

Name of Organisation: _____

Community Services Directorate

Healthwatch



Form of Performance Bond

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September 2019

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Lewisham

Community Services Directorate

Healthwatch

Form of Performance Bond

THIS PERFORMANCE BOND is made as a deed the _____ day of _____ 200

BETWEEN _____ of _____ ("the Surety") of the first part
_____ of _____ ("the Contractor") of the second part

THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF LEWISHAM of Lewisham
Town Hall Catford London SE6 4RU ("the Employer") of the third part

WHEREAS

The Employer and the Contractor have entered into a contract dated the _____ day of _____
("the Contract" which expression shall include any variation or addition to the Contract) for the
carrying out of _____ at _____ ("the
Services")

**NOW IN CONSIDERATION OF THE PAYMENT OF ONE POUND (£1) BY THE EMPLOYER TO
THE SURETY AND THE CONTRACTOR (RECEIPT OF WHICH THE SURETY AND THE
CONTRACTOR HEREBY ACKNOWLEDGE) IT IS HEREBY AGREED AS FOLLOWS:-**

1. In this Bond the following words and expressions shall save where the context otherwise requires be deemed to have the following meanings:-

"the Sum" means the sum of (£)

"the Expiry Date" means the date of payment of the sum payable pursuant to the Final Certificate issued under the Contract as the case may be by the Employer to the Contractor or by the Contractor to the Employer

"Net Damages" means the gross damages sustained by the Employer by reason of an Event or Default less any entitlement to payment of a liquidated sum which has accrued to the Contractor on or before the date on which such gross damages have been ascertained and established in accordance with clause 4.

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"Event of Default"

means any breach by the Contractor of any of the terms of the Contract; the default or corruption of the Contractor; the passing of a resolution for winding up by the Contractor (other than for the purposes of a solvent amalgamation or reconstruction where the resulting entity assumes all of the obligations of the Contractor under the Contract) or the making by a court of an order to that effect; the Contractor ceasing to carry on its business or substantially the whole of its business; the Contractor becoming or being declared insolvent, or convening a meeting of or making or proposing to make any arrangement or composition with its creditors; a liquidator, receiver, administrator, manager, trustee, or similar officer being appointed over any of the assets of the Contractor; or any fraudulent act by the Contractor in relation to the Employer or in respect of any payment made by the Employer or any other arrangement arising out of or in connection with the Contract

2. If an Event of Default shall occur, the Surety shall subject to clause 5 pay to the Employer a sum equivalent to the Net Damages sustained by the Employer by reason thereof as soon as the amount of such Net Damages has been ascertained and established pursuant to clause 4.
3. If an Event of Default shall occur, the Employer may at any time before the Expiry Date give notice in writing to the Surety specifying the nature of the Event of Default and making a claim under the terms of this Bond, notwithstanding that the Net Damages sustained by the Employer by reason thereof shall not yet have been ascertained and established.
4. The gross damages sustained by the Employer by reason of an Event of Default (which where applicable shall include the fees of a quantity surveyor appointed in accordance with clause 4.3) shall be ascertained and established by
 - 4.1 a statement signed by the Employer certifying the nature of the Event of Default and the damages sustained by the Employer by reason thereof and countersigned by an authorised signatory of the Contractor acknowledging the default; or
 - 4.2 the terms of a judgement of a Court of competent jurisdiction or an award of an adjudicator or an arbitrator duly appointed in accordance with the terms of the Contract; or
 - 4.3 subject to the Employer submitting to the Surety evidence of the appointment of a trustee in bankruptcy or a liquidator or an administrative receiver or an LPA Receiver or an administrator of the assets or undertaking of the Contractor or a similar officer, the written determination of a quantity surveyor who shall be agreed between the Employer and the Surety or in default of agreement within 28 days of the Employer submitting such evidence shall be appointed by the President for the time being of the Royal Institution of Chartered Surveyors and who shall act as expert and not as arbitrator.
5. The maximum aggregate liability of the Surety under this Bond shall not exceed the Sum but subject to such limitation the liability of the Surety shall be co-extensive with the liability of the Contractor under the Contract. For the avoidance of doubt it is hereby agreed and declared that the Employer may make more than one claim under this Bond.
6. The occurrence of any one or more of the following shall not in any way release the Surety from its obligations hereunder:-
 - 6.1 any alteration to the nature or extent of the Services or otherwise to the terms of the Contract;
 - 6.2 any allowance of time, forbearance, indulgence or other concession granted to the Contractor under the Contract or any other compromise or settlement of any

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dispute between the Employer and the Contractor (but so that the Employer shall not pursue against the Surety a remedy contrary to the terms of any such compromise or settlement insofar as the Contractor shall have complied with such terms);

- 6.3 any other act omission matter or thing which but for this provision might operate to discharge release or otherwise exonerate the Surety's obligation and liability under this Bond.
7. The Surety's obligation and liability under this Bond shall continue notwithstanding any disclaimer of the Contract by a liquidator or administrator appointed to the Contractor and the Contract shall for the purposes of this Bond be deemed to continue notwithstanding any such disclaimer.
8. The Employer will not be bound first to enforce any rights against any other guarantor before enforcing this Bond.
9. The Surety shall be released and discharged from its obligations under this Bond on the Expiry Date save in respect of any claims notified to the Surety under clause 3 prior to such date.
10. This Bond is governed by English law and in the event of any dispute or difference arising out of or in connection with this Bond the parties hereto hereby submit to the non-exclusive jurisdiction of the Courts of England and Wales.
11. If any provision of this Bond is held by any competent authority to be invalid unlawful or unenforceable in whole or in part the validity lawfulness and enforceability of the other provisions of this Bond and the remainder of the provision in question shall not be affected thereby.
12. It is hereby expressly agreed and declared that none of the provisions of this Bond are intended to or will operate to confer any benefit pursuant to the Contracts (Rights of Third Parties) Act 1999 on any person who is not named as a party to this Bond.

IN WITNESS WHEREOF the Contractor and the Surety have executed this bond as a deed and delivered the same on the day and year first above written

EXECUTED by the Contractor

EXECUTED by the Surety