ABI Model Form of Guarantee Bond

An explanatory guide

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ABI explanatory guide to model form of bond

Introduction

On 22nd September 1995 the ABI published its model form of contract Guarantee Bond following a lengthy period of consultation with government and local authority advisers, commercial users, construction and engineering industry bodies, major construction companies and insurers, to respond to the criticisms of archaic bond wordings made by the House of Lords in the case of Trafalgar House and to meet the commercial needs of users identified by the Latham Committee.

The form was amended in July 2002 to incorporate reference to The Contracts (Rights of Third Parties) Act 1999 in Clause 7. Subsequent amendments are merely cosmetic.

Aims of the Model Form

The aim of the ABI has been to produce a model form of bond which meets the objectives set out in the report of the Latham Committee and which is therefore:

- In short form
- In clear, modern language
- Operates as a guarantee of payment on contractor default and not merely on demand
- Provides the employer with an entitlement to damages immediately at the point where the contractor becomes liable to pay damages under the contract
- Minimises the risk of litigation
- Contains a clear expiry date

and in addition to introduce one industry standard model form of guarantee bond which provides clarity of purpose and equity to Employer, Contractor and Surety. Its use should cut out the many hundreds of different bond wordings currently in use and save all parties considerable time and legal expenses in the issue of bonds.

Background

The language of the traditional forms of bond in use by the construction and civil engineering industries prescribed by both public and private employers for many years has its origins in the 17th Century and has throughout the 20th Century been the subject of criticism in the courts for being archaic and unduly complex.

Although it had been clear to lawyers for more than 150 years that the traditional form of bond in use operated as a guarantee of payment to the employer of contractual balances and damages due, this was not always readily apparent because of the archaic manner in which the obligations of the parties were expressed. Whilst the origins of such documents may be a matter of some fascination to lawyers the ABI considers that the commercial purpose of a Guarantee Bond should be readily apparent to employers and contractors from the terms of the Bond itself.

‘on demand’ bonds

In the 1970's a form of bond known as an ‘on demand’ bond, described by the House of Lords in 1995 as a ‘new creature’, began to be used in connection with international construction contracts and projects.

What is an ‘on demand’ bond?

- An ‘on demand’ bond is an independent banking obligation requiring the obligor to pay up to the full amount stated in the bond ‘on demand’ by the employer. A bond of this type will generally be in short form and expressed to become payable ‘on demand’ or ‘on your first demand’. Payment must normally be made notwithstanding protests by the contractor and without any requirement on the part of the employer to establish a breach of contract or that any damages have in fact been suffered.

- The contractor has no defence against a call on such a bond other than proven fraud and there can be no effective challenge to the employer's demand.

- Such bonds have been used as a ‘lever’ by employers when a contractual dispute has arisen entitling the contractor to additional payments. Though an improper call on the bond in these (and any other) circumstances might well jeopardise the solvency of the contractor, the contractor cannot take any action to prevent payment. Even an employer owing substantial sums to the contractor can make demand for immediate payment.

Why are the Construction and Surety industries unwilling to sanction the use of such bonds on construction contracts?

- On demand bonds are issued by bankers. As they are tantamount to unpresented cheques or letters of credit and can be converted to immediate funds by a call at any time, bankers properly treat them as utilisation of the contractor's credit lines. It is possible that contractors' credit lines can be blocked with such bonds at a time when these credit lines are most needed in the economic cycle.

- An on demand bond is an obligation wholly independent of the contract in respect of which it is given. If a call is made on the bond neither the contractor nor the provider of the bond can raise any contractual defence. An on demand bond is not a guarantee and thus the independent liability of the bank is not co-extensive with the liability of the contractor under the underlying contract.

- There are substantial doubts as to whether and how a contractor can recover sums paid under ‘on demand’ bonds where a call is shown to be unfair or improper after its account has been debited.

- Contractors would not entertain contractual provisions which oblige them to pay to the employer at any time sums equal to 10% of the contract price against the employer's written demand whether or not the employer can reasonably establish any entitlement to such payments. Contractors therefore resist on demand bonds which operate in precisely this way and may leave them in a position where bankers debit their accounts with amounts demanded by employers even in cases where there are genuine contractual disputes.

