

THIS DEED is dated _____

BETWEEN

- (1) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (the 'Consultant')
- (2) **WICKES BUILDING SUPPLIES LIMITED** incorporated in England and Wales with company registration number 01840419 whose registered office is at Vision House, 19 Colonial Way, Watford, United Kingdom, WD24 4JL (the 'Beneficiary')

BACKGROUND:-

- (A) The Client has engaged the Consultant to perform the Services.
- (B) The Beneficiary has an interest in the Project.
- (C) The Consultant has agreed to enter into this Deed for the benefit of the Beneficiary.
- (D) The Beneficiary has paid £1 to the Consultant as consideration under this Deed.

AGREED TERMS:-

1. Interpretation

- 1.1. The definitions and rules of interpretation in this clause apply in this Deed.

Business Day	a day (other than a Saturday, Sunday or public holiday in England) when banks in London are open for business.
Client	THE COUNCIL OF THE BOROUGH OF TORBAY of Town Hall, Castle Circus, Torquay, TQ1 3DR
Material	all designs, drawings, models, plans, specifications, design details, photographs, brochures, reports, notes of meetings, CAD materials, calculations, schedules, programmes, bills of quantities, budgets and any other materials provided in connection with the Project and all updates, amendments, additions and revisions to them and any works, designs, or inventions incorporated or referred to in them.
Permitted Uses	the design, construction, completion, reconstruction, modification, refurbishment, development, maintenance, funding, disposal, letting, fitting-out, advertisement, demolition, reinstatement, building information modelling and repair of the Property and the Project.
Professional Appointment	an agreement in writing dated [DATE] between the Consultant and the Client for the Services.
Project	the design and construction of a new retail unit at the Property.
Property	the site of the Project at Plot 1, Edginswell Business Park, Torquay, Devon.

Required Standard all the reasonable skill, care and diligence as may be expected of a properly qualified and competent consultant experienced in performing services of a similar nature, size, scope and complexity to the Services.

Services the services referred to in the Professional Appointment, performed by or on behalf of the Consultant under the Professional Appointment.

2. Comply with Professional Appointment

2.1. The Consultant warrants to the Beneficiary that:

- 2.1.1. it has complied, and shall continue to comply, with its obligations under the Professional Appointment; and
- 2.1.2. it has exercised and shall continue to exercise the Required Standard when performing the Services.

2.2. In proceedings for breach of this clause 2, the Consultant may:

- 2.2.1. rely on any limit of liability or other term of the Professional Appointment; and
- 2.2.2. raise equivalent rights of defence as it would have had if the Beneficiary had been named as a joint client, with the Client, under the Professional Appointment (for this purpose not taking into account any set-off or counterclaim against the actual Client under the Professional Appointment).

2.3. The Consultant's duties or liabilities under this Deed shall not be negated or diminished by:

- 2.3.1. any approval or inspection of:
 - 2.3.1.1. the Property; or
 - 2.3.1.2. the Project; or
 - 2.3.1.3. any designs or specifications for the Property or the Project; or
 - 2.3.2. any testing of any work, goods, materials, plant or equipment; or
 - 2.3.3. any omission to approve, inspect or test,
- by or on behalf of the Beneficiary or the Client.

2.4. This Deed shall not negate or diminish any other liability or otherwise owed to the Beneficiary by the Consultant.

3. No instructions to Consultant by Beneficiary

The Beneficiary may not give instructions to the Consultant under this Deed.

4. Copyright

4.1. The Consultant grants to the Beneficiary, with immediate effect, an irrevocable, non-exclusive, non-terminable, royalty-free licence to copy and make full use of any Material prepared by, or on behalf of, the Consultant for any purpose relating to the Project and the Property, including any of the Permitted Uses. The licence shall enable the Beneficiary to copy and use the Material for an extension of the Project but not to reproduce any designs contained in that Material for any such extension.

- 4.2. This licence carries the right to grant sub-licences and is freely transferable to third parties without the consent of the Consultant.
- 4.3. The Consultant shall not be liable for use of the Material for any purpose other than that for which it was prepared and/or provided.
- 4.4. The Beneficiary may request a copy (or copies) of some or all of the Material from the Consultant. On the Beneficiary's payment of the Consultant's reasonable charges for providing the copy (or copies), the Consultant shall provide the copy (or copies) to the Beneficiary.

5. Professional indemnity insurance

- 5.1. The Consultant shall maintain professional indemnity insurance for an amount of at least £[SUM] for any one claim for the duration of its liability under the Professional Appointment, provided that such insurance is available at commercially reasonable rates.
- 5.2. Any increased or additional premium required by insurers because of the Consultant's claims record or other acts, omissions, matters or things particular to the Consultant shall be deemed to be within commercially reasonable rates.
- 5.3. The Consultant shall immediately inform the Beneficiary if the Consultant's required professional indemnity insurance ceases to be available at commercially reasonable rates, so that the Consultant and the Beneficiary can discuss how best to protect the respective positions of the Beneficiary and the Consultant regarding the Project and the Property, without that insurance.
- 5.4. Whenever the Beneficiary reasonably requests, the Consultant shall send the Beneficiary evidence that the Consultant's professional indemnity insurance is in force.

6. Assignment

- 6.1. The Beneficiary may assign the benefit of this Deed without the consent of the Consultant:
 - 6.1.1. on two occasions to any person; and
 - 6.1.2. without counting as an assignment under clause 6.1.1, to and from subsidiary or other associated companies within the same group of companies as the Beneficiary.
- 6.2. The Consultant shall not contend that any person to whom the benefit of this Deed is assigned under clause 6.1 may not recover any sum under this Deed because that person is an assignee and not a named party to this Deed.

7. Third party rights

Subject to clause 6, a person who is not a party to this Deed shall not have any rights under or in connection with it.

8. Governing law and jurisdiction

- 8.1. This Deed, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by and construed in accordance with the law of England.
- 8.2. The parties irrevocably agree that the courts of England shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Deed or its subject matter or formation (including non-contractual disputes or claims).

This document has been executed as a deed and is delivered and takes effect on the date stated at

the beginning of it.

Executed as a deed by the Consultant
Acting by a director
in the presence of a witness

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Director signature

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Witness signature

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Witness name

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Witness address

Executed as a deed by the Beneficiary
Acting by a director
in the presence of a witness

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Director signature

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Witness signature

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Witness name

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Witness address