

PERFORMANCE GUARANTEE NO: DRAFT

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

1. GUARANTOR DETAILS AND DEFINITIONS

“Guarantor” means	: YARD INSURANCE LIMITED (Registration Number: 1997/006545/06)
Physical address	: ONE ON NINTH, UNIT B, GROUND FLOOR, CORNER 9TH STREET & GLENHOVE ROAD, HOUGHTON ESTATE, JOHANNESBURG 2198
“Employer” means	: DEPARTMENT OF ROADS AND TRANSPORT: GAUTENG PROVINCE
“Contractor” means	: VINCE HOMES (PTY) LTD (Reg. No. 2015/189434/07)
“Employer’s Agent” means	: DEPARTMENT OF ROADS AND TRANSPORT, GAUTENG PROVINCE
“Works” means	: CONTRACT NO. DRT D2_08/02/2025 – THE EXECUTION OF ROUTINE ROAD MAINTENANCE CONTRACTS ON SELECTED RISFSA CLASS 3 PROVINCIAL ROADS IN IDENTIFIED AREAS OF GAUTENG PROVINCE. PACKAGE D-CONTRACT D2
“Site” means	: GAUTENG PROVINCE
“Contract” means	: The Agreement made in terms of the Form of Offer and Acceptance and such amendments or additions to the contract as may be agreed in writing between the parties.
“Contract Sum” means	: The accepted amount inclusive of tax of ZAR60 564 570.16
Amount in words	: Sixty Million Five Hundred and Sixty Four Thousand Five Hundred and Seventy Rand and Sixteen Cents
“Guaranteed Sum” means	: The maximum aggregate amount of ZAR6 056 457.02
Amount in words	: Six Million Fifty Six Thousand Four Hundred and Fifty Seven Rand and Two Cents
“Expiry date” means	: 30th September 2028

2. CONTRACT DETAILS

Employer's Agent issues: interim Payment Certificates, Final Payment Certificate and the Certificate Completion of the Works and Final Approval Certificate as defined in the Contract.

3. GUARANTOR'S LIABILITY

- 3.1. The Guarantor's liability shall be limited to the amount of the Guaranteed Sum.
- 3.2. The Guarantor's period of liability shall be from and including the date on which the Performance Guarantee is signed, up to and including the Expiry Date, or until the Defects Liability Period Expiry date as recorded within the Final Approval Certificate, whichever occurs first.
- 3.3. The Employer's Agent shall advise the Guarantor in writing of the date on which the Final Approval Certificate of the Works has been issued.

4. CONDITIONS APPLICABLE TO FIXED PERFORMANCE GUARANTEES

- 4.1. The Guarantor hereby acknowledges that:
 - 4.1.1. Any reference in this Performance 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;
 - 4.1.2. Its obligation under this Performance Guarantee is restricted to the payment of money.
- 4.2. Subject to the Guarantor's maximum liability referred to in 3.1, the Guarantor hereby undertakes to pay the Employer the sum certified upon receipt of the documents identified in 4.2.1. to 4.2.3.
 - 4.2.1. A copy of a first written demand issued by the Employer to the Contractor stating that payment of a sum certified by the Employer in an Interim or Final Payment Certificate has not been made in term of the Contract and failing such payment within (7) seven calendar days, the Employer intends to call upon the Guarantor to make payment in terms of 4.2.2;
 - 4.2.2. A first written demand issued by the Employer to the Guarantor at the Guarantor's physical address with a copy to the Contractor stating that a period of seven (7) days has elapsed since the first written demand in terms of 4.2.1 and the sum certified has still not been paid;
 - 4.2.3. A copy of the aforesaid payment certificate which entitles the Employer to receive payment in terms of the Contract of the sum certified in 4.2.
- 4.3. Subject to the Guarantor's maximum liability referred to in 3.1, the Guarantor undertakes to pay to the Employer the Guaranteed Sum or the full outstanding balance upon receipt of a first written demand from the Employer to the Guarantor at the Guarantor's physical address calling up this Performance Guarantee, such demand stating that:
 - 4.3.1. The Contract has been terminated due to the Contractor's default and that this Performance Guarantee is called up in terms of 4.3; or
 - 4.3.2. A provisional or final sequestration or liquidation court order has been granted against the Contractor and that the Performance Money Guarantee is called up in terms of 4.3; and

- 4.3.3. The aforesaid written demand is accompanied by a copy of the notice of termination and/or the provisional/final sequestration and/or the provisional liquidation court order.
- 4.4. It is recorded that the aggregate amount of payments required to be made by the Guarantor in terms of 4.2 and 4.3 shall not exceed the Guarantor's maximum liability in terms of 3.1.
- 4.5. Where the Guarantor has made payment in terms of 4.3, the Employer shall upon the date of issue of the Final payment Certificate submit an expense account to the Guarantor showing how all monies received in terms of this Performance Guarantee have been expended and shall refund to the Guarantor any resulting surplus. All monies refunded to the Guarantor in terms of this Performance Guarantee shall bear interest at the prime overdraft rate of the Employer's bank compounded monthly and calculated from the date payment was made by the Guarantor to the Employer until the date of refund.
- 4.6. Payment by the Guarantor in terms of 4.2 or 4.3 shall be made within seven (7) calendar days upon receipt of the first written demand to the Guarantor.
- 4.7. Payment by the Guarantor in terms of 4.3 will only be made against the return of the original Performance Guarantee by the Employer.
- 4.8. The Employer shall have the absolute right to arrange his affairs with the Contractor in any manner which the Employer may consider fit and the Guarantor shall not have the right to claim his release from this Performance Guarantee on account of any conduct alleged to be prejudicial to the Guarantor.
- 4.9. The Guarantor chooses the physical address as stated above for the service of all notices for all purposes in connection herewith.
- 4.10. This Performance Guarantee is neither negotiable nor transferable and shall expire in terms of 3.2, where after no claims will be considered by the Guarantor. The original of this Guarantee shall be returned to the Guarantor after it has expired.
- 4.11. This Performance Guarantee, with the required demand notices in terms of 4.2 or 4.3, shall be regarded as a liquid document for the purposes of obtaining a court order.
- 4.12. Where this Performance Guarantee is issued in the Republic of South Africa the Guarantor hereby consents in terms of Section 45 of the Magistrate's Courts Act No 32 of 1944, as amended, to the jurisdiction of the Magistrate's Court of any district having jurisdiction in terms of Section 28 of the said Act, notwithstanding that the amount of the claim may exceed the jurisdiction of the Magistrate's Court.

THUS DONE AND SIGNED ON BEHALF OF THE GUARANTOR AT BRYANSTON ON THIS ____ DAY OF ____ 2025

AS WITNESSES:

1.

JEREMY DANE PILLAY
AUTHORISED SIGNATORY
Yard Insurance Limited

2.

PLEASE NOTE THE FOLLOWING

1. Premium will be generated for this guarantee until this original guarantee document has been returned to Nexus Guarantees (Pty) Ltd, Underwriting Manager for Yard Insurance Limited.
2. In the event of a call on this Guarantee, payment will only be made against the return of this original Guarantee by the Beneficiary or the Beneficiary's duly appointed agent.
3. All future correspondence may be directed to the following: Address: Block A La Rocca Business Park, 321 Main Road, Bryanston 2196 Telephone: 011 791 3544 Email: jeremyp@nexusg.co.za.