

LABOUR AND MATERIAL PAYMENT BOND

No. _____ (the “**Bond**”) Bond Amount \$ _____

(name of the principal*)

as a principal, hereinafter [collectively] called the “**Principal**”, and

(name of the surety company**)

a corporation created and existing under the laws of _____
(place of incorporation)

as a surety, and duly authorized to transact the business of Suretyship in _____ and hereinafter called the “**Surety**”, are held and firmly bound unto:

(name of the obligee)

as obligee, hereinafter called the “**Obligee**”, in the amount of \$ _____
(Bond Amount in figures)

hereinafter called the “**Bond Amount**”, for the payment of which sum the Principal and the Surety bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally in accordance with the provisions of this Bond (the “**Obligation**”).

WHEREAS the Bond is for the benefit of the Obligee; and

WHEREAS the Principal has entered into a written contract with the Obligee dated the _____ day of _____
(name of month)

in the year _____ for: _____

(title or description of the contract)

(the “**Original Contract**”) and, for the purpose of specifying the conditions of the Obligation, this contract together with amendments made in accordance with its terms are by reference made part hereof and are hereinafter referred to collectively as the “**Contract**”.

NOW THEREFORE the condition of this Obligation is such that if the Principal shall make payment to all Claimants as hereinafter defined in accordance with the terms of their respective subcontracts for all labour and material used or reasonably required for use in the performance of the Contract then this Obligation shall be null and void, otherwise it shall remain in full force and effect subject to the following conditions:

1. Every corporate or natural person having a direct contract with the Principal for labour, material or both used or reasonably required for use in the performance of the Contract is a “Claimant” under this Bond. The terms “labour” and “material” include that part of water, gas, power, light, heat, oil, gasoline, telephone or digital service or rental equipment directly applicable to the Contract provided that a Claimant who rents equipment to the Principal to be used in the performance of the Contract under a contract which provides that all or any part of the rent is to be applied towards the purchase price thereof shall only be a Claimant to the extent of the prevailing industrial rental value of such equipment for the period during which the equipment was used in the performance of the Contract. The prevailing industrial rental value of equipment shall be determined, insofar as it is practical to do so, by the

prevailing rates in the equipment marketplace in which the work is taking place.

2. Every Claimant who has not been paid for labour, material or both used or reasonably required for use in the performance of the Contract, after the date on which payment was due and payable under the terms of its contract with the Principal may demand payment under this Bond by giving the Surety, with a copy to the Principal and the Oblige, a written Notice of Claim, hereinafter called the “**Notice of Claim**”.
3. In respect of any jurisdiction in which a Claimant is prohibited by law to commence any suit or action to enforce payment under this Bond, the Principal and the Surety hereby jointly and severally agree with the Oblige, as trustee, that the Oblige holds this Bond in trust for the purpose of allowing a Claimant to commence such suit or action.
4. The Bond or the trust under Section 0 does not impose on the Oblige any legal, equitable or other obligations or duties to any Claimant, including but not limited to any obligation to notify any Claimant of the existence of the Bond or the trust.
5. The Oblige is not obligated to do or take any action or proceeding against the Surety on behalf of the Claimant to enforce the Bond.
6. Where the Surety includes two or more companies a Notice of Claim may be delivered to the first listed Surety on behalf of all Sureties. The first listed Surety is hereby authorized to respond to a Notice of Claim on behalf of the Surety, and a Claimant is not required to make separate Notices of Claim to each Surety and is entitled to correspond with the first listed Surety on behalf of all Sureties.
7. It is a condition precedent to the liability of the Surety under this Bond that a Claimant shall have submitted a Notice of Claim
 - a) in respect of any amount required to be held back from the Claimant by the Principal, under either the terms of the Claimant’s contract with the Principal, or under the lien Legislation applicable to the Claimant’s contract with the Principal, whichever is the greater, hereinafter and for the purposes of this Bond called the “**Holdback**”, within one hundred and twenty (120) calendar days after the Claimant should have been paid in full under its contract with the Principal; and
 - b) in respect of any amount other than for Holdback within one hundred and twenty (120) calendar days after the date on which the Claimant last performed labour or provided materials for which the Notice of Claim was given.
8. For each Notice of Claim
 - a) No later than three (3) business days after receipt by the Surety of a Notice of Claim the Surety shall acknowledge receipt of the Notice of Claim, substantially in the form prescribed at Schedule B, and request from the Claimant any information and documentation the Surety requires to determine the Claimant’s entitlement under this Bond (hereinafter called the “**Information**”); and
 - b) No later than the earlier of: (a) ten (10) business days after receipt by the Surety of the Information, (b) twenty- five (25) business days after receipt by the Surety of a Notice of Claim, or (c) such longer time as agreed by the Surety and the Claimant, the Surety shall provide a position in response to the Notice of Claim, substantially in the form prescribed at Schedule C, hereinafter called the “**Surety’s Position**”.
9. No later than ten (10) business days after the Surety’s Position being provided to any Claimant the Surety shall pay such amounts included in the Notice of Claim that are undisputed by the Surety, except to the extent that the Surety makes an application to the Court with respect to such amounts in accordance with Section 11 below. This payment of undisputed amounts shall be without prejudice to the Surety’s position regarding any disputed portions of a Notice of Claim.
10. The Surety shall not in any circumstances be liable for a greater sum than the Bond Amount.
11. The Bond Amount shall be reduced by and to the extent of any payment or payments made under this Bond. If the aggregate of all Notices of Claim exceed, or the aggregate of amounts for which Notices of Claim might be given are believed by the Surety to exceed, the Bond Amount then the Surety may apply to the Court for direction in the interest of all Claimants.
12. Upon payment to a Claimant under this Bond in respect of any indebtedness of the Principal, the Surety shall be subrogated to all of the rights of the Claimant in respect of any and all claims, causes of action and rights to recovery which the Claimant may have against any person, firm or corporation because of or in connection with or

