

**SPECIMEN OF INDEMNITY AND WARRANTY**

INDEMNITY AND WARRANTY

FOR \_\_\_\_\_  
WORKS

THIS DEED OF INDEMNITY AND WARRANTY is made the \_\_\_\_\_ day of \_\_\_\_\_

By

(1) \_\_\_\_\_ having its registered office at \_\_\_\_\_  
(hereinafter called "the Contractor") of the first part; And

(2) \_\_\_\_\_ having its registered office at \_\_\_\_\_  
(hereinafter called "the Specialist") of the second part;

In favour of \_\_\_\_\_

(hereinafter called "the Employer" which term shall include its assigns and successors in title).

WHEREAS:-

- 1 The Employer is the developer of a \_\_\_\_\_ on Lot \_\_\_\_\_ Mukim \_\_ project known as " \_\_\_\_\_ " at \_\_\_\_\_ (hereinafter called "the Premises") and has entered into a Contract with the Contractor dated \_\_\_\_ day of \_\_\_\_\_ 201\_ (hereinafter called "the Contract") wherein the Contractor has agreed, inter alia, to supply, install, complete and maintain the \_\_\_\_\_ (hereinafter called "the Works") to the Premises.
- 2 By an agreement dated \_\_\_\_ day of \_\_\_\_\_ 201\_ made with the Contractor, the Specialist has agreed to execute the Works (hereinafter called "the Sub-Contract").
- 3 The Contractor and the Specialist have agreed to jointly and severally warrant the Works and to jointly and severally indemnify the Employer, in relation to the Works in the manner hereinafter appearing.

THE CONTRACTOR AND THE SPECIALIST HEREBY JOINTLY AND SEVERALLY AGREE with the Employer as follows:-

- 1 The Contractor and the Specialist jointly and severally warrant that the Works shall be free from any defect, deterioration, failure, lack of fitness, non-satisfaction of performance specifications or other requirements under the Contract or other faults in the Works including without prejudice to the generality of the foregoing any shrinkage, seepage or leakage if applicable in relation to the Works (“the Defects”), as shall be determined by the Employer, for a period of \_\_\_ (\_\_) years from the date of completion stated in the Completion Certificate of the Works under the terms of the Contract (“the Period”), and in the event of any Defects appearing or becoming apparent in the Works within the Period, the Contractor and/or the Specialist shall forthwith upon written notice from the Employer and within such time as the Employer may direct, remedy, repair or make good to the absolute satisfaction of the Employer:
  - 1.1 the Defects; and
  - 1.2 any damage to the Works or any property of the Employer or a third party, arising directly or indirectly out of the Defects and/or the remedy, repair or making good of such Defects, including but not limited to any damage to plaster, painting, panelling, tiling and other similar works, mechanical, electrical or other installations or other property.
- 2 In the event the works undertaken by the Contractor or the Specialist referred to in Clause 1 above prove ineffective as determined by the Employer whose decision shall be final and conclusive, or are not to the satisfaction of the Employer, the Contractor and/or the Specialist shall effect such additional works in such a manner and within such time as the Employer may direct and shall carry out all tests, as directed by the Employer until such Defects and damage have been remedied, repaired or made good to the absolute satisfaction of the Employer.
- 3 Should the Contractor or the Specialist fail to perform their obligations under Clauses 1 and 2 above within the time directed by the Employer or in the absence of such direction, within a reasonable period, the Employer shall be entitled (but not obliged) to remedy, repair or make good such Defects or damage and the Contractor and the Specialist shall forthwith on demand fully indemnify the Employer in respect of all losses, damages, costs and expenses incurred by the Employer in remedying, repairing or making good such Defects or damage, including all legal costs as between solicitor and client incurred by the Employer in enforcing this clause.
- 4 Nothing in this Deed or in Clause 3 above is intended to take away any of the Employer’s rights at law against the Contractor or the Specialist, and for the avoidance of doubt, should the Contractor or the Specialist fail to perform their obligations under Clauses 1 and 2 above within the time directed by the Employer or in the absence of such direction, within a reasonable period, the Employer shall be entitled to claim against the Contractor and/or the Specialist all its damages, losses, costs and expenses including all legal costs on the indemnity basis arising from a breach by the Contractor or the Specialist of any warranties or undertakings under this Deed.

- 5 The exercise by the Employer of any of its rights under this Deed in any manner (including without limitation the engaging of third parties to remedy the Defects) shall not in any way relieve the Contractor and the Specialist of their obligations under this Deed, the Contract (in the case of the Contractor) and at law.
- 6 The Contractor and/or the Specialist shall indemnify the Employer from and against any claim, actions or proceedings for any loss, damage, compensation or indemnity arising out of or in connection with:
  - 6.1 such Defects or damage or the remedy, repair or making good of such Defects or damage; or
  - 6.2 any breach by the Contractor and/or the Specialist of any of the warranties, covenants and undertakings contained in this Deed.
- 7 All costs and expenses arising out of the performance of the parties' obligations under this Deed shall be borne by the Contractor and the Specialist.
- 8 The giving of time or the neglect or forbearance of the Employer in enforcing its rights under this Deed or other indulgence granted to either the Contractor or the Specialist or both shall not in any way prejudice or affect the obligations of the Contractor and/or the Specialist under this Deed, the Contract (in the case of the Contractor) and at law.
- 9 The Employer shall be entitled at its absolute discretion to assign the benefit of and/or its rights under this Deed to any third party without the consent of the Contractor and/or the Specialist. For the avoidance of doubt, such an assignment shall not prejudice, modify, limit, exclude or affect in any way the Employer's rights and remedies against the Contractor and the Specialist under the Contract (in the case of the Contractor) and at law.
- 10 The rights and benefits conferred upon the Employer by this Deed are in addition to any other rights and remedies the Employer has or may have against the Contractor and/or the Specialist including without limitation, its rights and remedies under the Contract (in the case of the Contractor) and at law.
- 11 Any notice or demand required to be made shall be sufficiently given if sent by registered post to the aforesaid addresses of the Contractor or the Specialist or such addresses specified by them and shall be deemed to be received at the time when it would have been delivered in the ordinary course of post.
- 12 The statements and representations in the Recital hereinabove stated are true and accurate in all respects and this Deed shall have full force and effect notwithstanding:
  - 12.1 any limitation or termination of the Contractor's and/or Specialist's liability and/or responsibility under the Contract and/or Sub-Contract respectively;
  - 12.2 any termination of the Contract or the Contractor's employment under the Contract and/or the termination of the Sub-Contract or the employment of the Specialist under the Sub-Contract; or
  - 12.3 the expiry of any limitation period for any claim or cause of action which the Employer has or may have against the Contractor under the Contract.

- 13 A person who is not a party to this Deed shall have no rights or remedies under the Contracts (Rights of Third Parties) Act [Chapter 53B] to enforce any of the terms in this Deed.

IN WITNESS WHEREOF

the day and year first above written

SIGNED, SEALED AND DELIVERED )  
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by \_\_\_\_\_ )  
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for and on behalf of )  
\_\_\_\_\_ )  
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in the presence of:- )  
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Name: ..... )  
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Address: ..... )  
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Description: ..... )

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