



**(1) Q ASSURE BUILD LIMITED**

**- and -**

**(2) COMPANY NAME**

**GUARANTEE REGISTRATION NUMBER:**

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**CROSS-COMPANY GUARANTEE**

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**DD MONTH YYYY**



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## **INTRODUCTION**

### **PURPOSE OF THIS AGREEMENT**

In any relationship between two businesses it is important to understand the roles and expectations of all parties and their obligations to each other.

Q takes its commitment to Treating Customers Fairly very seriously: the underlying principle of The Q Policy is to adopt a fair, reasonable and consistent approach with all of our stakeholders during the build process and ensuring a consistent approach to claims decisions and cover.

It is very important that you read this document carefully in conjunction with the Terms of Business Agreement (“Agreement”) and the Structural Defects Insurance Scheme policy documents as all companies will have legal responsibilities and obligations under the Agreement and this Guarantee.

### **OVERVIEW OF AGREEMENT**

All members registering with Q are required to comply with the Terms of Business Agreement (“Agreement”). The conditions of the Agreement (and therefore of this Guarantee) apply to all developments registered and/or constructed by the member during the term of the Agreement.

This Guarantee may be amended from time to time and any such amendments will apply to all developments which the member has registered with Q at any time after notice of such amended Guarantee has been given.

This Guarantee is effective from the date stated at the beginning.

Compliance by the member with the Terms of Business Agreement (“Agreement”) is a condition precedent to the Underwriter providing insurance for any proposed New Homes.

Defined terms used in this Guarantee are the same as those used in Section 1.1 of the Terms of Business Agreement (“Agreement”) which has been entered into by the member.

This Guarantee and any dispute or claim arising out of or in connection with it or its subject matter, will be governed by and construed in accordance with the laws of England & Wales and subject to the exclusive jurisdiction of the courts of England.

**If you have any queries relating to this Guarantee or relating to the policy cover provided under The Q Policy, please contact Q at [client@qassurebuild.co.uk](mailto:client@qassurebuild.co.uk)**



THIS DEED is dated DD Month YYYY

**BETWEEN:**

- (1) **Q Assure Build Limited** a private limited company incorporated in England & Wales whose Registered Office is at **11 Milbanke Court, Milbanke Way, Bracknell, Berkshire, RG12 1RP** and whose company registration number is 727 7528 ("Q").
- (2) **Company Name** a private limited company incorporated in **England & Wales** whose Registered Office is at **Company Address, Address, City, County, Postcode** and whose company registration number is **XXX XXXX** ("Guarantor").

**WHEREAS:**

- (A) **Q Assure Build Ltd** is the Policy Administrator for The Q Policy Scheme (which is a Structural Defects Insurance product for New Build Residential Properties) and a Code User of the Consumer Code for New Homes.
- (B) **Company Name** is providing a Cross Company Guarantee to Q for **Member Name**.
- (C) **Member Name** is a **Developer/Builder** which arranges and sells/builds Properties in the United Kingdom, is registered with Q and who has signed a Terms of Business Agreement to fulfil certain liabilities for Q ("Developer/Builder").

**IT IS AGREED AS FOLLOWS:**

**1. GUARANTEE**

1.1 In consideration of Q accepting to register the Developer/Builder on The Q Register of Members and for its underwriters to provide Structural Defects Insurance on properties built, converted or refurbished by the Developer/Builder, and in accordance with the Agreement between Q and the Developer/Builder (as from time to time amended, extended or reissued) ("the Agreement") the Guarantor hereby:

1.1.1 irrevocably and unconditionally guarantees to Q and its underwriters:

- (i) the full and due performance and observance by the Developer/Builder of all its obligations under or arising pursuant to Q, its underwriters and/or the Agreement; and
- (ii) the due payment and discharge of all sums of money and liabilities which now are or at any time shall be due, owing or incurred, or payable and unpaid by the Developer/Builder to Q (and/or the Underwriter of the Structural Defects Insurance Scheme) pursuant to the Structural Defects Insurance and/or the Agreement; and
- (iii) the due payment and discharge of all losses, damages, expenses and costs arising from Q (and/or the Underwriter of the Structural Defects Insurance Scheme) exercising its rights against the Developer/Builder pursuant to the Structural Defects Insurance Scheme or/and the Agreement.