arising out of such indebtedness, and the Claimant undertakes to extend to the Surety or the Surety's designee any warranties and/or guarantees under the Contract in respect of all labour and materials for which the Claimant has been paid.

- 13. As a condition precedent, any suit or action under this Bond must be commenced within one (1) year after the date on which the Principal last performed work on the Contract, including work performed under any warranty or guarantees provided in the Contract. In the province of Québec, the coverage period of this bond expires one (1) year after the date on which the Principal last performed work on the Contract, including work performed under any warranty or guarantees provided in the Contract.
- 14. The parties to this Bond and a Claimant by providing a Notice of Claim agree that any suit or action is to be made to a court of competent jurisdiction in the location in which the work under the Contract is taking place and agree to submit to the jurisdiction of such court notwithstanding any terms to the contrary in the Contract.
- 15. The rights and obligations of the Obligee, the Principal, and the Surety under this Bond are in addition to their respective rights and obligations at common law and in equity.
- 16. This Bond shall be governed by the laws of the jurisdiction in which the work under the Contract is taking place.
- 17. All notices ("**Notices**") under this Bond shall be delivered by registered mail, facsimile, or electronic mail at the addresses set out below, subject to any change of address in accordance with this Section. Any Notice given by facsimile or electronic mail shall be deemed to have been received on the next business day or, if later, on the date actually received if the person to whom the Notice was given establishes that he or she did not, acting in good faith, receive the Notice until that later date. Any Notice given by registered mail shall be deemed to have been received five (5) days after the date on which it was mailed, exclusive of Saturdays and holidays or, if later, on the date actually received if the person to whom the Notice was mailed establishes that he or she did not, acting in good faith, receive the Notice until that later date. The address for the Surety, the Obligee or the Principal may be changed by giving Notice to the other parties setting out the new address in accordance with this Section.

The Surety:

[Surety corporate name]
[address]
[fax]
[email]

The Obligee:

[Obligee proper name]
[address]
[fax]
[email]

The Principal:

[Principal corporate name]
[address]
[fax]
[email]

1. Headings for Reference Only

- 1.1 The headings and references to them in this Bond are for convenience only, shall not constitute a part of this Bond, and shall not be taken into consideration in the interpretation of this Bond.

IN WITNESS WHEREOF, the Principal and the Surety have Signed and Sealed this Bond this _____ day of _____ in the year _____

[Principal proper name]

By _____

Name: _____

Title: _____

Witnessed by:

Name of Witness _____

Address of Witness _____

I have authority to bind the corporation.

[Surety corporate name]

By: _____

By _____

Name: _____

Name _____

Attorney-in-fact _____

Attorney-in-fact: _____

*** IF THERE ARE TWO OR MORE COMPANIES IN PARTNERSHIP OR JOINT VENTURE, JOINTLY AND SEVERALLY BOUND, INSERT THE NAME OF EACH PARTNER OR JOINT VENTURE PARTY, AND INSERT THE WORD "COLLECTIVELY" AFTER THE WORD "HEREINAFTER" IN THE FIRST LINE.**

**** IF THERE ARE TWO OR MORE SURETY COMPANIES, JOINTLY AND SEVERALLY BOUND, INSERT THE "[Name of the surety company], a corporation created and existing under the laws of [Place of incorporation]," FOR EACH SURETY, FOLLOWED BY "each as a surety and each duly authorized to transact the business of Suretyship in the [Jurisdiction in which the work under the Contract is taking place] and hereinafter collectively called the "Surety"".**