|  |  |  |
| --- | --- | --- |
| DATE |  | 20[ ] |

1. **[Contractor]**
2. **[Surety]**
3. **[ ]**

|  |  |  |
| --- | --- | --- |
|  | **Performance Bond for the Contract in relation to the design, supply and installation of artificial grass pitches at [ ]** |  |



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**DATE**                                                                     20[ ]

This **Performance Bond** is made as a deed between the following parties whose names and addresses are set out in Schedule 1 to this Performance Bond

PARTIES

1. The **Contractor**
2. The **Surety**, and
3. The **Beneficiary**

RECITALS

1. The Beneficiary has entered into a framework agreement with the Contractor (defined below) for the design, supply and installation of artificial grass pitches (the **Project**) dated [ ].
2. By a Contract (the '**Contract**') entered into between the Beneficiary and the Contractor particulars of which are set out in Schedule 1 the Contractor has agreed with the Beneficiary to execute works (the '**Works'**) upon and subject to the terms and conditions of the Contract.
3. The Surety has agreed with the Beneficiary at the request of the Contractor and pursuant to Clause 7.3.1 of the Contract to guarantee the performance of the obligations of the Contractor under the Contract upon the terms and conditions of this Performance Bond with the bond being on-demand as to insolvency but known simply as Performance Bond in this deed.

Words and expressions used but not defined in this Performance Bond shall have the meanings attributed to them in the Contract.

OPERATIVE CLAUSES

The Surety guarantees to the Beneficiary that in the event of a breach of the Contract by the Contractor the Surety shall subject to the provisions of this Performance Bond satisfy and discharge the damages, losses, costs and expenses sustained or which may be sustained by the Beneficiary in accordance with Clauses 1 to 7 and 9 to 13, and where an Insolvency Event occurs in accordance with Clauses 8 to 13.

1. The Beneficiary shall be entitled to make a written demand at any time prior to the occurrence of an Insolvency Event (but without prejudice to any written demand made following the occurrence of an Insolvency Event pursuant to Clause 8) upon the Surety stating:
	1. that the Contractor has failed to perform or observe any of its duties and/or obligations arising under or in connection with the Contract and/or has committed a breach of any provision and/or has failed to fulfil any warranty or indemnity set out in the Contract and/or has failed to satisfy any of its liabilities under or in connection with the Contract; and
	2. the amount claimed by the Beneficiary including any interest.
2. Any demand made under Clause 1 shall be accompanied by a certified copy of:
	1. a decision issued in adjudication proceedings pursuant to the terms of the Contract prior to the occurrence of an Insolvency Event; or
	2. a judgment of a court; or
	3. a written agreement signed by the Beneficiary, the Surety and the Contractor in respect of an action under or in connection with the Contract, in favour of the Beneficiary against the Contractor for an amount which is not less than the amount claimed by the Beneficiary and which is payable by the Contractor to the Beneficiary.
3. The Surety shall within five (5) Business Days of receipt of any demand served from time to time by a [Director] of the Beneficiary which complies with Clauses 1 and 2 pay to the Beneficiary the amount demanded subject to the maximum aggregate liability of the Surety under this Performance Bond which shall not exceed the Bond Amount (as set out at Schedule 1). Subject to the limitation in this Clause 3 and Clause 9 the liability of the Surety under this Performance Bond shall be co-extensive with the liability of the Contractor under the Contract.
4. The Surety shall not be discharged or released by any act, omission, matter or thing which, but for this clause, would or might reduce, release or prejudice any of its obligations under this Performance Bond including, without limitation:
	1. any alteration and/or variation of any of the terms conditions and provisions of the Contract or in the extent or nature of the Works;
	2. any allowance of time by the Beneficiary under or in respect of the Contract or the Works;
	3. any advance payment of sums which may become due and owing under or in respect of the Contract or the Works;
	4. the suspension or termination of the Contract or of the employment of the Contractor under the Contract;
	5. any disclaimer of the Contract by any liquidator or administrator appointed to the Contractor (and the Contract shall for the purposes of this Performance Bond be deemed to continue notwithstanding any such disclaimer);
	6. the liquidation, bankruptcy, administration, absence of legal personality, dissolution, incapacity, amalgamation, reconstruction or change in the name, composition, status, function, ownership or control of the Contractor or the Surety.
5. The Contractor having requested the execution of this Performance Bond by the Surety undertakes with the Surety (without limitation of any other rights and remedies of the Beneficiary or the Surety against the Contractor) to perform and discharge the obligations on its part set out in the Contract.
6. The Beneficiary shall not be obliged to pursue any means of recourse against the Contractor before being entitled to enforce this Performance Bond against the Surety provided that if the Beneficiary does seek recourse against the Contractor before seeking recourse under this Performance Bond any money judgment of the court or arbitrator's award or decision of an adjudicator against the Contractor in favour of the Beneficiary under the Contract shall be conclusive evidence for the purposes of this Performance Bond as to any liability of the Contractor to which such judgment award or decision relates (unless and until the same is set aside by any competent tribunal).
7. The Beneficiary may make any number of demands under this Performance Bond but the total of amounts due shall not exceed the Bond Amount.
8. **Insolvency Event (On-demand)**
	1. Should an Insolvency Event occur, the Surety hereby irrevocably and unconditionally agrees to pay the Beneficiary on the Beneficiary's first written demand (waiving all rights of objection and defence and without reference to the Contractor) an amount or amounts not exceeding in aggregate the Bond Amount provided that the Beneficiary's claim complies with the provisions of this Clause 8. All amounts due under this Clause 8 shall be paid in full without any set-off, counterclaim, deduction or withholding. The Surety acknowledges that the Contractor will have failed to fulfil the terms and conditions of the Contract if an Insolvency Event occurs.
	2. The Beneficiary's claim under this Clause 8 must be received at this office [               ] before Expiry and must be in the form of a statement signed for and on behalf of the Beneficiary that:
		1. the Contractor has failed to fulfil the terms and conditions of the Contract;
		2. as a result of such failure the amount claimed is due to the Beneficiary;
		3. specifies in what respects the Contractor has so failed;
		4. specifies the amount claimed.

