



## **COLLATERAL WARRANTIES POLICY**

<b>Date Approved</b>	<b>Proposed Review Date</b>
<b>September 2017</b>	<b>September 2020</b>
<b>Chair Person/Office Bearers Signature:</b>	

**CASSILTOUN HOUSING ASSOCIATION LTD**  
Castlemilk Stables, 59 MACHRIE ROAD, GLASGOW G45 OAS

**Cassiltoun Housing Association is a recognised Scottish Charity no. 035544**

## **COLLATERAL WARRANTIES POLICY**

### **1.0 POLICY OBJECTIVES**

- 1.1 The objective of this policy is to ensure that the Association's interests are protected and that a clear and concise document is provided to avoid any doubt as to the requirements of the Association.
- 1.2 This policy clarifies Cassiltoun's requirements in terms of securing warranties from designers on major developments where CHA is not directly employing the designers. This is most often encountered on 'non-traditional' building contracts such as 'Design and Build'.

### **2.0 LEGAL AND REGULATORY FRAMEWORK**

- 2.1 As a registered social landlord, Cassiltoun HA must comply with the Regulatory Standards of Governance and Financial Management set out by Scottish Housing Regulator. Standard 2- *'The RSL manages its resources to ensure its financial well-being and economic effectiveness'* is of relevance to this Policy.
- 2.2 The proposed collateral warranties protect the interests of Cassiltoun HA by creating a contractual relationship with designers on a non-traditional development project, with whom we would otherwise have no direct relationship and therefore no recourse to, should problems arise in the future with the design.

### **3.0 EQUAL OPPORTUNITIES STATEMENT**

- 3.1 We recognise our pro-active role in valuing and promoting diversity, fairness, social justice and equality of opportunity by adopting and promoting fair policies and procedures. We will check this policy and associated procedures regularly for their equal opportunity implications, taking appropriate action to address inequalities likely to result or resulting from the implementation of the policy and procedures. We are committed to providing fair and equal treatment to all applicants including tenants and will not discriminate against any on the grounds of race, colour, ethnic or national origin, religion, age, gender, sex, sexual orientation, marital status, family circumstances, employment status or physical ability.

### **4.0 RESPONSIBILITY**

- 4.1 It shall be the responsibility of the Association's Development Consultant to liaise with the Employer's Agent on a non-traditional contract to ensure that collateral warranties with other design team members are implemented. This includes the incorporation of this policy within tendering documents for main contractors.

### **5.0 BACKGROUND**

- 5.1 **There are two main types of Collateral Warranties.**
  - (a) Employers Collateral Warranties
  - (b) Funders Collateral Warranties
- 5.2 This document deals specifically with Employers' Collateral Warranties.

## **6.0 PURPOSE OF COLLATERAL WARRANTIES**

- 6.1 In a Design & Build Contract, the Association will have a direct contractual link with the Main Contractor. The Main Contractor undertakes responsibility for the design element of a project and appoints the professional team, e.g. Architect, Engineer, etc. As such, the Association has no contractual link with the professional team.
- 6.2 If a problem arises after completion of the project, e.g. a latent or inherent defect, the Association's recourse is to the contractor, who in turn has recourse to the professional team. There is no problem for the Association as long as the contractor is still in existence. If the contractor disappears for what ever reason, e.g. insolvency or group re-organisation, the Association has no route to pursue the professional team, as it has no contract with them.
- 6.3 It is therefore necessary to bridge the contractual gap between the Association and the professional team appointed by the contractor with Collateral Warranties.

## **7.0 POLICY**

- 7.1 The Association shall adopt a standardised form of Collateral Warranty Agreement between "the firm" (Consultant appointed by the Main Contractor) and "the Purchaser" (the Association).
- 7.2 The Association shall include a standardised form of Collateral Warranty Agreement in the draft tender documents, which will be issued to the Main Contractor at the Briefing Stage prior to the Main Contractor appointing Consultants.
- 7.3 Prior to appointment by the Main Contractor, Consultants will be required to confirm their acceptance of the terms of the Collateral Warranty.
- 7.4 An additional clause shall be added to the Preliminaries of the tender document to cover this point.
- 7.5 Copies of the additional clause to Preliminaries and the standardised form of Collateral Warranty are attached.

