

Specimen Performance Bond

To: The Appropriate Authorities (as defined below)

[date]

Performance Bond

The obligations set out in this Performance Bond are given by us in favour of and for the benefit of any and all Appropriate Authorities.

We, (*insert name of financial institution*) of (*insert address*) (the “**Issuer**”), are informed by (*insert name of Code operator*) whose [*registered - only appropriate for a company*] office is at (*insert address of [registered] office*) [*and whose registered company number is - only if a company*] (the “**Code operator**”) that under Regulation 16 of the Regulations the Code operator is under a duty to ensure that sufficient funds are available to meet the Specified Liabilities which arise on or before the date on which a Relevant Event occurs or may arise at any time during the Liability Period from the exercise of rights conferred upon the Code operator by paragraph 9 of the Electronic Communications Code.

We have been requested by the Code operator to issue a Performance Bond in favour of the Appropriate Authorities as contained in this document.

On (*insert date*) (the “**Arrangement Date**”), the Issuer issued this Performance Bond as a means of payment to the Appropriate Authority of the Specified Liabilities of the Code operator.

We irrevocably and unconditionally undertake that, if we receive a first written demand from an Appropriate Authority which is in accordance with the provisions of this Performance Bond (the “**Demand**”) we shall, subject as provided below, forthwith pay to the Appropriate Authority making the Demand the amount set out in the Demand in accordance with the payment instructions also set out in the Demand.

PROVIDED ALWAYS THAT: -

1. The Issuer's liability under this Performance Bond is limited to an amount or amounts, including all previous claims made under this Performance Bond, not exceeding in aggregate (*insert figure*).
2. The Issuer's liability under this Performance Bond shall apply to any and all of the Code operator's Specified Liabilities arising on or before the date on which a Relevant Event occurs or at any time during the Liability Period (including prior to the Arrangement Date) provided that the Relevant Event occurs prior to the Expiry Date.
3. This Performance Bond will expire, subject to paragraph 4 below, on (*insert date*) [*must be at least one year after the Arrangement Date*] (the “**Expiry Date**”) but the Issuer shall remain liable in respect of the Specified Liabilities of the Code operator in accordance with the provisions of paragraph 2 above after the Expiry Date.
4. Any Demand hereunder must be received by the Issuer at the address specified

in paragraph 5 below on or before 30 days after the Expiry Date or, as the case may be, on or before 30 days after the end of the Liability Period, after which this Performance Bond will become of no effect whatsoever.

5. The relevant office address for the purposes of paragraph 4 above is (*insert address*).
6. Any Demand made by any Appropriate Authority under this Performance Bond must be sent by letter to the address specified in paragraph 5 above, signed by a person(s) authorised on behalf of the Appropriate Authority to make the Demand which shall include the following statement (with the applicable details completed):

“In accordance with the Performance Bond dated [] from [name of bank, address] we, [name of Appropriate Authority] hereby certify that:

- (a) we are an Appropriate Authority as defined and referred to in the Performance Bond;
- (b) the Code operator has failed to meet its Specified Liabilities as required in accordance with Regulation 16 of the Electronic Communications Code (Conditions and Restrictions) Regulations 2003;
- (c) we have requested payment from the Code operator but they have failed to pay us the amount claimed within a period of 30 days of our written request; and
- (d) the amount required to meet the Specified Liabilities is £[] (“**Demand Amount**”).

We hereby demand that you make payment of the Demand Amount in accordance with the provisions of the Performance Bond within [seven] days after the date of the receipt of this Demand.

Please make payment to the following account [details of bank account of the Appropriate Authority].

7. We shall accept such Demand as evidence, for the purposes of this Performance Bond alone, that the amount claimed is due to the Appropriate Authority under this Performance Bond.
8. Without prejudice to any right or remedy to which any Appropriate Authority may be entitled under this Performance Bond and which may arise at any time during which the Performance Bond is valid and subsisting, this Performance Bond is personal to the Appropriate Authorities and is not transferable or assignable.
9. In this Performance Bond:
 - (a) “**Act**” means the Communications Act 2003 (c. 21);
 - (b) “**Appropriate Authority**” means any appropriate authority, traffic authority, responsible authority or other person referred to in Regulation 16 of the Regulations, which may incur any of the Specified Liabilities;

- (c) “**Electronic Communications Code**” shall have the same meaning as it has in section 106 of the Act;
 - (d) “**Liability Period**” means the period commencing on the occurrence of a Relevant Event and ending on the third anniversary thereof;
 - (e) “**Regulations**” means the Electronic Communications Code (Conditions and Restrictions) Regulations 2003 (S.I. 2003 No. 2553), as amended from time to time;
 - (f) “**Relevant Event**” occurs if:
 - (i) a code operator becomes subject to a direction under the Act by virtue of which he is prohibited from providing the electronic communications network for the purposes of the provision of which the Electronic Communications Code was applied to him by a direction under section 106(3)(a) of the Act (as shall be interpreted in accordance with Regulation 16(12) of the Regulations);
 - (ii) a code operator ceases to provide an electronic communications network;
 - (iii) a code operator is deemed to be unable to pay his debts (as shall be determined in accordance with Regulation 16(11) of the Regulations);
 - (iv) a code operator enters into administration, receivership or liquidation;
 - (v) any person takes action for the voluntary winding-up, dissolution, bankruptcy or sequestration of a code operator;
 - (vi) an administrator, receiver, trustee or similar officer of a code operator, or of all or any material part of the revenues and assets of that operator, is appointed;
 - (vii) any order is made for the compulsory winding-up, dissolution, bankruptcy or sequestration of a code operator; and
 - (g) “**Specified Liabilities**” are defined in regulation 16(10) of the Regulations.
10. Except in so far as the context otherwise requires, words or expressions in this Performance Bond shall have the meaning ascribed to them in this Performance Bond and otherwise any word or expression shall have the meaning it has in the Regulations.
11. This Performance Bond shall be governed by, and construed in accordance with, the Laws of England and Wales and shall be subject to the exclusive jurisdiction of the English Courts.

Executed as a Deed [in the appropriate manner]