Such claim and statement shall be accepted by the Surety as conclusive evidence, for the purposes of this Clause 8, that the amount claimed is due to the Beneficiary.

1. Whether or not this Performance Bond is returned to the Surety the obligations of the Surety under this Performance Bond shall be released and discharged absolutely upon Expiry (as defined in Schedule 1) save in respect of any breach of the Contract and/or an Insolvency Event has occurred and in respect of which a claim in writing containing particulars of such breach and/or the fact that there is an Insolvency Event has been made upon the Surety before Expiry.
2. This Performance Bond and the benefit thereof shall be capable of beingassigned without the prior written consent of the Surety and/or the Contractor to a party to whom the benefit of the Contract has been assigned. The Surety and/or the Contractor shall not be entitled to assign this Performance Bond or the benefit thereof.
3. The parties to this Performance 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 itsave for permitted assignees pursuant to Clause 10.
4. This Performance Bond shall be governed by and constructed in accordance with the laws of England and Wales and only the courts of England and Wales shall have jurisdiction hereunder.
5. Any demand or notice under this Performance Bond may be served personally, by first class post or by facsimile (with a copy by first class post) and shall be sent to the Surety at [                     ] or to such other address within the United Kingdom or facsimile number as the Surety may have previously notified in writing to the Beneficiary. Any demand or notice if delivered personally or by facsimile shall be deemed to have been served at the time of delivery or transmission or, if sent by post, shall be deemed to have been served on the second Business Day following posting.

**Executed as a Deed by the parties and delivered on the date at the beginning of this Performance Bond**

Schedule 1

1. **The Contractor** [                    ] whose registered office address is at [                    ]
2. **The Surety** [                    ] whose registered office address is at [                                  ] whose registered office and address for service is [                          ]
3. **The Beneficiary**: **[ ]**

**Bond Amount:** the sum of [£                   ] is [10%] of the Contract Sum stepped-down from time to time until the Expiry of the bond as shown at Schedule 2.

**Business Day**: means any day except Saturday, Sunday and bank or other public holidays in England.

**Contract:** the JCT Design and Build Contract 2016 with project specific amendments dated [ ] for the Contract Sum of [                    ] pounds (£[      ]).

**Expiry**: the [I*nsert date]* in respect of the whole of the Works pursuant to the Contract which shall be conclusive for the purposes of this Performance Bond.

**Insolvency Event**: means [*please insert the provisions from the contract. Please do not state that it will be by reference to the contract*].

Schedule 2

Step-down Schedule

|  |  |
| --- | --- |
| **Dates** | **Bond Amount** |
| Date of issue of the [                     ] |  |
| Date of issue of the [                       ] |  |