

FORM OF WARRANTY

THIS **WARRANTY** is made on the date day of month of year by

1. **Contractor's Name** having its registered office at Registered Address (hereinafter called the "**Contractor**") of the first part, and
2. **Sub-Contractor's Name** having its registered office at Registered Address (hereinafter called the "**Sub-Contractor**") of the second part,

in favour of **Employer's Name** having its registered office at Registered Address (hereinafter called the "**Employer**" which term shall include its assigns and successors in title).

WHEREAS:

- (A) The Employer is the developer of Project Title (hereinafter called the "**Project**") and has entered into a contract with the Contractor dated the date day of month of year (hereinafter called the "**Contract**") wherein the Contractor has agreed to design¹, execute and complete insert brief description of main works (hereinafter called the "**Works**") for the Project.
- (B) The Sub-Contractor has entered into an agreement with the Contractor dated the date day of month of year (hereinafter called the "**Sub-Contract**") wherein the Sub-Contractor has agreed to execute insert brief description of sub-contracted works (hereinafter called the "**Sub-Contract Works**").
- (C) The Contractor and the Sub-Contractor have agreed to jointly and severally warrant the Sub-Contract Works in the manner hereinafter appearing.

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

1. The Contractor and the Sub-Contractor jointly and severally warrant and undertake that:
 - 1.1 the Sub-Contract Works, which include but are not limited to workmanship, goods and materials, shall be free from any defect, deterioration, failure, lack of fitness, non-satisfaction of performance specifications or other requirements under the Contract and/or Sub-Contract or other faults in the Sub-Contract Works including but

¹ Drafting note: To remove if Contractor is not responsible for design.
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not limited to, without prejudice to the generality of the foregoing any shrinkage, seepage or leakage *et al*, where applicable, in relation to the Sub-Contract Works (collectively referred to as the “**Defects**”), as shall be determined by the Employer, for a period of Three/Five/Ten² years from the date of substantial completion of the entire Works or if the Works are carried out in different phases or parts under the Contract, date of completion of the last phase or part to achieve substantial completion under the Contract (as certified in the Certificate of Substantial Completion) (“**Warranty Period**”); and

- 1.2 in the event of any Defects appearing or becoming apparent within the Warranty Period, the Contractor and/or the Sub-Contractor 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:
 - (a) the Defects; and
 - (b) any damage to the Sub-Contract Works, 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 without limitation to any plaster, painting, panelling, tiling and other similar works, mechanical and electrical or other installations or other property.
2. In the event the works undertaken by the Contractor and/or the Sub-Contractor pursuant to Clause 1 above prove ineffective as determined by the Employer in its sole discretion, whose decision shall be final and conclusive, or are not in any way to the absolute satisfaction of the Employer, the Contractor and/or the Sub-Contractor shall effect such additional works in such a manner and within such time as the Employer may direct in writing and shall carry out all tests, as directed by the Employer until such Defects and damage have been remedied, repaired or made good to its absolute satisfaction.
3. It is an express term of the Warranty that the Sub-Contract Works when completed and the workmanship, goods and materials used therein shall meet all the requirements under the Contract and/or Sub-Contract in respect of the Sub-Contract Works for the Warranty Period. In the event the Sub-Contract Works when completed and/or the workmanship, goods and materials should fail to meet any such requirement at any time during the Warranty Period, the Contractor and the Sub-Contractor shall be precluded from disclaiming liability under the Warranty on the ground that the Sub-Contract Works are completed and/or the workmanship, goods and materials used therein accord or comply with the Contract and/or Sub-Contract at

² Drafting notes: delete where not applicable
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the time of completion, and in this connection, the Contractor and the Sub-Contractor shall be deemed to have waived this defence in the event a claim is made by the Employer against him in respect of his breach of the Warranty.