- The effect of providing such bonds is to deprive the contractor of the benefit of all the safeguards built into the contract itself.

To demonstrate the dangerous legal characteristics of 'on demand' bonds some leading judicial opinions are set out in the Appendix to this guide.

Despite the wholly different nature of Guarantee Bonds and 'on demand' bonds the term 'performance bond' has been applied to both of them. This confusion has been exacerbated by the practice of some employers, especially during times of recession, of prescribing 'on demand' forms of bond for use in connection with ordinary domestic contracts. As a consequence, some employers have mistakenly regarded all performance bonds as giving rise to an independent payment obligation enforceable by them whether or not it can be established that the contractor is in breach of contract or that the employer has suffered any loss or damage. Whilst for more than a century, the system of Guarantee Bonds as a protection for the employer had operated satisfactorily and had given rise to the minimum of litigation, the perception that any document styled a 'performance bond' gave rise to an immediate payment obligation led to a spate of litigation in the early 1990's and resulted in some commentators concluding mistakenly that the commercial purpose of all bonds was immediate payment of the bond amount without regard to the contract.

The confusion as to the effect of the two types of bond led the courts in one case to seek to 'assimilate' them and treat them as enforceable in the same way despite the different commercial nature of the two types of bond.

The House of Lords in the case of Trafalgar House Construction (Regions) Ltd v General Surety and Guarantee Co Ltd emphasised that the traditional form of bond (in that case the form used was based upon the bond appended to the ICE conditions 5th edition) will operate as a guarantee. Whilst there may be a natural tendency for employers, contractors and sureties to adhere to the use of the archaic forms prescribed for many years in the light of this decision, the ABI is firmly of the view that, in order to address judicial criticisms of archaic language and the objectives outlined in the report of the Latham Committee, there is a need for a clear and modern form of document.

The ABI believes that the use of a guarantee confers important protection upon an employer and meets the commercial purpose of both employer and contractor by guaranteeing payment to the employer upon default by the contractor of what is due under the contract at the time stipulated by the contract. The contractor is protected against the risks of the 'on demand' bond which can lead to unfair calling in circumstances where there is no breach of contract or no loss or damages suffered.

The ABI model form of Guarantee Bond safeguards the interests of both contractor and employer by linking the surety's payment obligation to the underlying contract which has been freely negotiated between those parties.

Commentary upon text of ABI Model Form Bond

The parties

The bond is to be executed by the 'Contractor' and 'Guarantor' in favour of the 'Employer'. The Contractor is of course already bound by the underlying contract but the Contractor's execution of the Guarantee Bond makes clear that the Contractor has agreed to and understands the nature of the obligations assumed by the Guarantor and enables the Contractor to undertake in favour of the Guarantor that it will perform its obligations under the bonded contract.

The recitals / preamble

Paragraph 1

Identifies the Contract and the Works to which the Guarantee Bond relates. Particulars of both will be set out in the Schedule, the intention being that the text should be kept as short and as simple as possible. Because the Guarantee Bond operates in relation to the underlying Contract, it is important that the Contract be identified clearly.

Paragraph 2

This paragraph emphasises that the Bond operates as a 'guarantee'. Whilst this has been the effect of performance bonds (other than 'on demand' bonds) for 150 years this has not been readily apparent from the language used in the 'Archaic' forms. The new model form states clearly that the Bond guarantees the Contractor's obligations under the bonded contract. The liabilities under the Bond will follow those arising under the Contract.

Clause 1

This clause is the main operative provision of the document. The obligation of the Guarantor arises if there is a breach of the Contract by the Contractor. The liability of the Guarantor is to pay the damages due under the Contract or which are payable for breach of the Contract. The Employer is required to give credit for any entitlements to payment on the part of the Contractor.

