

FORMS OF PARENT COMPANY GUARANTEE AND PERFORMANCE BOND

Part 1. FORM OF PARENT COMPANY GUARANTEE

[INSERT NAME OF PARENT COMPANY]

and

[INSERT NAME OF CLIENT]

PARENT COMPANY GUARANTEE

[INSERT NAME OF PROVIDER]

PARENT COMPANY GUARANTEE ("this Guarantee") dated

20[]

PARTIES:

(1) [*insert Guarantor's full name*] Limited (company number [*insert company number*]) whose registered office is at [*insert Guarantor's registered office address*] ("**the Guarantor**"); and

(2) [] Council of [] ("**the Client**");

[use for a local authority]

OR

(3) [] [*Limited*] (company number []) whose registered office is at [] ("**the Client**");

[use for an ALMO or registered provider which is a company]

OR

(4) [] [*Limited*] (community benefits society number []) whose registered office is at [] ("**the Client**");

[use for a community benefits society]

INTRODUCTION

(A) By a contract between the Client and [*insert name of Provider*] (company number []) whose registered office is at [] ("**the Provider**") dated [*insert date of Contract*] the Provider has agreed to provide Services for the Client as set out in the Contract ("**the Contract**").

(B) The Provider is a subsidiary company of the Guarantor.

(C) At the request of the Provider the Guarantor has agreed to guarantee to the Client the performance of the Provider's obligations under the Contract on the terms of this Guarantee.

THIS DEED WITNESSES:

1. The Guarantor unconditionally and irrevocably and as primary obligator guarantees to the Client that if the Provider fails to perform any of its obligations under the Contract, commits any breach of any warranty set out in the Contract fails to fulfil any indemnity set out in the Contract or becomes insolvent or initiates or suffers any kind of insolvency related procedure then immediately on demand from the Client the Guarantor will (as applicable) perform such obligation in the place of the Provider, compensate the Client for such breach or fulfil such indemnity.

2. The Guarantor agrees to indemnify the Client from and against all losses, damages, liabilities, claims, costs or expenses which the Client may suffer or incur due to any failure or breach mentioned in Clause 1 above.

3. The Guarantor acknowledges that none of the following release the Guarantor from its obligations under this Guarantee:

- any variation of the Contract made by agreement between the Client and the Provider;
- any allowance of time, forbearance or release of the obligations of the Provider given by or on behalf of the Client in connection with the Contract;
- the liquidation, receivership, administration, voluntary arrangement or other composition with creditors (or any event analogous to any of them), absence of legal personality, dissolution, incapacity, amalgamation, reconstruction or the change in name, composition, status, function, ownership or control of the Provider or the Guarantor;
- any disclaimer of this Guarantee or any liability under it by any liquidator of the Provider or by any other competent person or the Crown; or
- any compromise or settlement with the Provider;

- the suspension or termination of the Contract or of the employment of the Provider under the Contract for any reason;
 - any provision of the Contract being or becoming illegal, invalid, void, voidable or unenforceable for any reason; or
 - any other act omission matter or thing which but for this Clause 3 might operate to release exonerate or discharge the Guarantor's obligations and liabilities under this Guarantee.
4. This Guarantee shall be a continuing guarantee, and accordingly shall remain in full force and effect until all obligations, duties, undertakings, covenants, conditions and warranties now or in future to be carried out or performed by the Provider under the Contract have been satisfied or performed in full.
 5. This Guarantee shall be additional to any other guarantee or security from time to time held by the Client and shall not be affected by any release or waiver of any such guarantee or security.
 6. The Guarantor acknowledges that the Client will not be bound first to make any demand on, or enforce any rights against, the Provider or any other person before enforcing this Guarantee.
 7. Without prejudice to this Guarantee, any sums which are payable under the Contract by the Provider to the Client but which are not otherwise recoverable by the Client from the Provider because of a legal limitation, immunity, inability or incapacity or other circumstances relating to the Contract (whether or not known to the Client) shall nevertheless be recoverable from the Guarantor except to the extent those obligations under this Guarantee are illegal.
 8. No assurance, security or payment which may be avoided under any enactment relating to insolvency and no release settlement or discharge which may have been given or made on the faith of any such assurance security or payment shall prejudice or affect the right of the Client to recover from the Guarantor to the full extent of the covenants in this Guarantee.
 9. The Client shall be entitled to assign any and all of its rights under this Guarantee (whether or not accrued) at any time to any person, firm or company who takes an assignment, novation or other transfer of the Contract or the benefit of it, and a transferee from the Client of rights under this Guarantee shall be entitled to enforce such rights against the Guarantor.
 10. A demand under this Guarantee will be duly served if given in writing and served in accordance with the following table (with the date of service and method of proof being as set out in it).