1.1.2 irrevocably and unconditionally undertakes to Q that if the Developer/Builder fails to fully and completely:

- (i) perform and observe its said obligations; or
- (ii) pay and satisfy the said sums of money and/or liabilities; or
- (iii) pay and discharge the said losses, damages, expenses and costs

the Guarantor will indemnify and keep indemnified Q and its underwriters from and against and forthwith on demand pay to Q and its underwriters all losses, damages, expenses and costs which Q and its underwriters may suffer, incur or pay as a direct or indirect result of such failure on the part of the Developer/Builder.



- 1.2 It is hereby agreed and declared that the liability of the Guarantor hereunder shall be as principal obligor and not merely as surety.
- 1.3 The Guarantor agrees that all sums which may not be recoverable from the Developer/Builder by reason of any legal limitation, disability or incapacity on or of the Developer/Builder or of any other circumstances whether known to Q or not shall nevertheless be recoverable from the Guarantor as sole or principal debtor on demand.

## 2. EXTENT AND DURATION OF GUARANTEE

- 2.1 The Guarantor agrees that this Guarantee is a continuing guarantee and notwithstanding the provisions of [Clause 4 - Expiry of Guarantee](#) hereof it shall not be released from this Guarantee by the granting by Q of any time or other indulgence, or by the taking by Q or its underwriters of any other security in respect of any obligations of the Developer/Builder or the Guarantor, or termination or variation of any of the provisions of the Structural Defects Insurance Scheme and for the Agreement or of any such other security, or the release of any such other security, and that the Guarantor's liability under this Deed shall not be affected by any failure, delay or forbearance on the part of Q (and/or the Underwriter of the Structural Defects Insurance Scheme) in enforcing any such security or any of its rights against the Developer/Builder or the Guarantor.
- 2.2 Notwithstanding any composition, release or arrangement effected by Q or its underwriters with the Developer/Builder, the Guarantor's liability under this Guarantee shall only be reduced to the extent of payment and discharge by the Developer/Builder to Q (and/or the Underwriter of the Structural Defects Insurance Scheme) of all sums, obligations and liabilities which may from time to time be respectively due or owing or incurred from or by the Developer/Builder.
- 2.3 The provisions of [Clause 1](#) hereof and the Guarantor's liabilities hereunder shall remain in force notwithstanding any intermediate settlement of account or payment or any change in the constitution or control of, or the insolvency of, or any bankruptcy, winding-up or analogous proceedings relating to the Developer/Builder.
- 2.4 This Guarantee shall extend to any reasonable costs, charges and expenses incurred by Q (and/or the Underwriter of the Structural Defects Insurance Scheme) in enforcing or seeking to enforce this Guarantee and in suing for and otherwise in recovering or attempting to recover any moneys which are payable by the Developer/Builder under or pursuant to the terms of the Structural Defects Insurance Scheme and the Agreement and remaining unpaid.

## 3. ENFORCEMENT OF GUARANTEE

- 3.1 No single exercise of any right, power or privilege conferred by this Deed shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege.
- 3.2 If any monies have become payable or shall have been paid by the Guarantor under this Guarantee, the Guarantor shall not, in respect of such monies, seek to enforce repayment or to exercise any other rights or legal remedies of any kind whatsoever and howsoever arising which may accrue to or in favour of the Guarantor against the Developer/Builder in respect of any other monies for the time being due to the Guarantor from the Developer/Builder so long as any monies remain owing to Q (and/or the Underwriter of the Structural Defects Insurance Scheme) pursuant to the Structural Defects Insurance Scheme and the Agreement and, in the event of the insolvency, winding-up, liquidation or dissolution of the Developer/Builder the Guarantor will not prove in competition with Q or its underwriters in respect of any monies owing in any manner whatsoever and howsoever arising to the Guarantor by the Developer/Builder or any other surety until all monies owing to Q (and/or the Underwriter of the Structural Defects Insurance Scheme) under or pursuant to the Structural Defects Insurance Scheme and the Agreement shall have been paid off or satisfied in full.