The Guarantee Bond does not operate (unlike some forms of bond in use in the United States) to confer upon the Guarantor a right to complete the Works. The Guarantee Bond creates a payment obligation enforceable against the Guarantor and enables the Employer to recover from the Guarantor the sums which it is entitled to recover from the Contractor. The main protection conferred by a Guarantee Bond is that, in those circumstances where the Contractor is insolvent and unable to meet its contractual liabilities, the Employer has the safeguard conferred by the Guarantee Bond.

The model form does not contain detailed provisions for the calculation of damages. Since the Bond operates as a guarantee, damages will be calculated by reference to the provisions of the bonded Contract.

The Guarantee Bond does not alter the nature of the obligation of Employer and Contractor under the bonded Contract. In the event of a breach of contract by the Contractor the Employer will, in accordance with general principles, be required to 'mitigate' its loss by acting reasonably (a duty generally applicable to any breach of contract).

Most standard forms of contract contain provisions for the calculation of the Employer's loss and damage following insolvency. Once the sum payable by the Contractor calculated in accordance with the Contract has become due the Employer is entitled to immediate payment from the Guarantor up to the Bond Amount.

Clause 2

This clause stipulates that the Guarantor is liable to the same extent as the Contractor subject to the overall limit imposed by the Bond Amount.

Clause 3

Under English law, the obligations of a Guarantor can be treated as discharged on technical grounds if there are any alterations to the bonded contract or if the Employer does not enforce the terms of that Contract against the Contractor strictly. The original rationale was that such conduct on the part of the Employer was capable of prejudicing a Guarantor. Since there is always the possibility that such rules could operate to release a Guarantor, this clause has been inserted to prevent the release of the Guarantor by any such technicality.

Clause 4

It is important to Contractors that there is a clear expiry date within the Guarantee Bond. This follows the recommendations of the Latham Committee. Since a Bond in the ABI model form operates as a guarantee, liabilities under the Bond would, in the absence of such provision, be capable of subsisting until the limitation period applicable to any potential breach of contract has expired. Where contracts are concluded under 'seal' there is the possibility that liabilities under Bonds can subsist for many years. Since Bonds are provided as a line of credit, the cost of maintaining Bonds in place indefinitely would be considerable. The protection conferred by a Bond is clearly of greatest importance whilst the contract project is being performed and the works carried out. The Employer will wish to ensure that there is a security available to cover the damages that may arise if the Contractor defaults before completion of the project.

The actual date of 'Expiry' which is to be inserted in the Schedule will be a matter for negotiation and discussion between Employer and Contractor in each instance. For example, the date of issue of a Certificate of Practical or Substantial Completion will often be inserted. At that stage, the project has been handed over and, in relation to any liabilities during the defects liability or maintenance period, the Employer will ordinarily hold retention monies. The ABI recognises, however, that other dates or events may be inserted by agreement between Contractor and Employer.

Notwithstanding the insertion of an Expiry provision there must clearly be protection for the Employer if a breach of contract has occurred before the occurrence of the event inserted. In such circumstances, provided that the Employer makes a claim in writing and sets out particulars of the breach of the Contract relied upon, his remedies under the Guarantee Bond will be preserved and become enforceable.

Clause 5

This clause does not affect the Employer's rights under the Guarantee Bond. The Contractor undertakes expressly in favour of the Guarantor that it will carry out the Contract. Execution of the Bond by the Contractor avoids arguments and disputes between the Contractor and Guarantor as to whether the Bond was issued in agreed form or even whether the Contractor had requested or sanctioned the issue of the Bond.

Clause 6

Since the Bond creates guarantee obligations in favour of the Employer and confers valuable benefits, together with the right to sue, upon the Employer, the identity of the Employer, as well as the Contractor, is clearly of great importance to the Guarantor. In the absence of a provision, which restricts the assignment of the benefit of the bond, any Employer would be free to assign, without limit, the right to sue or enforce the bond. In practice, where there is an assignment of the

benefits created by the underlying Contract by agreement between the Employer and Contractor, it is envisaged that consent to the assignment of the benefit of the bond would be given by the Guarantor save in the most exceptional of circumstances. Where, for example, funding institutions or other companies within the same group as the Employer require the assignment of the benefit of the bond this can ordinarily be provided for at the time the Bond is issued by insertion of amended text or the provision of a letter of consent.

