

**Cross Company Indemnity
Agreement**

THIS AGREEMENT is made on XXXXX

BETWEEN:

- A. **[INSURER]** whose principal place of business is at XXXXX, XXXXX, XXXXX, XXXXX (the "Underwriter")
- B. **[CROSS COMPANY]** whose principal place of business is at XXXXX, XXXXX, XXXXX, XXXXX (the "Cross Company")
- C. **[DEVELOPER]** whose principal place of business is at XXXXX, XXXXX, XXXXX, XXXXX (the "Developer")

WHEREAS:

- A. The **Developer** has organised or facilitated and will from time to time in the future organise or facilitate the construction of **Housing Unit(s)** at various housing development sites (the **New Developments**) and has applied or will from time to time in the future apply to the **Scheme Administrator** of the **Underwriter** for the **Housing Unit(s)** in the **New Development(s)** to be insured with **Premier Guarantee**.
- B. The **Developer** and the **Underwriter** have entered an agreement (the **Developers Indemnity Agreement**) pursuant to which the **Developer** has agreed that it will on all occasions observe and comply with all of its obligations under the **Rules** (as defined below) as well as its obligations to the purchasers of **Housing Unit(s)** in **New Development(s)** during the **Building Period** and the **Defects Insurance Period** as detailed in the **Policy** (as defined below).
- C. The **Cross Company** has agreed to indemnify all of the obligations of the **Developer** to the **Underwriter**.

IT IS AGREED AS FOLLOWS:

1 DEFINITIONS AND INTERPRETATION

- 1.1 In this **Agreement**, unless the context otherwise requires, the following terms shall have the following meanings given to them:
 - 1.1.1 **Policy**
The relevant policy of insurance between the **Policyholder** and the **Underwriter** issued by the **Scheme Administrator**
 - 1.1.2 **Rules**
The Rules of Registration issued by the **Scheme Administrator** (including as updated from time to time).
- 1.2 In addition to the terms defined in Clause 1.1, any other words shown in bold in this **Agreement** (including in the Recitals) shall have the meanings given to them in the **Policy** and/or the **Rules** (unless otherwise defined in this **Agreement** or where the context otherwise requires). For the avoidance of doubt, in the event that any of the defined terms in the **Policy** and/or the **Rules** are amended from time to time (including pursuant to the **Underwriter's** rights referred to in Clause 6.2), then any such terms which are used in this **Agreement** shall have the meanings given to them as so amended. Where any term used in this **Agreement** is given the meaning ascribed to such term in the **Policy** and the **Rules** and such term is defined differently in the **Policy** and the **Rules** then the meaning given to such term in the **Policy** shall apply to this **Agreement**.
- 1.3 In this **Agreement** (unless the context otherwise requires):
 - 1.3.1 the words including and include and words of similar effect shall be deemed have the words "without limitation" following them;

- 1.3.2 words importing the singular shall include the plural and vice versa; and
- 1.3.3 references to a numbered clause or Schedule are to a clause of and a schedule to this **Agreement** so numbered.

1.4 The headings in this **Agreement** are for ease of reference only and shall not affect its construction or interpretation.

2 INDEMNITY

2.1 In consideration of the **Underwriter** agreeing to issue the **Policy**, the **Cross Company** agrees to indemnify the **Underwriter** and keep the **Underwriter** indemnified in respect of:

- 2.1.1.1 any payments made by the **Underwriter** to a **Policyholder** arising from or connected to Section 3.1 and/or 3.2 of a **Policy**; and
- 2.1.1.2 any claims, liabilities, losses and expenses (including interest and all costs) of whatsoever nature incurred by the **Underwriter** arising from or connected to Section 3.1 and/or 3.2 of a **Policy**;

which, in the **Underwriter's** opinion, arise directly or indirectly out of:

- a. the **Developer's** failure to observe and comply with all of its obligations as set out in clauses 2.1.1 and 2.1.3 of the **Developers Indemnity Agreement**; and
- b. the failure of the **Underwriter** to recover any sums that the **Developer** is liable to pay to the **Underwriter** under the terms and conditions of the **Developers Indemnity Agreement**.

3 POLICY CLAIMS AND ARRANGEMENTS

3.1 Any claim made under the **Policy** will be dealt with by the **Scheme Administrator** as agents on behalf of the **Underwriter** and the **Cross Company's** liability hereunder will not be altered or reduced in any way by such arrangement.

3.2 Where a valid claim is made pursuant to the **Policy** or the nature of the claim and/or the sums involved is such that it is not practicable to defend such claim, the **Cross Company** acknowledges and agrees that the **Underwriter** shall be entitled to pay amounts to a **Policyholder** (including without prejudice basis) without reference to or any authorisation from the **Cross Company**, whether or not the **Cross Company** disputes the validity of the payment. Any such payment shall be deemed to constitute a valid payment under or connected to the **Policy**.

4 CLAIMS MADE UNDER THIS AGREEMENT

4.1 Any claim(s) against the **Cross Company** hereunder shall be made by the **Scheme Administrator**, on behalf of the **Underwriter**, in writing and sent to the **Cross Company** in accordance with clause 5.1.