Method of service	Date of service	Proof of service
Personal delivery to the registered office of the Guarantor.	48 (forty eight) hours after the date of delivery if before 16.00 on a Business Day otherwise 10.00 on the next Business Day.	Proof of delivery to the registered office.
Prepaid first class letter addressed to the Guarantor at the registered office.	48 (forty eight) hours after posting if that is a Business Day otherwise on the next Business Day.	Proof of posting.

11. Nothing in this Guarantee shall confer any rights on any person which that person would not have had but for the Contracts (Rights of Third Parties) Act 1999.
12. If any provision of this Guarantee is held by any competent authority to be wholly or partly invalid, unlawful or unenforceable the validity lawfulness and enforceability of the other provisions of this Guarantee and the remainder of the provision in question shall not be affected.
13. This Guarantee shall be governed by English law. The parties submit to the non-exclusive jurisdiction of the English courts.

IN WITNESS of the above both Parties have executed this Guarantee as a deed and it is delivered and takes effect on the date at the start of it.

Guarantor

EXECUTED as a **DEED** by _____)
[_____] Limited acting by: _____)

Director _____

Director/Secretary _____

OR

Director _____

Witness signature _____

Witness name _____

Witness address _____

OR

EXECUTED as a **DEED** by _____)
[_____] Limited acting by its attorney [_____])

Attorney _____

Witness signature _____

Witness name _____

Witness address _____

Board member _____

Board member/Secretary _____

OR

Board member _____

Witness signature _____

Witness name _____

Witness address _____

[use for a community benefit society or company that does not have a seal]

Part 2. FORM OF PERFORMANCE BOND

[INSERT NAME OF PROVIDER]

and

[INSERT NAME OF GUARANTOR]

and

[INSERT NAME OF CLIENT]

PERFORMANCE BOND

PERFORMANCE BOND ("this Bond") dated

20[]

PARTIES:

- (1) [] (company number []) whose registered office is at [] ("**the Provider**");
- (2) [] (company number []) whose registered office is at [] ("**the Guarantor**"); and
- (3) [] Council of [] ("**the Client**"); and
[use for a local authority]

OR

- (3) [] [Limited] (company number []) whose registered office is at [] ("**the Client**"); and
[use for an ALMO or a registered provider which is a company]

OR

- (3) [] [Limited] (community benefit society number []) whose registered office is at [] ("**the Client**").
[use for a Co-operative and Community Benefits Society]

INTRODUCTION

- (A) By the Contract between the Client and the Provider described in Clause 1 the Provider has agreed to execute the Works on the terms of the Contract.
- (B) At the request of the Provider the Guarantor has agreed to guarantee to the Client the performance of the Provider's obligations under the Contract on the terms of this Bond.

THIS DEED WITNESSES:

1. INTERPRETATION

1.1 In this Bond (unless the context requires otherwise):

"the Bond Amount"	means £[] ([]) pounds;
"Business Day"	means Monday to Friday (inclusive) excluding bank or local government holidays;
"Claim"	means a written claim served on the Guarantor before the Expiry Date identifying the Trigger Event giving rise to the service of the claim (but not necessarily the Payment Amount);
"the Contract"	means the contract for the Works dated [] between the Client and the Provider;
"Expiry Date"	means the date [12 (twelve) months] from the date of practical completion of the Works under the Contract;
"Parties"	means the parties to this Bond and "Party" means any one of term;

“Payment Amount” means the amount of the damages sustained by the Client consequent on the breach of the Contract or the amount of the debt payable by the Provider to the Client on the termination of the Provider’s employment under the Contract, taking into account all sums due or to become due to the Provider under the Contract;

“Trigger Event” means a breach of the Contract by the Provider or the termination of the employment of the Provider under the Contract (for insolvency or otherwise); and

“Works” means the works to be undertaken by the Provider under the Contract.