Clause 7

The intention of the Guarantee Bond is to be a deed between the parties named in the schedule and for no other parties.

Clause 8

This clause is self explanatory and states which laws will apply to the Guarantee Bond and which courts are to have jurisdiction.

The schedule

The model form has been designed so that all information to be inserted will be contained in the Schedule. The text of the Bond itself will not generally require amendment or insertions (save in relation to the choice of law and jurisdiction clause 8).

In some cases the parties may agree that the Bond Amount is to be reduced upon the occurrence of a particular event or the achievement of a particular stage in the execution of the Works. For example, where the parties agree that the Bond should be released upon the issue of a Certificate of Making Good Defects or a Final Certificate, it may be agreed that the original Bond Amount shall nevertheless reduce at an earlier stage, for example upon the issue of a Certificate of Practical or Substantial Completion. In such a case such provision should be inserted within the definition of the 'Bond Amount'. An example would be as follows:-

The Bond Amount:

The sum of £[ ] pounds sterling (£[ ]) or following the issue of the Certificate of Practical Completion the sum of £[ ] pounds sterling (£[ ])

In relation to Expiry, it is envisaged that the parties will generally insert, as the event which gives rise to Expiry, the issue of a certificate under the bonded Contract such as the Certificate of Practical Completion.

<u>Questions and answers upon the effect of the ABI Model Form of Bond</u>

(i) **What protection is conferred by a Bond which operates as a guarantee?**

The bond provides a remedy and entitlement to payment against a Guarantor/surety in addition to those available against the Contractor. Where the Contractor is insolvent and unable to pay sums due to the Employer, the Bond will safeguard such payments and fulfils the commercial purpose of securing the Employer's rights to such sums up to the agreed limit of the Bond.

(ii) **How is the amount payable under the Bond calculated?**

Since the Bond operates as a guarantee it does not contain elaborate provisions for the calculation of damages. The underlying Contract negotiated between Employer and Contractor will set out the detailed mechanism for establishing the sums due. Once the amount due is calculated by reference to the underlying Contract, the balance will be payable under the Bond subject only to the financial limit imposed by the Bond Amount.

(iii) **Must the Employer give credit for sums due to the Contractor?**

Since the Bond guarantees payment of the sums due from the Contractor the Guarantor is liable to the same extent. If, in calculating the liability of the Contractor, sums due to the Contractor are to be brought into account, the position will not be affected by the provision of the Bond. For example, where a Contractor is entitled to payment in respect of works executed prior to the date of the breach, such sums, if held by the Employer, will reduce the Contractor's payment obligations. The payment obligation under the Bond will reduce commensurately. The Employer will therefore recover, by means of the Bond, the sum which it would have recovered but for the Contractor's insolvency or inability to pay. The Bond does not affect the ordinary principles applicable to the calculation of sums payable by the Contractor.

(iv) **Can the form of the Bond be amended?**

The ABI believes that the model form of bond will be suitable for use without amendment but recognises that there may be circumstances where, depending upon negotiations between the parties, the terms and provisions of the Bond will require amendment. Employers, Contractors and Guarantors should seek their own professional advice upon the use of the ABI model form and any amendments or adaptations that may be required for the purposes of any particular projects.

(v) **Since the Bond obliges the Guarantor to pay damages where the Contractor is in breach of Contract, what is the position in those cases where there are disputes between Contractor and Employer in relation to alleged breach?**

Since the Bond operates as a guarantee, it cannot be enforced in cases of dispute between Employer and Contractor unless, in such a case, it is established that the Contractor is in breach and that damages are payable. The guarantee is not intended to provide immediate cash payment where such sums would not be payable under the Contract. This should be contrasted with the position under an ‘on demand’ Bond where the Employer may simply ‘call’ the Bond without establishing or proving any breach or loss even though the Contractor disputes the Employer's claim in good faith.

(vi) **What happens where the Contractor becomes insolvent?**

Standard forms of Contract contain provisions dealing with the effect of insolvency. Since a Bond in the ABI model form operates as a guarantee, the liabilities of the Guarantor will be calculated by applying the provisions of the Contract.

