

**Associate Company Indemnity
Agreement**

THIS AGREEMENT is made on XXXXX

BETWEEN:

- A. **[COMPANY NAME] (Company No: XXXXX)** whose registered office or whose principal place of business is at XXXXX, XXXXX, XXXXX, XXXXX, the associate company of the **Developer** or **Builder** as defined herein at Clause 1.1.2 (the "Associate Company")
- B. **MD Insurance Services Ltd (Company No: 3642459)** whose registered office 2 Shore Lines Building, Shore Road, Birkenhead, Wirral, CH41 1AU (the "**Underwriter's Representative**"), being the **Scheme Administrator** and duly and properly authorised agent of the current underwriters of the **Scheme** (the "**Underwriter**") on behalf of the **Underwriter**.

WHEREAS:

- A. The **Developer** and / or **Builder** has organised or facilitated and may from time to time organise, facilitate or construct **Home(s)** at various housing development sites (the **New Developments**) and has applied or may from time to time apply to the **Underwriter's Representative** for the **Home(s)** in the **New Development(s)** to be insured with **Premier Guarantee**.
- B. The **Underwriter** provides insurance cover for any claims, liabilities, losses and expenses (including interest and all costs) of whatsoever nature arising from or connected with:
 - i. Sections 3.1 and/or 3.2 of a **Policy** in respect of **Premier Guarantee for New Homes**
and / or
 - ii. Section 3.1 of a **Policy** in respect of **Premier Guarantee for Social Housing** or **Premier Guarantee for Private Rental**
and / or
 - iii. any endorsement regarding the **Insolvency** of the **Builder** during the **Building Period** in respect of **Premier Guarantee for Social Housing** or **Premier Guarantee for Private Rental**.
- C. The **Underwriter** provides bonds in favour of statutory undertakers as surety for the due performance by the **Developer** and / or **Builder** of its obligations in connection with the construction of roads, sewers and drains ("Bond").
- D. Under the terms of the **Policy** (as defined herein at 1.1.4), the **Developer** and / or **Builder** is obliged on all occasions to observe and comply with all of its obligations under the **Rules** (as defined herein at 1.1.6) as well as its obligations to the owner of **Home(s)** in **New Development(s)** during the **Building Period** and the **Defects Insurance Period** as detailed in the **Policy**.
- E. The Associate Company has an interest in or is affiliated with the **Developer** and / or **Builder** and has agreed to guarantee the performance of all of the obligations of the **Developer** and / or **Builder** under the **Policy**, the **Rules** and any Bond undertaken by the **Underwriter** on behalf of the **Builder** and/or the **Developer**.

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 **Affiliate**

Any company within the same group of companies as the Associate Company.

1.1.2 **Developer / Builder**

All those **Subsidiary, Affiliate and Joint Venture Companies** notified in the Schedule 1 to this **Agreement** and/or notified to the **Scheme Administrator** pursuant to clause 11 in each case which has applied to be registered with the **Scheme Administrator/Underwriter** in respect of **Premier Guarantee for New Homes** and **Premier Guarantee for Social Housing** and **Premier Guarantee for Private Rental**.

1.1.3 **Joint Venture Company**

A company or partnership that the Associate Company or a company within the **[ASSOCIATE COMPANY NAME]** group of companies owns jointly with a third party(ies) for a joint venture purpose.

1.1.4 **Policy**

The relevant policy of insurance between the **Policyholder** and the **Underwriter** issued by the **Scheme Administrator**.

1.1.5 **Prior Indemnities**

The indemnities listed in Schedule 2 to this **Agreement**.

1.1.6 **Rules**

The Rules of Registration issued by the **Scheme Administrator** (including as updated from time to time).

1.1.7 **Subsidiary**

A 'subsidiary' or 'subsidiary undertaking' (as the case may be within the meaning of sections 1159 to 1162 of The Companies Act 2006) of the Associate Company.

