

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 'Sub-Contractor')
- (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 Contractor has engaged the Sub-Contractor to carry out the Sub-Contract Works.
- (B) The Beneficiary has an interest in the Project.
- (C) The Sub-Contractor has agreed to enter into this Deed for the benefit of the Beneficiary.
- (D) The Beneficiary has paid £1 to the Sub-Contractor 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.
Contractor	[FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS]
Material	all designs, drawings, models, plans, specifications, design details, photographs, brochures, reports, notes of meetings, CAD materials, 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, extension, building information modelling and repair of the Property and the Project.
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.
Sub-Contract	an agreement in writing dated [DATE] between the Contractor and the Sub-Contractor.

Sub-Contract Works the design, construction and completion of the building works referred to in the Sub-Contract, carried out by or on behalf of the Sub-Contractor under the Sub-Contract.

2. Comply with Sub-Contract

2.1. The Sub-Contractor warrants to the Beneficiary that:

2.1.1. it has complied, and shall continue to comply, with its obligations under the Sub-Contract; and

2.1.2. without affecting clause 2.1.1, and to the extent that it takes responsibility for the same under the Sub-Contract, it has designed, or will design, the Sub-Contract Works with all the reasonable skill, care and diligence to be expected of a properly qualified and experienced designer undertaking the design of works similar in scope, character and nature to the Sub-Contract Works.

2.2. In proceedings for breach of this clause 2, the Sub-Contractor may:

2.2.1. rely on any limit of liability or other term of the Sub-Contract; 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 Contractor, under the Sub-Contract (for this purpose not taking into account any set-off or counterclaim against the actual Contractor under the Sub-Contract).

2.3. The Sub-Contractor'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. the Sub-Contract Works; or

2.3.1.4. any designs or specifications for the Property, the Project or the Sub-Contract Works; 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 Contractor.

2.4. This Deed shall not negate or diminish any duty or liability otherwise owed to the Beneficiary by the Sub-Contractor.

3. No instructions to Sub-Contractor by Beneficiary

The Beneficiary may not give instructions to the Sub-Contractor under this Deed.

4. Copyright

4.1. The Sub-Contractor 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 Sub-Contractor for any purpose relating to the Project and the Property, including any of the Permitted Uses.

- 4.2. This licence carries the right to grant sub-licences and is freely transferable to third parties without the consent of the Sub-Contractor.
- 4.3. The Sub-Contractor 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 Sub-Contractor. On the Beneficiary's payment of the Sub-Contractor's reasonable charges for providing the copy (or copies), the Sub-Contractor shall provide the copy (or copies) to the Beneficiary.

5. Professional indemnity insurance

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

.....
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