible.

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

6.2.1 arises out of or in the course of or because 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 employees, agents, or anyone 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 for himself and anyone authorised by him to carry out any part of the Works and shall provide evidence of such insurance to the Contractor upon request.

1. PAYMENTS TO THE SUB-CONTRACTOR

7.1 The Sub-Contractor will be paid at a rate of £<xxx> per day for his own time and at a rate of £<xxx> per day for other staff.

7.2 [The Sub-Contractor will also be reimbursed for goods and materials provided and other expenses reasonably incurred in connection with the Works, provided such expenses have been approved by the Contractor in advance and are supported by receipts].

OR [No further payment will be made to the Sub-Contractor for the Works over and above the consideration referred to in this clause, including any goods, materials, or other expenses incurred by the Sub-Contractor in performing the Works.]

7.3 Payment will be made in a lump sum following the practical completion of the Works.

7.4 After practical completion, the Sub-Contractor shall submit an invoice to the Contractor. The invoice must:

7.4.1 specify the work that has been carried out; and

7.4.2 includes a breakdown of the time spent by the Subcontractor and any other workers.

7.5 [The invoice must also include details of all goods and materials provided by the Sub-Contractor and all other expenses claimed by the Sub-Contractor under clause 7.2.]

7.6 The Contractor shall pay the amount specified in the invoice within 14 days of receipt.

7.7 All payments under this Agreement are exclusive of any Value Added Tax.

7.8 If the Contractor fails to pay an invoice by the due date, the Contractor shall pay the Sub-Contractor interest on the overdue amount at a rate of 5% per annum above the base rate of Barclays Bank plc from the due date until payment is made.

1. NON-COMPETITION AND NON-SOLICITATION

8.1 [The Sub-Contractor shall not, during the performance of the Works or for a period of <insert period> following the termination or expiry of this Agreement, provide similar services to any competitor of the Contractor [within <insert radius> of <insert location>]. [The Contractor may waive this restriction, either entirely or for specific competitors, upon receiving a written request from the Sub-Contractor.]]

8.2 [The Sub-Contractor shall not, during the performance of the Works or for a period of <insert period> following the termination or expiry of this Agreement, solicit any clients or employees of the Contractor with whom the Sub-Contractor has had dealings during the <insert period> before the termination or expiry date, or any other clients known to the Sub-Contractor. [The Contractor may waive this restriction, either entirely or for specific clients or employees, upon receiving a written request from the Sub-Contractor, provided that such a waiver does not violate any prior agreement between the Contractor and the client regarding the sharing of client details.]]

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 by the provisions of the 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 Clause 9.3, the Privacy Notice of a First Party is available to the Other Party upon request from 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 by the terms of the Data Sharing Agreement entered into on <insert date> under 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 under the terms of the Data Processing Agreement entered into on <insert date> under this Agreement.]

CONFIDENTIALITY

10.1 Except as provided by clause10.2 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 the record in any way or part with possession of any Confidential Information; and

10.1.5 ensures that none of its directors, officers, employees, agents, sub-contractors or advisers does any act which, if done by that party, would breach 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 (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 Clause 10 shall continue in force under their terms, notwithstanding the termination of this Agreement for any reason.

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 beyond that party's reasonable control. 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 [If 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 termination date. Such payment shall consider any prior contractual commitments entered into in reliance on the performance of this Agreement.]

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 voluntarily or compulsorily (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 [Either party may terminate this Agreement 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.

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 under the Scheme for Construction Contracts (England and Wales) Regulations 1998;

13.1.3. Either party may refer the matter to arbitration under the Arbitration Act 1996 and the rules for arbitration as agreed upon between the parties. If 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.

MISCELLANEOUS

14.1 This Agreement contains the entire 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. Both parties acknowledge that 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 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 corporate body and to an unincorporated body of persons.

14.5 The parties agree that a person 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.

GOVERNING LAW AND JURISDICTION

15.1 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 above 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>