**Appendix 1: COLLATERAL WARRANTIES:  
ADDITIONAL CLAUSE TO PRELIMINARIES**

The following clause will be added by the Association's Employer's Agent to the standard preliminaries documents that forms part of the tendering documents in a non-traditional contract.

*"the Contractor will ensure that **[insert full details of all consultants required to grant warranties]** will execute and deliver to the Employer on demand Collateral Warranties in terms of the draft forming part **[insert details of reference]** of these preliminaries. In completing the draft:-*

1. *The parties to be named in clause 1 (b) shall be only those from whom the contractor is required to obtain a warranty in favour of the Employer.*
2. *The level of insurance to be inserted in clause 6 of the draft shall be [two million pounds (£2m)] or such greater amount specified as the minimum level of P I cover in the contract.*
3. *The period for the purposes of clause 6 shall, be [12] years.*
4. *For the purposes of Clause 7 the warranty shall be capable of being assigned or transferred twice.*
5. *For the purposes of clause 9, the period shall be 12 years from the date of practical completion".*

**Appendix 2: CASSILTOUN HOUSING ASSOCIATION LIMITED**  
**STANDARD FORM OF COLLATERAL WARRANTY AGREEMENT**

THIS AGREEMENT IS MADE BETWEEN:

(1) Cassiltoun Housing Association Ltd whose registered office is situated at 59 Machrie Road, Glasgow G45 OAS ("the Purchaser" which term shall include all permitted assignees under this Agreement) and

(insert name of the Consultant) (2) .....  
of/whose registered office is situated at .....  
..... ("the Firm"),

WHEREAS:-

A. The Purchaser has entered into or may enter into a contract ("the Building Contract") with .....("the Client")  
Relating to the Design and Construction of units forming part of the..... at .....  
("the Development").

B. The Client has entered into a contract ("the Appointment") dated .....  
and the Client has appointed the Firm as [architects/consulting structural Engineers/consulting building services engineers/quantity surveyors] in connection with the Development.

(Insert date of appointment)  
(delete/complete as appropriate)

NOW IN CONSIDERATION OF THE PAYMENT OF ONE POUND (£1) BY THE PURCHASER TO THE FIRM (RECEIPT OF WHICH THE FIRM ACKNOWLEDGES) IT IS HEREBY AGREED as follows:-

1. The Firm warrants that it has exercised and will continue to exercise skill reasonably to be expected of a properly qualified and competent [ ] experienced in carrying out work of a similar size scope and complexity to the Development in the performance of its services to the Client under the Appointment.

In the event of any breach of this warranty:

- (a) subject to paragraphs (b) and (c) of this clause, the Firm shall be liable for the reasonable costs of repair renewal and/or reinstatement of any part or parts of the Development to the extent that
  - the Purchaser incurs such costs and/or
  - the Purchaser becomes liable either directly or by way of financial contribution for such costs.

(delete as appropriate to reflect terms of the Appointment)

The Firm shall not be liable for other losses incurred by the Purchaser

(insert the names of other intended warrantors)

(b) The Firm's liability for costs under this agreement shall be limited to that proportion of such costs which it would be just and equitable to require the Firm to pay having regard to the extent of the Firm's responsibility for the same and on the basis that.....  
.....  
.....shall be deemed to have provided contractual undertakings on terms no less onerous than this Clause 1 to the Purchaser in respect of the performance of their services in connection with the Development and shall be deemed to have paid to the Purchaser such proportion which it would be just and equitable for them to pay having regard to the extent of their responsibility;

- (c) the Firm shall be entitled in any action or proceedings by the Purchaser to rely on any limitation in the Appointment and to raise the equivalent rights in defence of liability as it would have against the Client under the Appointment;
- (d) the obligations of the Firm under or pursuant to this clause 1 shall not be released or diminished by the appointment of any person by the Purchaser to carry out any independent enquiry into any relevant matter.

2. [Without prejudice to the generality of Clause 1, the Firm further warrants that it has exercised and will continue to exercise reasonable skill and care to see that, unless authorised by the Client in writing or, where such authorisation is given orally, confirmed by the Firm to the Client in writing, none of the following has been or will be specified by the Firm for use in the construction of those parts of the Development to which the Appointment relates:-

- (a) high alumina cement in structural elements;
- (b) wood wool slabs in permanent formwork to concrete;
- (c) calcium chloride in admixtures for use in reinforced concrete;
- (d) asbestos products;

(delete where the Firm is the quantity surveyor)

- (e) naturally occurring aggregates for use in reinforced concrete which do not comply with British Standards 882: 1983 and/or naturally occurring aggregates for use in concrete which do not comply with British Standards 8110: 1985

(f)

In the event of any breach of this warranty the provisions of Clauses 1a, b, c and d shall apply.]

