

THIS DEED is dated _____

BETWEEN

- (1) **THE COUNCIL OF THE BOROUGH OF TORBAY** of Town Hall, Castle Circus, Torquay, TQ1 3DR (the '**Client**')
- (2) [FULL COMPANY OR LLP NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (the '**Contractor**')
- (3) [FULL COMPANY OR LLP NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (the '**Consultant**').

BACKGROUND:-

- (A) By an agreement in writing dated [DATE] (**Appointment**), the Client appointed the Consultant to provide design services in connection with the development of a new retail unit at Plot 1, Edginswell Business Park, Torquay, Devon (**Project**).
- (B) The Client and the Contractor have entered into a building contract, under which the Contractor has been appointed to carry out and complete the design and construction of the Project.
- (C) The parties have agreed to novate the Appointment from the Client and the Consultant to the Contractor and the Consultant on the terms of this deed.

AGREED TERMS:-

1. Novation of Appointment

This deed novates the Appointment from the Client and the Consultant to the Contractor and the Consultant.

2. Release of Consultant

The Consultant shall no longer owe any duty or obligation to the Client in respect of the Appointment.

3. Release of Client

The Client shall no longer owe any duty or obligation to the Consultant in respect of the Appointment.

4. Binding of Consultant to Contractor

- 4.1. The Consultant binds himself to the Contractor under the Appointment as if the Contractor was, and always had been, named in the Appointment in place of the Client.
- 4.2. The Consultant undertakes and warrants to the Contractor that it has carried out, and will carry out, its duties and obligations under the Appointment. In performing its services under the Appointment, the Consultant has exercised, and will continue to exercise, all the reasonable skill, care and diligence to be expected of a qualified and experienced member of the Consultant's profession undertaking the design of works similar in scope and character to the Project.
- 4.3. The Contractor shall not be prevented from recovering any losses incurred by the Contractor that result from any breach of this clause 4 because:

- 4.3.1. the acts or omissions causing that breach occurred before this deed took effect; or
- 4.3.2. the Client will not incur and has not incurred those losses.

5. Binding of Contractor to Consultant

The Contractor binds itself to the Consultant under the Appointment as if the Contractor were, and always had been, named in the Appointment in place of the Client.

6. Vesting of remedies in Contractor

All rights of action and remedies vested in the Client against the Consultant in respect of the Appointment shall vest in the Contractor from the date of this deed.

7. Vesting of remedies against Contractor

All rights of action and remedies vested in the Consultant against the Client in respect of the Appointment shall lie against the Contractor from the date of this deed.

8. Fees and disbursements

The Consultant acknowledges that all fees, disbursements and expenses due to the Consultant under the Appointment to the date of this deed have been paid in full.

9. Affirmation of Appointment

Subject to the terms of this deed, the Appointment shall remain in full force and effect.

10. Collateral warranties and third party rights

Nothing in this deed shall affect any collateral warranty given, or to be given, by the Consultant to the Client (or to any third party) in respect of the Project. Nothing in this deed shall affect any third party rights in favour of the Client (or in favour of any third party) under the Appointment.

11. Governing law

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.

12. Jurisdiction

Each party irrevocably agrees that the courts of England shall have exclusive jurisdiction to settle any dispute or claim arising 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 Client
By affixing its common seal
in the presence of

.....
Authorised signatory - Signature

.....
Authorised signatory – Name

.....
Authorised signatory – Signature

.....
Authorised signatory - Name

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

.....
Director signature

.....
Witness signature

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Witness name

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Witness address

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

.....
Director signature

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Witness signature

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Witness name

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Witness address