- 3.3 This Guarantee shall be in addition and without prejudice to, and not in substitution for, any rights whatsoever and howsoever arising which Q and its underwriters may have for the time being, and from time to time, under or by virtue of the Structural Defects Insurance Scheme and the Agreement and/or any other agreement, document, guarantee or security whatsoever and this Guarantee may be enforced against the Guarantor without first having recourse to any or all of such rights and without taking any steps or proceedings against the Developer/Builder or any other surety.
- 3.4 No cancellation of this Guarantee or other release, settlement, discharge or arrangement by Q or its underwriters with the Guarantor and/or the Developer/Builder which may have been given or made on the faith of any security, payment or other act which may subsequently be avoided or reduced by or under any enactment or provision relating to bankruptcy, insolvency or liquidation or other law or for any other reason whatsoever and howsoever arising shall prejudice or affect the rights of Q (and/or the Underwriter of the Structural Defects Insurance Scheme) to recover from the Guarantor to the full extent of this Guarantee as if such cancellation, release, settlement, discharge or arrangement had not occurred.
- 3.5 Q (and/or the Underwriter of the Structural Defects Insurance Scheme) shall be at liberty but not bound to resort for its own benefit to any other means of payment at any time and in any order as it thinks fit without thereby diminishing the liability of the Guarantor and Q or its underwriters may enforce this Guarantee either for the payment of the ultimate balance after resorting to other means of payment or for the balance due at any time, notwithstanding that other means of payment have been resorted to and, in the latter case, without entitling the Guarantor to any benefit from and/or any right of contribution in respect of such other means of payments until all moneys now or hereinafter owing under or pursuant to the Structural Defects Insurance Scheme and the Agreement have been paid off or satisfied in full.

#### **4. EXPIRY OF GUARANTEE**

- 4.1 In respect of each New Home, the Guarantor shall have no further liability hereunder with effect from the second anniversary of the effective date of the issue of the last Insurance Certificate relating thereto, subject to there being:
- 4.1.1 no sums due from the Guarantor hereunder; or
  - 4.1.2 no outstanding claims against the Developer/Builder pursuant to the Structural Defects Insurance Scheme and/or the Agreement; or
  - 4.1.3 no reoccurrence of Defects which were notified to the Developer/Builder before the expiry of the Customer Services Guarantee Period, regardless of whether the Developer/Builder has already attempted to address such Defects; or
  - 4.1.4 no outstanding Insurance Certificate in respect of New Homes or Common Parts; or
  - 4.1.5 no endorsement(s) relating to the period of the policy on the Insurance Certificate relating to the New Home and/or Common Parts.

#### **5. ASSIGNMENT**

- 5.1 Q (and/or the Underwriter of the Structural Defects Insurance Scheme) shall be entitled to assign its rights or any of them under this Guarantee to any company or other organisation into which it may be absorbed or with which it may merge or amalgamate and accordingly this Guarantee shall continue to bind the Guarantor notwithstanding such assignment absorption merger or amalgamation.



5.2 The Guarantor shall not without the prior written consent of Q (and then only to the extent permitted by such consent) be entitled to assign or dispose of any of its rights or obligations hereunder, nor to sub-contract or delegate any of such rights or obligations.

**6. OTHER PROVISIONS OF THIS AGREEMENT**

6.1 Expressions used in this Guarantee have the same meaning as in the Agreement.

6.2 The Guarantor shall supply Q and its underwriters such written information concerning the financial and trading position and prospects of the Guarantor as Q and its underwriters from time to time require.

6.3 This Deed constitutes the entire agreement between its parties as to its subject matter and supersedes all other agreements, statements, representations or warranties made by or between such parties concerning the same.

6.4 Any notice, communication or demand to be given under the terms of this Guarantee are to be sent by e-mail to [client@qassurebuild.co.uk](mailto:client@qassurebuild.co.uk).

6.5 The parties will use their best endeavours to negotiate in good faith and settle amicably within a reasonable period any dispute that may arise out of or relates to this Guarantee. In the event that such negotiations fail, the parties will attempt in good faith to settle any dispute by mediation. Each party will bear one half of the mediator's fees.

6.6 This Deed shall be governed by and construed the laws of England & Wales and subject to the exclusive jurisdiction of the courts of England.

**IN WITNESS** whereof the Guarantor has executed this instrument as a Deed by their authorised representative on the date set out below.

Signed for and on behalf of **COMPANY NAME**

<b>Name of Authorised Signatory:</b>		
	<b>Signature:</b>	
<b>Position of Authorised Signatory:</b>	<b>Director</b>	<b>Director</b>
<b>Date:</b>		