



Indemnity Agreement

****The below is for illustrative purposes only, a populated form will be provided for signing on receipt of the policy premium ****

THIS INDEMNITY AGREEMENT is made on the [DAY] Day of Month of [Month] 2020

BETWEEN:

ICW Insurance Services Ltd (“ICW”) is a company registered in England and Wales (Company Number 10985073), our registered address is 5th Floor, Minorities House, 2-5 Minorities, London, EC3N 1BJ. (the **“Scheme Administrator”** and duly authorised agent of the current Underwriter of the Scheme); and

XXXXXXX whose principal place of business is at XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX (the **“Developer”**)

WHEREAS

The Developer has organised or facilitated the construction of Residential Property(s) in the Development(s) and it has applied to the Scheme Administrator for the Residential Property(s) in the Development(s) to be insured with the Policy.

The Developer agrees to observe and comply with all of its obligations under the Membership Rules for the Warranty (the **“Rules”**) as well as its obligations to the purchasers of the Residential Property(s) in the Development(s) during the Defects Insurance Period as detailed in the Policy.

The Developer proposes to obtain a building warranty in respect of the Development from the Scheme Administrator upon the terms set out within the Policy Document.

Wherever any of the following words appear in bold in this Agreement they will have the undermentioned meaning:

Common Parts

Those parts of a multi-ownership building (of which each Residential Unit is part) for a common or general use for which the Policyholder has joint ownership and/or legal responsibility.

Defects Insurance Period

The period commencing on the date specified in the Final Certificate issued by the Scheme Administrator and ending:

- a) Two years after such date; and
- b) For Common Parts; the period commencing on the earliest date specified on a Final Certificate issued for a Residential Property that shares the Common Parts and ending either three years from the earliest date specified on a Final Certificate or two years from the latest date specified on the Final Certificate for a Residential Property sharing the Common Parts, whichever is the earlier.
- c) three years from the earliest date specified on a Final Certificate or two years from the latest date specified on the Final Certificate for a Residential Property sharing the Common Parts, whichever is the earlier.



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Belfast Office: Unit 1, 33 Massey Avenue, Belfast BT4 2JT. London Office: America House, 2 America Square, London EC3N 2LU.

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Developer	<p>Any person, sole trader, partnership, company, or special purpose vehicle with whom the Policyholder has entered into an agreement or contract to purchase the Residential Property on either a Freehold or Leasehold basis; or</p> <p>Any person, sole trader, partnership, company, or special purpose vehicle who constructs the Residential Property and with whom the Policyholder has entered into an agreement or contract to purchase the Residential Property on either a Freehold or Leasehold basis.</p>
Development	A Residential Property or a group of residential units for which an application for a Policy has been made.
Final Certificate	The Certificate issued by the Scheme Administrator to signify acceptance of each Residential Property for insurance following the Technical Audit Approval by the Technical Auditor.
Policy	The policy of insurance as more fully defined in the Policy Document.
Policy Document	The Policy Document is the document prepared by the Scheme Administrator and provided to the Developer which sets out legal basis upon which the Developer will receive a building warranty in respect of the Development.
Policyholder	The owner of the Residential Property which is the subject of the insurance provided by the Structural Warranty acquiring a freehold or leasehold interest in a Residential Property within the Development or their successor in title, or any mortgagee or lessor.
Residential Property	The property insured as more fully defined in each Policy.
Scheme Administrator	ICW whose principal place of business is Unit 1, 33 Massey Avenue, Belfast BT4 2JT. ICW act on behalf of the Underwriter and any obligations under this agreement to ICW shall be deemed to include the Underwriter for whom ICW act on behalf of.
Structural Warranty	The building warranty which it is proposed will be granted by ICW to the Developer in respect of the Development pursuant to the terms of the Policy Document.
Technical Auditor	The party which carries out technical audits of the Development on behalf of the Scheme Administrator to establish whether they represent a standard risk to the Underwriter.



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Underwriter

the Company or Lloyds Syndicate specified on the Certificate of Insurance relating to the Structural Warranty for the Residential Property.

