

PERFORMANCE BOND

BOND dated and delivered [] 20[]

BETWEEN the Employer, the Surety and the Contractor named in the Particulars below

1. PARTICULARS

- 1.1. **Employer** []
Company Number: []
Registered Office: []
- 1.2. **Surety** []
Company Number: []
Registered Office: []
- 1.3. **Contractor** []
Company Number: []
Registered Office: []
- 1.4. **Bond Amount** [the sum of [] £(pounds)]
- 1.5. **Contract** The Contract between the Employer and the Contractor in the form of the JCT Design and Build Contract 2016 Edition and incorporating various further amendments for the design construction and completion of and making good defects in the Works in conformity with the provisions of the Contract
- 1.6. **Works** The works at [] to be carried out pursuant to the Contract

2. BOND

- 2.1. On any breach of the Contract by the Contractor (which for the purposes of this Bond will be deemed to include without limitation the occurrence in relation to the Contractor of any of the events listed in Clause 8.1 of the Contract) the Surety shall satisfy and discharge the damages sustained by and any debt due to the Employer thereby (assessed under and pursuant to the Contract with account being taken of any retention fund and other sums due to the Contractor from the Employer) up to the Bond Amount so that the liability of the Surety under this Bond will be co-extensive with the liability of the Contractor under the Contract up to the Bond Amount

3. RELEASE

- 3.1. The Surety will be released from all further liability under this Bond:
- 3.1.1. when it has fulfilled its obligations under Clause 2 above or;
 - 3.1.2. if the Contractor duly performs and observes all the terms provisions conditions and stipulations of the Contract on the Contractor's part to be performed and observed according to the true purport intent and meaning thereof; or
 - 3.1.3. if pursuant to the provisions of Clause 2.27 of the Contract [the Employer issues the Practical Completion Statement for the whole of the Works (in which case the Surety will be released upon the day named in such Statement);
- except that the Surety will not be released in relation to:
- 3.1.4. claims made by the Employer in writing prior to the date on which the Surety would otherwise be released; or
 - 3.1.5. claims relating to events which occurred prior to that date and which the Employer has notified to the Surety in writing by that date and which are reasonably expected to give rise to a breach of the Contract by the Contractor (and for the avoidance of doubt the occurrence in relation to the Contractor before that date of any of the events listed in Clause 8.1 of the Contract will constitute a breach)
- 3.2. The liability of the Surety will not be discharged or affected in any way by:
- 3.2.1. any fact, event or rule of law which, but for this Clause 3.2 might operate to release in whole or in part the Surety from its obligations under this Bond including (without limitation) any novation, assignment, termination (whether automatic or otherwise and whether by reason of the Contractor's insolvency or otherwise), amendment, or extension of time of, or variation of or under the Contract, or any act carried out in performance or purported performance of the Contract (other than its performance in accordance with Clause 3.1.2 above) or any forbearance or forgiveness by the Employer of the Contractor; or
 - 3.2.2. any fact event or rule of law which results in any total or partial invalidity, illegality or unenforceability of the Contract which the Contractor could have avoided by the use of its reasonable endeavours or could by using its reasonable endeavours have drawn to the attention of the Employer prior to the date of the Contract (in which case for the purposes of this Bond the Contract will be deemed valid, legal and enforceable as if such reasonable endeavours had been exercised and appropriate steps been taken to avoid or mitigate the invalidity, illegality or unenforceability); or
 - 3.2.3. a legal limitation, disability or incapacity of the Surety

4. ASSIGNMENT

The Employer is entitled to assign the benefit of and its rights under this Bond (as a whole only and not in parts) at any time without the consent of the Surety or the Contractor being required to any person to whom the benefit of the Contract is assigned or to any person providing finance in connection with the Contract. The Surety and the Contractor are to be notified before or within a maximum of one month after the assignment

5. OBLIGATION TO SURETY

The Contractor undertakes to the Surety (without limitation to any other rights or remedies of the Employer or Surety) to perform and discharge the obligations on its part set out in the Contract

6. LAW

- 6.1. This Bond and any dispute or claim arising out of or in connection with it or its subject matter or formation (including without limitation non-contractual disputes or claims) will be governed by and construed in accordance with English law and the parties submit to the exclusive jurisdiction of the English courts (but without prejudice to the right of the parties to bring proceedings in any other jurisdiction to enforce a decision of the English courts)
- 6.2. The parties to this Bond do not intend that any of its provisions should be enforceable by any person by virtue of the Contracts (Rights of Third Parties) Act 1999

7. EXECUTION AND DELIVERY

This document is executed as a deed and is delivered on the date stated at the beginning of this deed. This document may be signed in any number of separate counterparts, each of which when signed and dated shall be an original, and such counterparts taken together shall constitute one and the same agreement.

**EXECUTED AS A DEED BY
LIMITED
ACTING BY [A] [NAME OF] DIRECTOR
IN THE PRESENCE OF:**

.....
DIRECTOR

WITNESS' SIGNATURE:

WITNESS' NAME:

WITNESS' ADDRESS:

I CONFIRM THAT I WAS PHYSICALLY PRESENT WHEN SIGNED THIS DEED

**EXECUTED AS A DEED BY
LIMITED
ACTING BY [A] [NAME OF] DIRECTOR
IN THE PRESENCE OF:**

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DIRECTOR

WITNESS' SIGNATURE:

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