

Company Indemnity Agreement

SAMPLE

THIS AGREEMENT is made on XX/XX/XXXX

BETWEEN:

- A. **[COMPANY NAME] (Company No: XXXXXXXX)** whose registered office or whose principal place of business is at XXXXX, XXXXX, XXXXX, XXXXX, XXXXX (the **Company**)
- B. **MD Insurance Services Ltd (Company No: 3642459)** whose registered office is at 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 **Company** has organised, facilitated or constructed 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 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 **Company** 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 its Registration, the **Company** is obliged on all occasions to observe and comply with the **Rules** in addition to its obligations under the **Contract** and under the **Policy**.
- E. Upon the terms of this **Agreement** the **Company** hereby agrees to indemnify the **Underwriter**, its associates, agents and representatives in respect of any and all costs or liabilities incurred or suffered by the **Underwriter** or its associates, agents or representatives in respect of any failure by the **Company** to comply with its obligations relating to any **New Developments** insured with **Premier Guarantee** undertaken by the **Company**:
 - i. in respect of which the **Underwriter** has provided any cover under Clause B in this **Agreement**
and/or
 - ii. in respect of which the **Underwriter** has issued any **Bond**.

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 Claims Procedure

The Claims and **Dispute Resolution Service** set out in the **Policy** and any other provisions of the **Policy** regarding the manner in which disputes or claims relating to the **Policy** are to be managed or determined.

1.1.2 **Company**

Company shall have the same meaning as set out in the **Rules**

1.1.3 **Developer**

Developer shall have the same meaning as set out in the **Rules**

1.1.4 **Developer's Obligations**

The obligations of the **Developer** to the **Underwriter** and the **Scheme Administrator** as set out in the **Rules** and the obligations of the **Developer** to the **Policyholder** as set out in the **Policy**.

1.1.5 **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**

1.1.6 **Policy**

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

1.1.7 **Relevant Cover**

The cover provided to the **Policyholder** under the **Policy** in respect of certain defects in or relating to the **Home(s)** or in certain materials or components within the **Home(s)**, in each case as more particularly described in the **Policy**.

1.1.8 **Rules**

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

- 1.1.9 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**.

- 1.1.10 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 COMPANY'S OBLIGATIONS

- 2.1 The **Company** shall at all times observe and comply with any and all of the obligations it has to the **Underwriter**, the **Scheme Administrator** and/or the **Policyholder**, under, connected with or arising from the **Policy** and/or the **Rules** and/or the **Technical Manual** and/or the **Insolvency Cover**.
- 2.2 Without prejudice to the generality of the foregoing, the **Company** shall when required by the **Underwriter**, at the **Company's** own cost, participate in the **Claims Procedure**.
- 2.3 The **Company** hereby indemnifies the **Underwriter**, its associates, agents and representatives in respect 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 any nature whatsoever, together with costs and interest, which it may incur or suffer as a result of any breach by the **Company** of Clauses 2.1 or 2.2 of this **Agreement**. The **Company** shall make any such payment in full upon written demand by the **Scheme Administrator** and/or **Underwriter**.
- 2.4 The **Company** hereby agrees that in the event of:
- 2.4.1 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**, the **Underwriter** shall certify in writing to the **Company** that it has received such claim or demand whereupon the **Company** shall immediately upon written demand by the **Underwriter** deposit in cash the full amount of such respective **Insolvency Cover** 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 **Insolvency Cover**;
- 2.4.2 the **Insolvency** of the **Company** (except for a voluntary liquidation for the purposes of reconstruction or amalgamation), the **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 on behalf of the **Company** 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 **Company**.

The **Underwriter** may use such monies obtained under clause 2.4.1 and/or 2.4.2 (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**. 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 **Company** together with any surplus accrued interest (if any).

- 2.5 The **Company** hereby agrees that if after the date hereof the **Company** undergoes a change of control, other than where control passes to a company within the same group of companies as the **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 **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 **Company**. 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** together with any losses costs damages legal fees disbursements and/or expenses incurred by the **Underwriter** under or in connection with any **Insolvency Cover**. 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**, such surplus shall be refunded to the **Company** together with any unexpended interest accrued thereon. For the purposes of this Clause 2.5, "control" shall have the meaning given to it in section 1124 of the Corporation Tax Act 2010.

2.6 Further, in the case of **Premier Guarantee for New Homes**, where the **Company** is a separate legal entity from the **Developer**, the **Company** hereby indemnifies the **Underwriter** its associates, agents and representatives in respect of any liability, loss or expense of any nature whatsoever (together with costs and interest) which it may incur or suffer as a result of any breach by the **Developer** of any of the **Developer's Obligations**, provided always, that in the case of any breach by the **Developer**, the **Company's** liability shall be:

2.6.1 no greater than the liability of the **Developer** to the **Underwriter** in respect of the breach, and

2.6.2 limited to the **Company's** responsibility to the **Developer** under any relevant construction contract.

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 **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 **Company** acknowledges and agrees that the **Underwriter** shall be entitled to pay amounts to a **Policyholder** (including on a without prejudice basis) without reference to or any authorisation from the **Company**, whether or not the **Company** disputes the validity of the payment. Any such payment shall be deemed to constitute a liability incurred by the **Underwriter** arising from and connected with the **Policy**.

4 CLAIMS MADE UNDER THIS AGREEMENT

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

4.2 Any such claim(s) shall be accepted by the **Company** as conclusive evidence (and admissible as such) that any sum stated therein is properly due and payable by the **Company** to the **Scheme Administrator** or the **Underwriter** (at the **Underwriter's** option) for the purposes of this **Agreement**. The **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 **Company** or to the **Scheme Administrator** acting as disclosed agents of the **Underwriter**. Such notices should be sent to the registered office of the **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 **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 **Company** or any third party to make a claim under any other document to which it is party.

6.2 Without consent of the **Company** and provided that the amount of the **Company's** liability, obligations and indemnities hereunder is not increased the **Underwriter** may from time to time, on giving the **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 **Company** agrees that any such modification, amendment, renewal or extension shall not release nor in anyway lessen, remove, discharge or affect the **Company's** liability hereunder.

6.3 The **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 **Company** would be exonerated either wholly or in part from this **Agreement** shall release nor in anyway lessen, remove, discharge or affect the **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 **Company** is a partnership or otherwise consists of more than one person the liability of the **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 **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 **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 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:

10.3.1 affect the **Claims Procedure**; or

10.3.2 restrict the ability of a party from seeking any injunctive or interlocutory relief from the courts at any time.

11 THIRD PARTY RIGHTS

11.1 The Parties hereby acknowledge that 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 re-insurers. 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**.

11.2 Except as expressly provided, a person who is not a party to this **Agreement** 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.

12 GOVERNING LAW AND JURISDICTION

12.1 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

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

Signed as a deed by
[COMPANY NAME] (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