In some forms of standard contract conditions the insolvency of the Contractor may automatically determine the Contractor's employment. This does not mean that the Contract itself has come to an end but merely that the Contractor is no longer obliged or entitled to continue the Works (even though, for example, a receiver of the Contractor may wish to do so). The Employer can obtain possession of the site and engage a replacement Contractor to complete the project. The Employer is entitled immediately when such determination occurs to suspend all payments to the Contractor and thereafter to recover all direct loss and expense which is caused by reason of the automatic determination of the Contractor's employment on insolvency. Direct loss and expense will include, for example, reasonable professional fees incurred in re-letting the works, the cost of site security, any additional costs paid to another Contractor over and above those that would have been paid to the original insolvent Contractor for completion of the Works and the financing or interest costs due under the contract.

The Employer's rights under the Bond are not diminished by the enforcement of the Employer's rights under the Contract on the insolvency of the Contractor.

(vii) **Following insolvency, when will payment be made?**

When the provisions of the Contract require the Contractor to make payments. It is important to note, however, that the Employer's immediate cash flow requirements are protected by the standard forms of Contract which suspend all the Employer's payment obligations. The Employer will therefore be entitled to retain all sums that would otherwise become due and payable to the Contractor, whether in respect of outstanding Certificates for payment, Works executed and measured but not certified for payment or Works which have been executed but not measured or valued at the date of insolvency together with all balances held in respect of retentions.

(viii) **Can the Employer demand immediate payment of the Bond Amount as soon as the insolvency occurs?**

Generally the underlying Contract would not provide for immediate payment but protects the Employer's cash flow by entitling the Employer to suspend all payments and to retain sums that would otherwise be due and payable to the Contractor. Any amount payable under the Bond will become due and payable at the time provided for in the Contract bonded.

(ix) **If the effect of standard contract conditions is that the Contractor's employment is automatically determined (or may be determined by the Employer) on insolvency, should the Bond be amended to provide that such automatic determination will be treated as a breach of Contract or a default?**

In the case of Perar BV v General Surety and Guarantee Co Ltd the Court of Appeal considered a claim under a Bond in which it was alleged that automatic determination amounted to a 'default' so that the Employer was entitled to immediate payment without regard to the further provisions of the Contract which set out the Employer's payment entitlement. The Court found that since the underlying Contract (embodying the JCT conditions) operated to determine the Contractor's employment automatically on insolvency, the Contractor was not in breach and there was no right to immediate payment under the Bond merely because the Contractor did not continue to execute the works. Insolvency alone will not, therefore, give rise to any payment entitlement.

It should be stressed that standard forms of Contract go on to provide that following such determination of the Contractor's employment, the balance payable by the Contractor in respect of the Employer's direct loss and expense incurred on the contractor's insolvency will become payable as a debt by the Contractor. If, by reason of the insolvency, that debt is not discharged (which is, for obvious reasons, usually the case), the Guarantor will be liable up to the Bond Amount for that debt. The failure of the Contractor, following insolvency, to pay the sum due will be a breach of Contract which will be protected by the Bond.

There is, therefore, no requirement to amend the form of Bond to stipulate that 'insolvency' or automatic determination will be treated as a breach of Contract. Such an amendment will not add to the protection conferred by the Bond since, even if such a provision is inserted, the damages payable will still be calculated by reference to the underlying Contract. In the Court of Appeal case of Perar BV it was made clear that if a claim is made, in accordance with the provisions of the underlying Contract, for payment of the debt due by the Contractor to the Employer following automatic determination, payment will be due under the Bond. In that case Peter Gibson LJ stated that 'had a claim been made as the Contract envisaged, it may well be that these proceedings would have been avoided, as plainly, any consequent failure by the Contractor to pay any such demand, if properly made, would have enabled a claim to be made under the Bond provided such claim was timeous'.