(further specific materials may be added by agreement)

3. The Firm acknowledges that the Client has paid all fees and expenses properly due and owing to the Firm under the Appointment up to the date of this agreement.

4. The Purchaser has no authority to issue any direction or instruction to the Firm in relation to the Appointment.

5. The copyright in all drawings, reports, models, specifications, bills of quantities, calculations and other documents and information prepared by or on behalf of the Firm in connection with the Development (together referred to in this Clause 5 as "the Documents") shall remain vested in the Firm but, subject to the Firm having received payment of any fees agreed as properly due under the Appointment, the Purchaser and its appointees shall have a licence to copy and use the Documents and to reproduce the designs and content of them for any purpose related to the Development including, but without limitations, the construction, completion, maintenance, letting, promotion, advertisement, reinstatement, refurbishment and repair of the Development. Such licence shall enable the Purchaser and its appointee to copy and use the Documents for the extension of the Development but such use shall not include a licence to reproduce the designs contained in them for any extension of the Development. The Firm shall not be liable for any use by the Purchaser or its appointee of any of the Documents for any purpose other than that for which the same were prepared by or behalf of the Firm.

6. The Firm shall maintain professional indemnity insurance in an amount of not less than \_\_\_\_\_ pounds (£ \_\_\_\_\_), or such greater amount specified as the minimum level of PI cover in the contract, for any one occurrence or series of occurrences arising out of any one event for a period of \_\_\_\_\_ years from the date of practical completion of the

Development under the Building Contract, provided always that such insurance is available at commercially reasonable rates. The Firm shall immediately inform the Purchaser if such insurance ceases to be available at commercially reasonable rates in order that the Firm and the Purchaser can discuss means of best protecting the respective positions of the Purchaser and the Firm in the absence of such insurance. As and when it is reasonably requested to do so by the Purchaser or its appointee the Firm shall produce for inspection documentary evidence that its professional indemnity insurance is being maintained.

7. The Purchaser shall be entitled to assign or transfer his/her rights under this Agreement to any other person acquiring the Purchaser's interest in the whole of the Development without the consent of the Firm subject to written notice of such assignation being given to the Firm in accordance with Clause 8 hereof. Nothing in this clause shall permit any party acquiring such right as assignee or transferee to enter into any further assignation or transfer to anyone acquiring subsequently an interest in the Development from him.

(insert amount)  
 (insert period)  
 8. Any notice to be given by the Firm hereunder shall be deemed to be duly given if it is delivered by hand or sent by registered post or recorded delivery to the Purchaser at its registered office and any notice given by the Purchaser hereunder shall be deemed to be duly given if it is addressed to "The Senior Partner"/"The Managing Director" and delivered by hand at or sent by registered post or recorded delivery to the above-mentioned address of the Firm or to the principal business address of the Firm for the time being and, in the case of any such notices, the same shall if sent by registered post or recorded delivery be deemed to have been received forty eight hours after being posted.

9. No action or proceedings for any breach of this Agreement shall be commenced against the Firm after the expiry of [X] years from the date of practical completion of the Development under the Building Contract.

10. This Agreement shall be construed and the rights of the parties and all matters arising hereunder shall be determined in all respects according to the Law of Scotland.

IN WITNESS WHEREOF these presents are executed as follows:-

(insert number of times)  
 SIGNED by the above named Firm at .....  
 on the ..... day of ..... Two Thousand and.....  
 as follows:-

..... (Firm's signature)

Witness  
 Signature ..... Full Name .....

Address .....

..... Occupation .....

.....Director/Company Secretary Signature

Full Name .....

Address .....

(Complete as appropriate) ..... Occupation .....

Witness  
 Signature ..... Full Name .....

Address .....  
..... Occupation .....

SIGNED by the above named Purchaser at .....  
on the ..... day of ..... Two Thousand and .....  
as follows:-

\* Partnership  
Only

For and on behalf of the Purchaser

..... Authorised Signatory

Witness  
Signature ..... Full Name .....

Address .....  
..... Occupation .....

\* Company  
Only

\* Delete as appropriate