4.2 Any such claim(s) shall be accepted by the **Cross Company** as conclusive evidence (and admissible as such) that any sum stated therein is properly due and payable by the **Cross Company** to the **Scheme Administrator** or the **Underwriter** (at the **Underwriter's** option) for the purposes of this **Agreement**. The **Cross Company** agrees it will pay such sum within 28 days of the relevant notice without set off or counterclaim.

5 NOTICES

5.1 Any notice under or in connection with this **Agreement** may be sent by ordinary pre-paid post to (as the case may be) the **Cross Company** or the **Developer** or to the **Scheme Administrator** acting as disclosed agents of the **Underwriter**. Such notices should be sent to the registered office of the **Cross Company** or **Developer** or **Scheme Administrator** as applicable.

6 OTHER AGREEMENTS

- 6.1 The **Underwriter's** rights under this **Agreement** shall not be in any way prejudiced or affected by any one or more other agreements, indemnities, guarantees, securities or obligations which the **Cross Company** or the **Underwriter** may enter into with any third party. The **Underwriter** shall not be obliged to take any steps against any third party before making a claim hereunder nor wait for the **Cross Company** or any third party to make a claim under any other document to which it is party.
- 6.2 Without consent of the **Cross Company** and provided that the amount of the **Cross Company's** liability, obligations and indemnities hereunder is not increased the **Underwriter** may from time to time, on giving the **Cross Company** not less than one month's notice of the same, modify, amend, renew or extend the terms and conditions of:
- 6.2.1 any **Policy**;
- 6.2.2 the **Rules**; and/or
- 6.2.3 any agreements, indemnities, guarantees, securities or obligations it has entered into with a third party;

and the **Cross Company** agrees that any such modification, amendment, renewal or extension shall not release nor in anyway lessen, remove, discharge or affect the **Cross Company's** liability hereunder.

- 6.3 The **Cross Company** agrees that no act, error, omission or matter whatsoever whether under this **Agreement** or any other contract whereby (but for this clause 6.3) the **Cross Company** would be exonerated either wholly or in part from this **Agreement** shall release nor in anyway lessen, remove, discharge or affect the **Cross Company's** liability hereunder (save if and to the extent otherwise provided by deed executed by the **Underwriter**).

7 JOINT AND SEVERAL LIABILITY

- 7.1 Where the **Cross Company** is a partnership or otherwise consists of more than one person the liability of the **Cross Company** under this **Agreement** shall be deemed to be joint and several liability of the partners or of such persons and any demand for payment made by the **Underwriter** to any one or more persons so jointly and severally liable shall be deemed to be a demand made to all such persons.
- 7.2 The **Cross Company** may not release or discharge any one or more of such persons from liability under this **Agreement** or compound with, accept compositions from or make any other arrangements with any of such persons without having obtained the prior written consent of the **Underwriter**.

8 EFFECT OF DELAY OR OMISSION

- 8.1 No delay or omission on the part of the **Underwriter** in exercising any right, power, privilege or remedy in respect of this **Agreement** shall impair such right, power, privilege or remedy or be construed as a waiver of it, nor shall any single or partial exercise of any such right, power, privilege or remedy preclude any further exercise of it or the exercise of any other right, power, privilege or remedy. The rights, powers, privileges and remedies provided in this **Agreement** are cumulative and not exclusive of any rights, powers, privileges or remedies provided by law.

9 ASSIGNMENT

- 9.1 The **Cross Company** shall not transfer or assign any of its obligations pursuant to this **Agreement** without having obtained the prior written consent of the **Underwriter**.

10 ARBITRATION

- 10.1 If any dispute arises between the parties under this **Agreement** concerning the construction, meaning or effect of this **Agreement** or concerning the rights and liabilities of the parties or any other matter arising out of or in connection with this **Agreement** it shall be referred to a single arbitrator to be agreed between the parties. Failing such agreement within 14 days of the request by one party to the other that the matter be referred to arbitration in accordance with this clause, such reference shall be to an arbitrator appointed (on the application of either party) by the President for the time being of The Royal Institution of Chartered Surveyors.
- 10.2 The decision of such arbitrator shall be final and binding upon the parties and no appeal shall lie to any

Court save on a point of law or where the decision of the arbitrator can be deemed to be manifestly unfair. Any reference under this clause shall refer to arbitration within the meaning of the Arbitration Act 1996 including any statutory modification or re-enactment thereof for the time being in force.

10.3 Nothing in this clause 10 shall restrict the ability of a party from seeking any injunctive or interlocutory relief from the courts at any time.

11 GOVERNING LAW AND JURISDICTION

11.1 This **Agreement** shall be governed by, and construed in accordance with, the laws of England and Wales and (save as provided in clause 10) the parties submit to the exclusive jurisdiction of the courts of England and Wales.

This **Agreement** has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

SAMPLE

Signed as a deed by the **Underwriter**)
acting by a director) [signature of director]

Name of Director.....

in the presence of:
[signature of witness]

Witness name:

Witness address:

Witness Occupation:

Signed as a deed by the **Cross Company**)
acting by a [director]/[member]) [signature of [director]/[member]]

[Name of [Director]/[Member].....

in the presence of:
[signature of witness]

Witness name:

Witness address:

Witness Occupation:

Signed as a deed by the **Developer**)
[acting by a [director]/[member]) [signature of [director]/[member]]

[Name of [Director]/[Member].....

in the presence of:
[signature of witness]

Witness name:

Witness address:

Witness Occupation:

You may wish to seek legal advice before signing this document