

## **APPENDIX 3.1:**

### **PERFORMANCE GUARANTEE**

For use with the General Conditions of Contract for Construction Works, Third Edition, 2015.

1. In this Guarantee the following words and phrases shall have the meaning stated:

- 1.1. **“Contract”** means the construction contract entered into between the Employer and Contractor (Contract Reference No. \_\_\_\_\_ and such amendments or additions to the Contract as may be agreed in writing between the parties.
- 1.2. **“Contract Sum”** means [insert]
- 1.3. **“Contractor”** means [insert]
- 1.4. **“Employer”** means [insert]
- 1.5. **“Employer's Agent”** means [insert]
- 1.6. **“Expiry Date”** means [insert]
- 1.7. **“Guarantee”** means this on demand, unconditional, irrevocable performance guarantee, which is independent and or separate from the underlying Contract.
- 1.8. **“Guaranteed Amount”** means the maximum aggregate amount of [insert]
- 1.9. **“Guarantor”** means [insert]
- 1.10. **“Guarantor's Address”** means [insert]

2. The Guarantor's liability shall be limited to the Guaranteed Amount.
3. The Guarantor's period of liability shall be from and including the date of issue of this Guarantee and up to and including the Expiry Date or the date of issue by the Employer's Agent of the Certificate of Completion of the Works or the date of payment in full of the Guaranteed Amount,

whichever occurs first. The Employer's Agent and/or the Employer shall advise the Guarantor in writing of the date on which the Certificate of Completion of the Works has been issued.

4. The Guarantor hereby acknowledges that:
  - 4.1. any reference in this Guarantee to the Contract is made for the purpose of convenience and shall not be construed as any intention whatsoever to create an accessory obligation or any intention whatsoever to create a suretyship; and
  - 4.2. its obligation under this Guarantee is restricted to the payment of money.
5. The Guarantor hereby undertakes to pay the Employer any sum or sums not exceeding the Guarantee Amount in total, upon receipt of a written demand delivered to the Guarantor's Address, stating that the Contractor is in breach of its obligations under the Contract (without being required to prove the nature of the breach and the amount claimed. The written demand shall be signed by the Employer and be accompanied by the original Guarantee).
6. Payment by the Guarantor, in terms of this Guarantee, shall be made within seven (7) calendar days upon receipt of the Employer's written demand to the Guarantor.
7. The obligations under this Guarantee constitute direct primary, irrevocable and unconditional obligations, do not require any previous notice to or claim against the Contractor, and shall not in any way be released or discharged or otherwise absolved of liability hereunder by reason of any arrangement or change in relationship made between the Contractor and the Employer and/or between the Guarantor and Contractor; nor any alteration in the obligations undertaken by the Contractor or in the terms of the Contract; nor any indulgence, failure, delay by the Employer as to any matter; nor any dissolution or liquidation or such other analogous event of the Contractor (whether or not the Guarantor has notice thereof).
8. The Employer shall have the absolute right to arrange his affairs with the Contractor in any manner which the Employer may deem fit and the Guarantor shall not have the right to claim his release from this Guarantee on account of any conduct alleged to be prejudicial to the Guarantor.
9. All payments made by Guarantor shall be due and payable in the amount specified in any payment demand made in respect hereof by the Employer and shall be made free and clear of and without any deduction for or on account of any tax or future taxes, levies, imposts, duties, charges, fees, set off, counterclaims, deductions or withholdings of any nature whatsoever and by whomever imposed. All charges of the Guarantor related to the issuance or performance of this Guarantee (including, but not limited to, the negotiation, payment, extension or transfer hereof) shall be borne by the Contractor and under no circumstances shall be charged to the Employer by the Guarantor.



10. This Guarantee shall be governed by and construed in accordance with the law of the Republic of South Africa and shall be subject to the jurisdiction of the High Court of the Republic of South Africa.
11. This Guarantee, with the required demand notice, shall be regarded as a liquid document for the purposes of obtaining a court order.
12. The Guarantor chooses as its *domicilium citandi et executandi* for all purposes in connection with this Guarantee at the Guarantor's Address.
13. If at any time any one or more of the provisions of this Guarantee is or becomes illegal, invalid or otherwise unenforceable in any respect neither the legality, validity or enforceability of the remaining provisions of this Guarantee, nor the legality, validity or enforceability of such provision, under the law shall in any way be affected or impaired as a result.

SIGNED at \_\_\_\_\_ on \_\_\_\_\_ Day of \_\_\_\_\_ 202\_\_\_\_

For and on behalf of the **GUARANTOR**, duly authorised and warranting such authority

Full Name: \_\_\_\_\_

Capacity: \_\_\_\_\_

Witness: \_\_\_\_\_

**[Insert Guarantor's stamp]**