1.2 In this Bond:

- 1.2.1 references to Clauses are (unless stated otherwise) references to clauses of this Bond;
- 1.2.2 the headings and references to them are not to affect its interpretation;
- 1.2.3 references to the masculine include the feminine and neuter and to the singular include the plural and vice versa;
- 1.2.4 any references to legislation, shall be construed as references to that legislation as amended, replaced, consolidated or re-enacted;
- 1.2.5 references to “consent” are to the prior written consent of the consenting party and any breach of the terms of any consent given is to be a breach of this Bond;
- 1.2.6 references to “persons” include individuals, firms, partnerships, companies, co-operative and community benefit societies, corporations, associations, organisations, governments, states, agencies, foundations, trusts, unincorporated bodies of persons and any organisations having legal capacity (in each case whether or not having separate legal personality) and their successors, permitted assignees and transferees; and
- 1.2.7 references to any document are (unless specified) references to such document as amended or supplemented from time to time.

1.3 The Introduction to this Bond is an integral part of it and is to have effect as if set out in full in the body of this Bond. References to this Bond include the Introduction.

1.4 All the Guarantor’s obligations, duties and responsibilities under this Bond are separate obligations, duties and responsibilities owed to the Client and are to be performed at the Guarantor’s own cost and expense (but without prejudice to any right of recovery the Guarantor may have against the Provider).

2. GUARANTEE

2.1 Subject to the terms of this Bond the Guarantor guarantees to pay the Payment Amount to the Client following a Trigger Event.

2.2 The maximum aggregate liability of the Guarantor under this Bond shall not exceed the Bond Amount.

2.3 Subject to Clause 2.2 and Clause 4 the liability of the Guarantor shall be co-extensive with the liability of the Provider under the Contract (but ignoring any right of set-off).

3. NO RELEASE

3.1 The liability of the Guarantor under this Bond shall not be released or affected by:

- 3.1.1 any alteration to the Contract or to the extent or nature of the Works;
- 3.1.2 any allowance of time, forbearance, indulgence or other concession granted to the Service Provider in relation to the Contract or the Works;

- 3.1.3 (subject to Clause 3.2) the compromise or settlement of any dispute between the Provider and the Client in connection with the Contract or the Works;
 - 3.1.4 any invalidity of the Contract;
 - 3.1.5 the assignment novation or termination of the Contract; or
 - 3.1.6 any disclaimer of the Contract by a liquidator or administrator appointed to the Provider (and for purposes of this Bond the Contract shall be deemed to continue despite any such disclaimer).
- 3.2 The Client shall not pursue a remedy contrary to the terms of any compromise or settlement against the Guarantor as referred to in Clause 3.1.3 except to the extent the Provider has not complied with the terms of that compromise or settlement.

4. EXPIRY

- 4.1 Whether or not this Bond is returned to the Guarantor the obligations of the Guarantor under this Bond shall be released and discharged absolutely on the Expiry Date except in relation to any Trigger Event in respect of which a Claim was served on the Guarantor before the Expiry Date.
- 4.2 A Claim may be made at any time before the Expiry Date even though the Payment Amount has not been established and ascertained at the time of the Claim.

5. PROVIDER'S UNDERTAKING

- 5.1 The Provider undertakes to the Guarantor to comply with its obligations under the Contract.
- 5.2 The Provider's undertaking in Clause 5.1 shall not limit:
- 5.2.1 the Client's or the Guarantor's rights or remedies against the Provider; or
 - 5.2.2 the Guarantor's obligations to the Client under this Bond.