1. THE CONSIDERATION

In consideration of ICW agreeing to issue a Policy, the Developer agrees:

- to observe and perform all of its obligations, undertakings and requirements set out in this Indemnity; and
- to observe and perform all of its obligations set out in the Rules in force from time to time of which said Rules the Developer acknowledges having read and fully understood; and
- to comply with the Claims Procedure as set out in the Policy;
- to indemnify the Underwriter and keep the Underwriter indemnified in respect of:
 - any payments made by the Underwriter to a Policyholder arising from or connected to Section 2 of a Policy; and
 - any claims, liabilities, losses, and expenses (including interest and all costs) of whatsoever nature incurred by the Underwriter arising from or connected to Section 2 of the Policy.
 - which in the Underwriter's opinion arise directly or indirectly out of the Developer's failure to observe and comply with all of its obligations as set out in Section 2 of the Policy.

2. AUTHORISATION

Any claim made under a Policy will be dealt with by the Underwriter or appointed agent on their behalf, and the Developer's liability hereunder will not be altered or reduced in any way by such arrangement.

The Developer acknowledges and accepts that the Underwriter or appointed agent on their behalf shall be entitled to pay amounts demanded from it by a Policyholder, or which it becomes liable to pay under or in connection with a Policy, without reference or further authority from the Developer and whether or not the Developer disputes the validity of the payment.

The Underwriter's payment of any amount under or connected to a Policy (including on an ex-gratia or without prejudice basis) shall be conclusive proof that the Underwriter was obliged to make a payment under the Policy.

3. CLAIMS MADE UNDER DEED

Any claim(s) hereunder shall be made by ICW, on behalf of the Underwriter, in writing and sent to the Developer at its address specified in the Agreement.

The aforementioned claim shall be accepted by the Developer as conclusive evidence (and admissible as such) that any sum stated therein is properly due and payable by the Developer to ICW or the Underwriter (at the Underwriters option) for the purpose of this Agreement. The Developer agrees it will pay this sum within 28 days of the notice without set off or counterclaim.



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4. NOTICES

Any notice under this Agreement may be sent by ordinary pre-paid post to either the Developer or to ICW. Such notices should be sent to the addresses herein or to their last known or usual place of business.

5. EFFECTS OF OTHER AGREEMENTS

The Underwriter 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 Developer 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 Developer to make a claim under any other document to which it is party.

Without notice to or consent of the Developer and provided that the amount of the Developer's liability hereunder is not increased ICW may from time to time modify, amend, renew, or extend the terms and conditions of:

- a Policy; and/or
- the Rules; and/or
- any agreements, indemnities, guarantees, securities, or obligations it has entered into with a third party;

and the Developer agrees that it shall not in any way lessen, remove, discharge, or affect the Developer's liability hereunder.

6. NO WAIVER AND CONTINUING SECURITY

The Developer agrees that no act, error, omission, matter, or thing whatsoever whether under this Agreement or any other contract whereby (but for this provision) the Developer would be exonerated either wholly or in part from the Agreement (other than a release under Seal), shall release, nor in anyway lessen, remove, discharge, or affect the Developer's liability hereunder.

7. JOINT AND SEVERAL LIABILITIES

Where the undersigned is a partnership or otherwise consists of more than one person, the liability of the undersigned under this Agreement shall be deemed to be joint and several liabilities of the partners or of such persons as stated above and any demand for payment made by ICW to any one or more persons so jointly and severally liable shall be deemed to be a demand made to all such persons.

The Developer 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 ICW.



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8. JOINT SIGNATORIES

If this Agreement is signed by or on behalf of more than one person and one or more of them is not bound by the provisions of this Agreement, whether by reason of their lack of capacity or improper execution of this Agreement or for any other reason, the remaining signatory or signatories shall continue to be bound by the provisions of this Agreement as if the other signatory or signatories had never been party to it.

9. EFFECT OF DELAY OR OMISSION

No delay or omission on the part of ICW or the Underwriter's 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 any other right, exclusive of any rights, powers, privileges or remedies.

10. ASSIGNMENT

The Developer shall not transfer or assign any of its obligations pursuant to this Agreement without having obtained the prior written consent of ICW or the Underwriter.

11. ARBITRATION

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 by the President for the time being of The Royal Institute of Chartered Surveyors of England and Wales.

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.

12. GOVERNING LAW AND JURISDICTION

This Agreement shall be governed by, and constructed in accordance with, the laws of England and Wales and the parties submit to the exclusive jurisdiction of the courts of England and Wales.



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Signed for and on behalf of the Scheme Administrator

Authorised Signatory

Signed:

Name:

Position:

Signed by

The DEVELOPER

Signed:

Name:

Position:

SAMPLE



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