(x) **How does the Employer ensure that a claim is made timeously and that the rights under the bond are not lost?**

The ABI model form of Bond contemplates the insertion, as the Expiry Date, of an event such as the issue of a Certificate of Practical Completion. Once that Certificate (or any other document or certificate inserted as giving rise to expiry) has been issued, the liabilities under the Bond will be extinguished. If, however, such a Certificate is not issued, the liabilities under the Bond will continue and the Employer is not subject to any time constraints in submitting a claim save to the extent that there are time limits within the underlying bonded contract or time limits prescribed by law (limitation periods).

Where the Contractor becomes insolvent before practical completion takes place (in those cases where the Expiry event prescribed is the date of the issue of the Certificate of Practical Completion) Expiry under the Bond will not occur. If another Contractor completes the works and obtains a Certificate of Practical Completion this will not prevent the submission of a claim under the Bond where, for example, the Employer has not at that stage formulated its final contractual claim for the purposes of the Bond. Practical completion of the Works by another Contractor would not constitute practical completion under the bonded Contract so as to extinguish the liabilities of the Guarantor (see City of Glasgow District Council v Excess Insurance Co Ltd 1986). Accordingly, once insolvency occurs, Expiry of the Bond will not occur where the insolvent Contractor fails to complete the works. In such circumstances there are no time limits (save for those referred to above) applicable to the submission by the Employer of a claim.

(xi) **What is the position in the exceptional case where the Employer considers that the Guarantor has delayed in satisfying a claim?**

As soon as there is a right to damages under the bonded Contract, the Guarantor is obliged to make payment. If the Guarantor does not do so, the Guarantor will be liable to pay interest and costs if proceedings become necessary. Where a balance calculated in accordance with the Contract has become due and payable the Guarantor will satisfy the claim immediately. In those rare cases where there is a dispute as to the correct contractual balance, the Guarantor delaying payment would be subject to the sanction of interest and an award of costs. The experience of ABI Surety Bond Panel members is that the vast majority of claims are settled amicably without litigation.

Appendix 1

Some leading judicial opinions on 'on demand' bonds:

- Lord Jauncey in Trafalgar House Construction (Regions) Limited v General Surety and Guarantee Co Ltd:

  "In recent years there has come into existence a creature described as an 'on demand bond' in terms of which the creditor is entitled to be paid merely on making a demand for the amount of the bond..... All that was required to activate it was a demand by the creditor stated to be on the basis of the event specified on the bond".

- Mr Justice Kerr in Harbottle v National Westminster Bank:

  "Performance guarantees in such unqualified terms seem astonishing.... And I understand that such guarantees are drawn up partly or wholly without any, or any apparent justification, almost as if they represented a discount in favour of the buyers. In such cases the contractors are then left merely with claims for breaches of contract against their employer and the difficulty of establishing and enforcing these claims."

- Lord Denning in Edward Owen Engineering v Barclays Bank:

  "...A demand might have to be met by the guarantor (surety)...Not only when there are substantial breaches of contract, but also when the breaches are insubstantial or trivial, in which case they bear the colour of a penalty rather than liquidated damages: or even when the breaches are merely allegations by the customer without any proof at all: or even when the breaches are non-existent. The performance guarantee then bears the colour of a discount on the price of 10% or 5% or as the case may be. The employer can always enforce payment by making a claim on the bond and it will then be passed down the line to the ....supplier ..... a possibility that the ..... contractor, if he is well advised, will take it into account when quoting his price for the contract".

- Supreme Court of New South Sales (Australia) in Woodhall Limited v The Pipeline Authority and Another (where an 'on demand' bond was provided):

  "The Authority took the steps it regarded as appropriate in terms of these four documents to require the Bank to pay to it the whole of the sum of $2.6 million.

  <u>It did this without the prior notice to the Contractor.</u>

  In fact, <u>it deliberately concealed its intention to do so knowing</u> or believing that its action would at the least <u>impose severe financial stress upon the Contractor</u>. It chose a time when that portion of the pipeline which the contractor had to complete was virtually finished - only cleaning up was outstanding.

  It had for some months at least contemplated taking this action but, fearing that an earlier demand would halt the work and make the Contractor cut its losses, it deferred its action to the closest point it safely could before the engineer would issue a Certificate of Acceptance, whereupon its rights under the performance guarantees at least would be lost.