6. ASSIGNMENT

- 6.1 The Client may assign all (but not part only) of its rights under this Bond to any person to whom the Client assigns the Contract or the whole of the Client's rights under the Contract.
- 6.2 Subject to Clause 6.1 the Client's rights under this Bond shall not be assigned (either wholly or partly) without the prior written consent of both the Guarantor and the Provider.

7. WAIVERS AND SEVERABILITY

- 7.1 The single or partial exercise of any right under this Bond shall not prevent any other exercise of that right or the exercise of any other right (whether arising out of the same factual situation or otherwise).
- 7.2 The rights of Party under this Bond can be waived only in writing signed by that Party.
- 7.3 A waiver of a breach of this Bond is not to be effective unless given in writing signed by the Party waiving its entitlement.
- 7.4 No waiver of a breach under this Bond is to be deemed a waiver of any subsequent breach.
- 7.5 The receipt of money under this Bond does not prevent the Party receiving it questioning the correctness of the amount.
- 7.6 If any term of this Bond is illegal, void or unenforceable the remainder of this Bond will continue in force as though that term had not been included in it.

8. ENTIRE AGREEMENT

- 8.1 Subject to Clause 8.2 this Bond sets out the whole agreement between the Guarantor and the Client in relation to the transaction it provides for. It supersedes and invalidates all other commitments, representations and warranties relating to its subject matter which either of them has made orally or in writing.

8.2 The Guarantor warrants that it has not entered into this Bond on the basis of any representation made by the Client except to the extent that such representation is expressly included in it (but nothing in this Clause 8 excludes any liability for fraudulent misrepresentation).

9. FURTHER ASSURANCE

9.1 Each Party undertakes to do all things and execute all further documents that another Party may reasonably require to give effect to this Bond.

10. THIRD PARTIES

10.1 The Parties do not intend that any of its terms will be enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person who is not a Party.

11. VARIATIONS

11.1 No variation of this Bond is to bind any Party and no person has authority on behalf of any Party to agree to a variation to this Bond except where the variation is agreed to in writing by all Parties.

11.2 No consent to a variation of this Bond is required under the Contracts (Rights of Third Parties) Act 1999 from any person who is not a Party.

12. NOTICES

12.1 Notices or other communications under this Bond will be duly served if given by and sent to the company secretary of the Party to be served in accordance with the following table with the date of service and method of proof being as set out in it:

Method of service	Date of service	Proof of service
Personal delivery of a letter addressed to the company secretary of the Party being served at that Party's registered office.	48 (forty eight) hours after the day of delivery if before 16.00 on a Business Day otherwise 10.00 on the next Business Day.	Proof of delivery.
Royal Mail Special Delivery letter addressed to the company secretary of the Party being served at its registered office.	48 (forty eight) hours after posting if that day is a Business Day otherwise 10.00 on the next Business Day.	Proof of posting unless returned through the Royal Mail undelivered service within 21 days of posting.

13. GOVERNING LAW AND ENFORCEMENT

13.1 This Bond is governed by English law and is to be construed in accordance with English law.

13.2 The Parties agree to submit to the exclusive jurisdiction of the courts of England and Wales in relation to this Bond.

13.3 The rights and remedies given by this Bond are cumulative and do not exclude any other rights or remedies given by law or under this Bond.

IN WITNESS of the above the Provider and the Guarantor have executed this Contract as a deed and it is delivered and takes effect on the date at the start of it.

Provider

EXECUTED as a **DEED** by _____)

[_____] Limited acting by: _____)

Director _____

Director/Secretary _____

OR

Director _____

Witness signature _____

Witness name _____

Witness address _____

OR

EXECUTED as a **DEED** by _____)

[_____] Limited acting by its attorney [_____])

Attorney _____

Witness signature _____

Witness name _____

Witness address _____

Guarantor

EXECUTED as a **DEED** by _____)

[_____] Limited acting by: _____)

Director _____

Director/Secretary _____

OR

Director _____

Witness signature _____

Witness name _____

Witness address _____

OR

EXECUTED as a **DEED** by _____)

[_____] Limited acting by its attorney [_____])

Attorney _____

Witness signature _____

Witness name _____

Witness address _____