1.1.8 The **Underwriter** for the purpose of this agreement is the class or group of insurers and/or underwriters with whom MD Insurance Services Ltd have agreed from time to time to issue a policy and/or provide cover for the **Premier Guarantee for New Homes** and for **Premier Guarantee for Social Housing** and for **Premier Guarantee for Rental Properties**.

1.1.9 The **Underwriter's Representative** is MD Insurance Services Ltd.

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 (unless otherwise defined in this **Agreement** or where the context otherwise requires). 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 GUARANTEE AND INDEMNITY

- 2.1 In consideration of the **Underwriter** agreeing to issue the **Policy**, the Associate Company hereby guarantees the performance of the **Builder** and/or the **Developer** of its obligations under the **Policy** and/or the **Rules**. The Associate Company hereby indemnifies the **Underwriter** and the **Scheme Administrator** in respect of any liability, loss or expense of whatsoever nature, together with costs and interest, which the **Underwriter** may suffer or incur as a result of any breach by the **Builder** or the **Developer** of its obligations under the **Policy** and / or the **Rules**.
- 2.2 The Associate Company hereby indemnifies the **Underwriter** in respect of any failure by the **Developer** and / or **Builder** to comply with its obligations under any Bond entered into or undertaken by the **Underwriter** on behalf of the **Developer** and / or **Builder** in connection with the construction of roads, sewers, drains and under which the **Underwriter** is liable to make a payment:
- (a) Provided always that the Underwriter shall provide the Associate Company with not less than twenty eight (28) days' prior written notice of such breach or failure before making a claim under this **Agreement** and following such notice shall provide the relevant **Developer** and / or **Builder** a reasonable opportunity to remedy the same within reasonable time frames agreed with the **Underwriter**. In the event that the **Developer** and / or **Builder** intends to remedy the breach or failure, a notice shall be served on the **Underwriter** within fourteen (14) days of the notice of opportunity to remedy. In the event that the **Developer** and / or **Builder** does not respond to the notice of opportunity to remedy within the time permitted, it shall be deemed that the **Developer** and / or **Builder** is unable or unwilling to remedy the failure.
 - (b) Provided further that in no event shall the liability of the Associate Company hereunder as a result of a failure by any **Developer** and / or **Builder** to comply with its obligations under the **Rules** or the **Policy** be any greater than the liability of the **Developer** and / or **Builder** to the **Underwriter** in respect of such a failure.

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 Associate 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**, the Associate Company acknowledges and agrees that the **Underwriter** shall be entitled to pay amounts to a **Policyholder** (including without prejudice basis) which it becomes liable to pay under the **Policy** without reference to or any authorisation from the Associate Company, whether or not the Associate Company disputes the validity of the payment subject always to the provisos in clause 2 hereof.

4 CLAIMS MADE UNDER THIS AGREEMENT

- 4.1 Any claim(s) against the Associate Company hereunder shall be made by the **Scheme Administrator**, on behalf of the **Underwriter**, in writing and sent to the Associate Company in accordance with clause 5.1.
- 4.2 In the event of a dispute the Associate Company shall be entitled (but not obliged) to opt for one of the following courses of action:
- 4.2.1 If such dispute has not been referred by a **Policyholder** to the **Dispute Resolution Service** or other form of dispute resolution as set out in the **Policy** then the Associate Company shall be entitled to refer the dispute to the **Dispute Resolution Service**. Should the **Dispute Resolution Service** not resolve the dispute then the parties to this **Agreement** can nevertheless opt for one of the other dispute resolutions as set out in a **Policy**.

4.2.2 If such dispute has already been referred by a **Policyholder** to the **Dispute Resolution Service** or any other dispute resolution as set out in a **Policy**, the **Scheme Administrator** will provide the Associate Company with a copy of the decision made by such party.

4.3 Any sum that is due and payable by the Associate Company in respect of the aforementioned claim(s) shall be paid to the **Scheme Administrator** or the **Underwriter** (at the **Underwriter's** option) within 28 days of the notice of claim without set off or counterclaim or where a dispute has arisen, within 28 days of the resolution of that dispute if later.

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 Associate Company or to the **Scheme Administrator** acting as disclosed agents of the **Underwriter**. Such notices should be sent to the registered office of the Associate Company or **Scheme Administrator** as applicable.

6 ENFORCEMENT AND MANAGEMENT

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 Associate 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 Associate Company or any third party to make a claim under any other document to which it is party.

6.2 Without consent of the Associate Company and provided that the amount of the Associate Company's liability, obligations and indemnities hereunder is not increased the **Underwriter** may from time to time, on giving the Associate Company not less than one month's notice of the same, modify, amend, renew or extend the terms and conditions of:

6.2.1 the **Technical Manual**;

6.2.2 any **Policy**;

6.2.3 the **Rules**; and / or

6.2.4 any agreements, indemnities, guarantees, securities or obligations it has entered into with a third party;

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

6.3 The Associate 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 Associate Company would be exonerated either wholly or in part from this **Agreement** shall release nor in anyway lessen, remove, discharge or affect the Associate Company's liability hereunder (save if and to the extent otherwise provided by deed executed by the **Underwriter** and the Associate Company).

7 JOINT AND SEVERAL LIABILITY

7.1 Where the Associate Company is a partnership or otherwise consists of more than one person the liability of the Associate 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 Associate 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 Associate Company shall not transfer or assign any of its obligations pursuant to this **Agreement** without having obtained the prior written consent of the **Underwriter** (such consent not to be unreasonably withheld or delayed).

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 Chartered Institute of Arbitrators.
- 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 [ASSOCIATE COMPANY] GROUP STRUCTURE

The Associate Company shall notify the **Scheme Administrator** in writing when:

- 11.1 any **Subsidiary, Affiliate** or **Joint Venture Company** needs to be added to the schedule hereto and upon receipt of such notice the terms of this **Agreement** will apply to that additional company from the date of such notice and the definition of **Developer** and / or **Builder** shall be construed accordingly.
- 11.2 any **Developer** and / or **Builder** changes its name and the notice shall specify the date that the company changed its name and shall specify the company's registration number.

12 THIRD PARTY RIGHTS

- 12.1 This **Agreement** is entered into by the **Underwriter's Representative** on behalf of the **Underwriter** for the benefit of the **Underwriter's** associates, co-insurers and reinsurers. Each shall be entitled, in its own right, pursuant to the Contracts (Rights of Third Parties) Act 1999 to enforce the terms of this **Agreement** as if each had been named as a party to it either directly or through the **Underwriter's Representative**.
- 12.2 Except as expressly provided, a person who is not a party to this **Agreement** (except for the **Developers** and / or **Builders**) shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this **Agreement**. This does not affect any right or remedy of a third party which exists, or is available, apart from under that Act.

13 PRIOR INDEMNITIES

The **Underwriter** has agreed to release the **Prior Indemnities** on the execution of this **Agreement**. The **Underwriter** hereby covenants not to pursue any claim against any **Developer** and / or **Builder** under any **Prior Indemnities**.

14 GOVERNING LAW AND JURISDICTION

14.1 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 unless otherwise agreed by the **Underwriter**.

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

SCHEDULE 1

[ASSOCIATE COMPANY] Group Subsidiary, Affiliate and Joint Venture Companies

[ASSOCIATED COMPANIES] (Company No: XXXXX)

SCHEDULE 2

Prior Indemnities

Note: Please ensure that the full document is returned signed to the Scheme Administrator.

Name of Associate Company: **[ASSOCIATE COMPANY] (Company No: XXXXX)**

Signed as a deed by the Associate
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
Underwriter's Representative
on behalf of the **Underwriter**
acting by an authorised signatory

.....
Signature of authorised signatory

.....
Name of authorised signatory

in the presence of:

.....
signature of witness

Witness name:

.....

Witness address:

.....

.....

.....

.....

You may wish to seek legal advice before signing this document