

Associate Company Indemnity Agreement

SAMPLE

THIS AGREEMENT is made on XX/XX/XXXX

BETWEEN:

- A. **[ASSOCIATE COMPANY NAME] (Company No: XXXXXXXX)** whose registered office or whose principal place of business is at XXXXX, 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. **Insolvency of the Developer During the Building Period** and/or **Defects Insurance** provided under a **Policy** in respect of **Premier Guarantee for New Homes**
and/or
 - ii. **Defects Insurance** provided under a **Policy** in respect of **Premier Guarantee for Social Housing** or **Premier Guarantee for Rental Properties**
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 (each of such being a **Bond** and together **Bonds**)
- D. Under the terms of the **Policy**, the **Developer** and / or **Builder** is obliged on all occasions to observe and comply with all of its obligations under the **Rules** 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 **Insolvency Cover**

- i. **Insolvency of the Developer During the Building Period** of a **Policy** in respect of **Premier Guarantee for New Homes**
and/or
- ii. 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**.
and/or
- iii. any **Bond**

1.1.4 **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.

1.1.5 **Policy**

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

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. 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 by 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 claim, demand, liability, losses, costs, damages, legal fees, disbursements and/or expenses 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**, its associates, agents and representatives in respect of any payment made by any of them in respect of any failure by the **Associate Company**, the **Developer** and / or **Builder** to comply with its obligations under any **Insolvency Cover** entered into or undertaken by the **Underwriter** on behalf of the **Associate Company**, the **Developer** and / or **Builder**. The **Associate Company** hereby agrees that in the event of any payment being made by the **Underwriter** or its associates, agents or representatives in respect of any claim demand liability losses costs damages legal fees disbursements and/or expenses of whatsoever nature in respect of or arising out of any **Insolvency Cover** provided for or issued on behalf of the **Associate Company**, the **Developer** and / or **Builder**, the **Associate Company** will repay the full amount thereof to the **Underwriter** immediately upon written demand by the **Scheme Administrator** and/or **Underwriter**.

2.3 The **Associate Company** hereby agrees that in the event of:

2.3.1 any claim or demand (as a result of **Fraud**, **Insolvency** or any other cause) being made upon the **Underwriter** or threatened in writing in respect of any **Insolvency Cover** provided for or issued on behalf of the **Associate Company**, the **Developer** and / or **Builder**, the **Underwriter** shall certify in writing to the **Associate Company** that it has received such claim or demand whereupon the **Associate Company** shall immediately upon written demand by the **Underwriter** deposit in cash the full amount of such respective **Insolvency Cover** provided for or issued on behalf of the **Associate Company**, the **Developer** and / or **Builder** plus any sum which the **Underwriter** establishes as a reserve to cover such claim or demand and any losses costs damages legal fees disbursements and/or expenses under or in connection with such respective **Insolvency Cover** provided for or issued on behalf of the **Associate Company**, the **Developer** and / or **Builder**;

2.3.2 the **Insolvency** of the **Associate Company**, the **Developer** and / or **Builder** (except for a voluntary liquidation for the purposes of reconstruction or amalgamation), the **Associate Company** shall immediately, upon written demand by the **Underwriter**, deposit in cash (a) a sum equal to the aggregate of all **Insolvency Covers** then outstanding provided for or issued on behalf of the **Associate Company**, the **Developer** and / or **Builder** plus (b) any sum which the **Underwriter** establishes as a reserve to cover any claim or demand and any losses costs damages legal fees disbursements and/or expenses under or in connection with any **Insolvency Cover** provided for or in respect of the **Associate Company**, the **Developer** and / or **Builder**.

The **Underwriter** may use such monies obtained under clause 2.3.1 and/or 2.3.2 (plus interest (if any) earned or accruing in relation thereto) to settle or pay the lawful claim(s) or demand(s) together with any losses costs damages legal fees disbursements and/or expenses incurred by the **Underwriter** under or in connection with any such **Insolvency Cover** provided for or issued on behalf of the **Associate Company**, the **Developer** and / or **Builder**. Any surplus remaining after payment or settlement of such claim(s) or demand(s) and any losses costs damages legal fees disbursements and/or expenses (or an amount equivalent thereto) shall be refunded to the **Associate Company** together with any surplus accrued interest (if any).

2.4 The **Associate Company** hereby agrees that if after the date hereof the **Associate Company** undergoes a change of control, other than where control passes to a company within the same group of companies as the **Associate Company** and which has validly executed an indemnity in favour of the **Underwriter** on terms no less onerous than the terms of this Agreement, then the **Associate Company** shall forthwith upon written demand by the **Underwriter** pay to the **Underwriter** a sum equal to the aggregate of all

Insolvency Covers then outstanding on behalf of the **Associate Company**, the **Developer** and / or **Builder**. The **Underwriter** may use such monies (together with all interest accruing thereon) to settle or pay any claim or demand arising from any **Insolvency Cover** provided for or in respect of the **Associate Company**, the **Developer** and / or **Builder** together with any losses costs damages legal fees disbursements and/or expenses incurred by the **Underwriter** under or in connection with any **Insolvency Cover** provided for or in respect of the **Associate Company**, the **Developer** and / or **Builder**. In so far as not so applied, such monies shall be retained by the **Underwriter** as cash cover upon trust to apply the same as aforesaid, and subject thereto, if there shall be a surplus in the hands of the **Underwriter** after paying, settling or recouping, as the case may be, all such claims or demands and any losses costs damages legal fees disbursements and/or expenses and the absolute release and discharge of the **Underwriter** from all liabilities (including contingent and prospective liabilities) under or in connection with the **Insolvency Cover** provided for or in respect of the **Associate Company**, the **Developer** and / or **Builder**, such surplus shall be refunded to the **Associate Company** together with any unexpended interest accrued thereon. For the purposes of this Clause 2.4, "control" shall have the meaning given to it in section 1124 of the Corporation Tax Act 2010.

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 on a 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 NAME] 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** and for the benefit of the **Underwriter's** associates, agents, representatives, 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 GOVERNING LAW AND JURISDICTION

- 13.1 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**

	Company Number	Date of Signature	Signature 1	Name 1	Signature 1	Name 2	Date of Signature
[COMPANY NAME 1]							
[COMPANY NAME 2]							
[COMPANY NAME 3]							
[COMPANY NAME 4]							

SAMPLE

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

Signed as a deed by
[ASSOCIATE COMPANY] (Company No: XXXXXXXX)
acting by:

.....
Signature of director / member

.....
Name of director / member

.....
Signature of director / member / Company Secretary

.....
Name of director / member / Company Secretary

Dated this day of 20....

Signed as a deed by the **Underwriter's Representative** on behalf of the **Underwriter**
acting by:

.....
Signature of director

.....
Name of director

in the presence of:

.....
signature of witness

Witness name:

Witness address:

Dated this day of 20....

You may wish to seek legal advice before signing this document