  The evidence indicates that the calling up of the monies from the Bank was pursuant to a 'strategy' upon which the Authority had determined in view of the situation which had arisen between it and the Contractor." (the underlining is ours). Despite these findings the Court in that case was constrained by the legal principles applicable to 'on demand' bonds to enforce payment to the Authority.

ABI Model Form Of Guarantee Bond Appendix 2

The Guarantee Bond is made as a deed between the following parties whose names and [registered office] addresses are set out in the Schedule to this Bond (the 'Schedule'):-

(1) The 'Contractor' as principal

(2) The 'Guarantor' as guarantor, and

(3) The 'Employer'

Whereas

(1) By a contract (the 'Contract') entered into or to be entered into between the Employer and the Contractor particulars of which are set out in the Schedule the Contractor has agreed with the Employer to execute works (the 'Works') upon and subject to the terms and conditions therein set out

(2) The Guarantor has agreed with the Employer at the request of the Contractor to guarantee the performance of the obligations of the Contractor under the Contract upon the terms and conditions of this Guarantee Bond subject to the limitation set out in clause 2

Now this deed witnesses as follows:-

1 The Guarantor guarantees to the Employer that in the event of a breach of the Contract by the Contractor the Guarantor shall subject to the provisions of this Guarantee Bond satisfy and discharge the damages sustained by the Employer as established and ascertained pursuant to and in accordance with the provisions of or by reference to the Contract and taking into account all sums due or to become due to the Contractor.

2 The maximum aggregate liability of the Guarantor and the Contractor under this Guarantee Bond shall not exceed the sum set out in the Schedule (the 'Bond Amount') but subject to such limitation and to clause 4 the liability of the Guarantor shall be co-extensive with the liability of the Contractor under the Contract.

3 The Guarantor shall not be discharged or released by any alteration of any of the terms conditions and provisions of the Contract or in the extent or nature of the Works and no allowance of time by the Employer under or in respect of the Contract or the Works shall in any way release reduce or affect the liability of the Guarantor under this Guarantee Bond

4 Whether or not this Guarantee Bond shall be returned to the Guarantor the obligations of the Guarantor under this Guarantee Bond shall be released and discharged absolutely upon Expiry (as defined in the Schedule) save in respect of any breach of the Contract which has occurred and in respect of which a claim in writing containing particulars of such breach has been made upon the Guarantor before Expiry.

5 The Contractor having requested the execution of this Guarantee Bond by the Guarantor undertakes to the Guarantor (without limitation of any other rights and remedies of the Employer or the Guarantor against the Contractor) to perform and discharge the obligations on its part set out in the Contract.

6 This Guarantee Bond and the benefits thereof shall not be assigned without the prior written consent of the Guarantor and the Contractor.

7 The parties to this Guarantee Bond do not intend that any of its terms will be enforceable, by virtue of The Contracts (Rights of Third Parties) Act 1999 or otherwise, by any person not a party to it.

8 This Guarantee Bond shall be governed by and construed in accordance with the laws of [England and Wales] [Scotland] and only the courts of [England and Wales] [Scotland] shall have jurisdiction hereunder.

The schedule

The Contractor:	[ ] whose [address] registered office address is at [ ]
The Guarantor:	[ ] whose registered office address is at [ ] [ ]
The Employer:	[ ] whose [address] registered office address is at [ ]
The Contract:	A contract [dated the day of] [*to be entered into*] between the Employer and the Contractor in the form known as[ ] for the construction of works comprising [ ] for the original contract sum of [ ] pounds (£[ ])
The Bond Amount:	The sum of £[ ]pounds sterling (£[ ]) *[Insert any provisions for reduction of the Bond Amount]*
Expiry:	*[Insert details of the event agreed between the parties]* which shall be conclusive for the purposes of this Guarantee Bond

In witness whereof the Contractor and the Guarantor have executed and delivered this Guarantee Bond as a Deed this day of , [year]

Executed and delivered as a deed by

Contractor

Executed and delivered as a deed by

Guarantor