4. All costs and expenses arising out of the performance of the obligations under this Warranty shall be borne by the Contractor and/or the Sub-Contractor.
5. Should the Contractor and/or the Sub-Contractor fail to perform any of its 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/or the Sub-Contractor shall forthwith on written 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.
6. The Contractor and/or the Sub-Contractor shall indemnify the Employer from and against any liability, claim, actions or proceedings for any loss, damage, compensation or indemnity, including any legal costs incurred in relation thereto, arising out of or in connection with:
 - 6.1 any Defects or damage arising directly or indirectly as a result thereof;
 - 6.2 the remedy, repair or making good of any Defects or damage arising directly or indirectly as a result thereof; and
 - 6.3 any breach by the Contractor and/or the Sub-Contractor of the warranty and undertaking in Clauses 1 and 3 above.
7. The Contractor and/or the Sub-Contractor shall each at his own cost and expense effect and maintain Public Liability Insurance, as well as, Workmen's Compensation Policies for the execution of any remedial, repair or making good of works under this Warranty.
8. The exercise by the Employer of any of its rights under this Warranty in any manner (including but without limitation to the engaging of third parties to remedy, repair or make good the Defects or damage as referred to in Clause 5) shall not in any way relieve the Contractor and/or the Sub-Contractor of their obligations under this Warranty, the Contract, the Sub-Contract and at law.
9. Any change or variation in the extent or nature of the Sub-Contract Works or in the giving of

time or the neglect or forbearance of the Employer in enforcing its rights under this Warranty or other indulgence granted to either the Contractor or the Sub-Contractor or both shall not in any way prejudice, affect or release the Contractor or the Sub-Contractor from any of their liabilities and obligations under this Warranty, the Contract, the Sub-Contract and at law.

10. The Employer may, without the consent of the Contractor and/or the Sub-Contractor, assign the benefit of all or any of the Contractor and/or the Sub-Contractor's obligations under this Warranty and/or any benefit arising under or out of this Warranty.
11. This Warranty shall have full force and effect notwithstanding:
 - 11.1 any limitation or termination of the Contractor's and/or the Sub-Contractor's liability and/or responsibility under the Contract and/or Sub-Contract;
 - 11.2 any termination of the Contract or the Contractor's employment under the Contract and/or the termination of the Sub-Contract or the Sub-Contractor's employment under the Sub-Contract; and/or
 - 11.3 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.
12. The obligations of the Contractor and Sub-Contractor under this Warranty are joint and several and the Employer shall be entitled to enforce this Warranty against either the Contractor or the Sub-Contractor or both. Any failure by either the Contractor or the Sub-Contractor to perform any of the obligations under this Warranty shall not excuse or discharge the other from performing the same.
13. Any notice, communication or demand under or in respect of this Warranty shall be in writing and shall be deemed to have been duly given if it is delivered by hand at or sent by registered post to the aforesaid address of the Contractor and/or the Sub-Contractor or to such other address as notified in writing to the Employer. Any notices and claims shall be deemed to be received by the addressee:
 - (a) if served by hand, when delivered to the addressee; or
 - (b) if served by post, two (2) Working Days from and including the date of postage,

but if the delivery or receipt is on a day which is not a Working Day or is after 5.00 pm (addressee's time) it is regarded as received at 9.00 am (addressee's time) on the following

Working Day. For the purposes of this Clause, “**Working Day**” means a day (excluding Saturday, Sunday and public holidays) on which commercial banks are open for business in Singapore.

14. This Warranty is governed by the laws of the Republic of Singapore and the parties irrevocably submit to the exclusive jurisdiction of the courts of the Republic of Singapore.
15. Save for those persons who have been assigned the benefit of all or any of the Contractor's and/or the Sub-Contractor's obligations under this Warranty and/or any benefit arising under or out of this Warranty pursuant to Clause 10 above, a person who is not a party to this Warranty shall have no rights or remedies under the Contracts (Rights of Third Parties) Act 2001 to enforce any of the terms in this Warranty.
16. This Warranty shall be read together with the Contract and/or the Sub-Contract but in case of any inconsistency between the provisions of this Warranty and the provisions of the Contract or the Sub-Contract, the provisions of this Warranty shall prevail to the extent of such inconsistency.

IN WITNESS WHEREOF the day and year specified above

EXECUTED AND DELIVERED as a deed

For and on behalf of the **Contractor**

Name:

Designation:

In the presence of:

Name:

Designation:

EXECUTED AND DELIVERED as a deed

For and on behalf of the **Sub-Contractor**

Name:

Designation:

In the presence of:

Name:

Designation: