

**EXPEDITED DISPUTE RESOLUTION**  
**PERFORMANCE BOND – INDUSTRIAL**

Bond No.: \_\_\_\_\_

**KNOW ALL WHO SHALL SEE THESE PRESENTS:**

**THAT WHEREAS,** \_\_\_\_\_ (“Obligee”) awarded to  
\_\_\_\_\_ (“Principal”), a contract (“Contract”) for  
a project known as the \_\_\_\_\_  
\_\_\_\_\_ (“Project”);

**AND WHEREAS,** it is one of the conditions of the Contract that these presents shall be executed;

**NOW THEREFORE,** We the undersigned Principal and Travelers Casualty and Surety Company of America (“Surety”) are firmly bound and held unto Obligee, in the penal sum of \_\_\_\_\_ Dollars (\_\_\_\_\_) good and lawful money of the United States of America for the payment whereof, well and truly to be paid to Obligee, we bind ourselves, our heirs, successors, executors, administrators, and assigns, jointly and severally, firmly by these presents.

**THE CONDITION OF THE FOREGOING OBLIGATION IS SUCH THAT:**

- 1) If Principal shall in all things stand to and abide by and well and truly keep, perform and complete all covenants, conditions, agreements, and obligations under the Contract, including any and all amendments, supplements, and alterations made to the Contract as therein provided, on Principal's part to be kept and performed at the time and in the manner therein specified, if Principal shall indemnify and save harmless Obligee, its directors, officers, employees and agents, as therein stipulated, and if Principal shall reimburse upon demand of Obligee any sums paid Principal that exceed the final payment determined to be due upon completion of the Project, then these presents shall become null and void; otherwise they shall remain in full force and effect unconditionally, irrevocably and shall be non-cancellable; provided, however, that upon substantial completion, the penal sum hereof shall reduce automatically to \_\_\_\_\_ % of the contract price, and such reduced penal sum shall solely cover liquidated damages, if any, and warranty obligations.
- 2) The obligations covered by this Bond specifically include liability for liquidated damages and warranties as specified in the Contract, but in no event shall Surety’s aggregate liability exceed the penal sum of this Bond.
- 3) Notwithstanding any language to the contrary in the Contract or this Bond, the obligations covered by this Bond solely cover the \_\_\_\_\_  
\_\_\_\_\_ work to be performed by Principal under the Contract.
- 4) Surety agrees that no fraud practiced by any person other than Obligee(s) seeking to recover on this Bond, as well as no change, extension of time, alterations, additions, omissions or other modifications of the terms of the following shall in any way affect Surety’s obligations on this

Bond, and it does hereby waive notice of such changes, extensions of time, alterations, additions, omissions or other modifications:

- a) The Contract, or
  - b) In the work to be performed with respect to the Project, or
  - c) In the specifications or plans, or any change or modification of any terms of payment or extension of time for any payment pertaining or relating to the Contract, or
  - d) Any conditions precedent or subsequent in this Bond attempting to limit the right of recovery of Obligee(s) otherwise entitled to recover under this Bond.
- 5) Surety agrees that payments made to laborers, contractors, subcontractors and suppliers to satisfy claims on any payment bond that Surety may issue in conjunction herewith do not reduce the penal sum of this Bond. Payments made to laborers, contractors, subcontractors or suppliers under any agreement wherein Surety has arranged for completion of the work to satisfy this Bond will not be considered payment bond claims.
- 6) Whenever Principal shall be, and is declared by Obligee to be in default under the Contract, there being no Obligee default under the Contract, Surety shall within fifteen (15) days of receipt of a letter from Obligee in the form set forth in Schedule A:
- a) Remedy such default, or
  - b) Complete the work covered by this Bond in accordance with the terms and conditions of the Contract then in effect, or
  - c) Select a contractor or contractors to complete all work covered by this Bond in accordance with the terms and conditions of the Contract then in effect, using a contractor or contractors approved by Obligee as required by the Contract (provided, that Surety may not select Principal or any affiliate of Principal to complete the work for and on behalf of Surety without Obligee's express written consent), arrange for a contract meeting the requirements of the Contract between such contractor or contractors and Obligee, and make available as work progresses (even though there should be a default or a succession of defaults under such contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the unpaid balance of the contract price; but not exceeding, including other costs and damages for which Surety is liable hereunder, the bonded sum; or
  - d) Waive Surety's right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances after investigation, determine the amount for which it may be liable to Obligee and, promptly make payment to Obligee.
- 7) In the event that Surety disputes its liability pursuant to this Bond, which includes any allegations of fraud, such dispute shall be determined in the first instance in accordance with the dispute resolution process ("DRP") attached hereto as Schedule B. A Decision shall be rendered within thirty (30) days of the Adjudication Commencement Date, or as otherwise extended pursuant to the DRP (the terms "Decision" and "Adjudication Commencement Date" are defined in Schedule B). The Decision shall be binding on Surety, Principal and Obligee but subject to each party's right to a de novo appeal of the Decision to a court of competent jurisdiction. Unless or until such time as a court of competent jurisdiction issues an order or ruling that conflicts with the Decision, either in whole or in part, all parties shall

perform in accordance with the Decision and Paragraph 6 of this Bond. For purposes of this paragraph, if Surety fails to make an election within the fifteen (15) days set forth in Paragraph 6 of this Bond, the claim shall be deemed disputed.

- 8) [*Use in case of multiple or co-sureties*] The sureties noted on the first page hereof agree to empower a single representative with authority to act on behalf of all of the sureties with respect to this Bond, so that Oblige(e)s will have no obligation to deal with multiple sureties hereunder. All correspondence from Oblige(e)s to the sureties and all claims under this Bond shall be sent to such designated representative. The designated representative may be changed only by delivery of written notice (by personal delivery or by certified mail, return receipt requested) to Oblige(e) designating a single new representative, signed by all of the sureties. The initial representative shall be:

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Company: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Email: \_\_\_\_\_

- 9) Schedules A and B are integral parts of this Bond and are specifically incorporated herein as if set out in full in the body of this Bond.

**IN WITNESS WHEREOF**, we have hereunto set our hands and seals on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

**Principal:** \_\_\_\_\_  
(Full Legal Name)  
Address: \_\_\_\_\_  
By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Contact Name: \_\_\_\_\_  
Phone: (\_\_\_\_) \_\_\_\_\_

**Surety:** \_\_\_\_\_  
(Full Legal Name)  
Address: \_\_\_\_\_  
By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Contact Name: \_\_\_\_\_  
Phone: (\_\_\_\_) \_\_\_\_\_

[Note: If more than one surety, then add appropriate number of signature blocks.]

[Note: A copy of a certificate that Surety (or sureties) is (are) authorized to transact business in \_\_\_\_\_ must be attached.]

[Note: This Bond shall be signed by authorized persons. Where such persons are signing in a representative capacity (e.g., an attorney-in-fact), but are not a members of the firm, partnership, or joint venture, or an officer of the legal entity involved, evidence of authority must be attached.]

**Schedule A**

**Form of Demand**

Date: \_\_\_\_\_

Travelers Casualty & Surety Company of America  
One Tower Square  
Hartford, CT 06183

Attention: John S. Halliday,  
Chief Underwriting Officer, National Accounts

Re: Performance Bond No.: \_\_\_\_\_ (“Bond”)

Principal: \_\_\_\_\_ (“Principal”)

Obligee: \_\_\_\_\_ (“Obligee”)

Contract: \_\_\_\_\_ (“Contract”)

Dear Sir: Pursuant to the Bond, Obligee hereby certifies that:

- 1) Principal is and continues to be in default of Principal’s obligations under the Contract;
- 2) Obligee has issued a notice of default to Principal in accordance with the provisions of the Contract; and
- 3) Obligee has honored and will continue to honor and perform in all material respects its obligations under the Contract.

We hereby demand that Surety honor its obligations under the Bond forthwith.

Obligee acknowledges that if Surety intends to dispute its liability pursuant to the Bond, then the parties shall proceed immediately with the DRP set forth in Schedule B.

Yours truly,

**Obligee:** \_\_\_\_\_  
(Full Legal Name)

By: \_\_\_\_\_

Title: \_\_\_\_\_

## Schedule B

### Dispute Resolution Process

Given the on default nature of the Bond, Principal, Surety and Obligees acknowledge that they may not agree whether Surety is liable to make payment pursuant to the Bond. In order to ensure that such disputes are determined quickly, so as to allow for the orderly and timely completion of the Contract, Principal, Surety and Obligees agree to submit such disputes to the dispute resolution process set out below. The parties acknowledge that any decision rendered in the DRP (“Decision”) will be binding during the completion of the Contract, but subject to appeal de novo by any party at any time to a court of competent jurisdiction. Pending issuance of a Decision, Principal and Obligees shall continue to perform their respective obligations under the Contract, including but not limited to performing work and paying for such work. Terms not defined herein shall have the meaning ascribed to them in the body of the Bond.

- 1) “Dispute” means a disagreement as to Surety’s liability pursuant to the Bond following Obligees’ demand.
- 2) Disputes arising prior to the date of substantial completion shall be submitted for binding resolution to adjudication (“Adjudication”) administered by JAMS – The Resolution Experts! (“JAMS”) in accordance with the procedure set out below.
- 3) Surety or Obligees shall demand Adjudication by filing an Adjudication statement electronically with JAMS, and serving electronic copies by email upon Principal and Obligees, utilizing the electronic forms and filing directions provided by JAMS on its website at [www.jamsadr.com](http://www.jamsadr.com). The Adjudication statement shall set forth in detail the factual and legal issues submitted for Adjudication and shall be sent no later than ten (10) days following Obligees’ demand.
- 4) Within three (3) business days after the Adjudication statement is filed and served, the parties shall appoint an adjudicator (“Adjudicator”) who shall be a panelist on the JAMS Global Engineering & Construction Panel (“JAMS GEC Panel”) of dispute adjudicators. If the parties fail to appoint an Adjudicator within the three (3) day period, JAMS shall administratively appoint an Adjudicator from the JAMS GEC Panel. The Adjudicator shall be under a duty to act impartially and fairly and shall serve as an independent neutral. At all times during and after the Adjudication, the Adjudicator shall be shielded by quasi-judicial immunity from suit or other legal process.
- 5) The Adjudication shall commence on the date that JAMS receives the Adjudication statement and initial deposit of funds, and confirms the appointment of the Adjudicator (“Adjudication Commencement Date”). Unless the Adjudicator decides otherwise, Principal, Surety and Obligees shall pay the final fees and expenses of Adjudication as set forth in the Contract. If the Adjudicator determines that Principal and Surety are aligned and have the same commonality of interest against Obligees, Principal and Surety jointly shall be charged with one share and

Obligee will be charged with one share. Should any party fail to deposit funds as required by JAMS, any other party may advance the deposit, and the amount of that advanced deposit will be taken into consideration in the Adjudicator's decision.

- 6) Upon commencement of the Adjudication, the Adjudicator is empowered to take the initiative in ascertaining the facts and the law, and to exercise sole discretion in managing the Adjudication process. Among other things, the Adjudicator may require the parties to make additional factual submissions such as sworn witness statements and business documents, may interview important witnesses after notice to the parties and affording opportunity to attend, may request and consider expert reports and may call for memoranda on legal issues. Notwithstanding the foregoing, the Adjudicator must decide the following questions:
  - a) Is Principal in default of Principal's obligations?
  - b) Has Obligee complied in all material respects with its obligations in good faith pursuant to the Contract?
  - c) Is Surety liable to perform in accordance with Paragraph 6 of the Bond?
- 7) The Adjudicator shall issue a Decision in writing, which shall be binding upon and enforceable by the parties through the completion of Principal's obligations. Any payment required in the Decision shall be made immediately. The Decision shall be issued through JAMS as soon as practicable but in no event later than thirty (30) calendar days after the Adjudication Commencement Date, or within any later time agreed upon by the parties. Unless the parties agree otherwise, the Decision shall state reasons therefore and shall be admissible in later administrative, arbitral or judicial proceedings between the parties.
- 8) This thirty (30) calendar day period may be extended by the Adjudicator in its sole discretion for no more than fourteen (14) days in the event that JAMS has requested any party to make an additional fee and expense deposit and such funds have not been deposited as requested or advanced by another party.
- 9) Any party may request clarification of the Decision within five (5) business days of its issuance, and the Adjudicator shall provide clarification within five (5) business days thereafter. Said clarification shall not delay any required payment.
- 10) Upon any settlement by the parties of the dispute prior to issuance of a Decision, the parties shall jointly terminate the Adjudication. Such removal or termination shall not affect the parties' continuing joint and several obligations for payment to JAMS of unpaid fees and expenses.
- 11) The parties shall comply with the Decision, unless and until it is subsequently vacated or modified. If the Decision is that Surety is liable to perform in accordance with Paragraph 6 of the Bond, then notwithstanding the commencement of any appeal de novo of the Decision, Surety shall perform in accordance with the terms of the Bond until Principal's obligations are completed.