

FORM 18

LABOUR AND MATERIAL PAYMENT BOND

(Construction Remedies Act, S.N.B. 2020, c.29, s.83(4)(a) and s.84(3)(a))

No. _____ (the "Bond") Bond Amount \$ _____

(name of the contractor*)

as a principal, hereinafter [collectively] called the "Contractor", and

(name of the surety company**)

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

as a surety, and duly licensed under the Insurance Act to transact guarantee insurance or surety insurance and hereinafter called the "Surety" are held and firmly bound unto _____ as obligee,
(name of the owner***)

hereinafter called the "Owner", in the amount of \$ _____ hereinafter called the "Bond Amount",
(Bond Amount in figures)

for the payment of which sum the Contractor and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns, in accordance with the provisions of this Bond (the "Obligation").

WHEREAS the Contractor has entered into a written contract with the Owner dated the _____ day of _____
(month)

in the year _____ for _____
(title or description of the 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 Contractor shall make payment to all Claimants as hereinafter defined in accordance with the terms of their respective subcontracts or sub-subcontracts for all services (including labour) and materials 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 who either has a direct contract with the Contractor (hereinafter called a "Subcontractor") or who has a direct contract with a Subcontractor under the Contractor (hereinafter called a "Sub-subcontractor") for services (including labour), materials or both used or reasonably required for use in the performance of the Contract is a "Claimant" under this Bond. The terms "services (including labour)" and "materials" 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 Contractor or a Subcontractor 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. The liability of the Surety and the Principal to make payment to any Sub-subcontractor is limited to such amounts as the Sub-subcontractor would be able to recover from the Owner (if the Owner was not the Crown) under the holdback provisions of the *Construction Remedies Act* (the “**Act**”), subject to any limitations and set-offs that would be applicable under the Act, as if the amount claimed under this Bond was for a lien under the Act. For clarity, to be a Claimant under this Bond, a Sub-subcontractor need not be a lienholder or to have taken any steps to prevent any lien it may have from being extinguished under the Act.
3. The Owner is not obligated to do or take any action or proceeding against the Surety on behalf of the Claimant to enforce the bond.
4. Every Claimant who has not been paid for services (including labour), materials 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 subcontract or sub-subcontract may demand payment under this Bond by giving the Surety, with a copy to the Contractor and the Owner, a written Notice of Claim, substantially in the form prescribed in Schedule A for a Subcontractor or Schedule B for a Sub-subcontractor, hereinafter called the “**Notice of Claim**”.
5. Where the Surety includes two or more companies a Notice of Claim may be given 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.
6. It is a condition precedent to the liability of the Surety under this Bond that a Claimant shall have given a Notice of Claim
 - a) in respect of any amount required to be held back from the Claimant by the Contractor, or by a Subcontractor, under either the terms of the Claimant’s contract with the Contractor or Subcontractor or under the *Act*, 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 Contractor or with a Subcontractor; and
 - b) in respect of any amount other than a Holdback within one hundred and twenty (120) calendar days after the date on which the Claimant last supplied services (including labour) or materials for which the Notice of Claim was given.
7. For each Notice of Claim given by a Subcontractor:
 - 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 C, 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 ten (10) business days after receipt by the Surety of the Information, or twenty-five (25) business days after receipt by the Surety of a Notice of Claim, whichever is earlier, or within such longer time as is agreed by the Surety and the Subcontractor, the Surety shall provide a position in response to the Notice of Claim, substantially in the form prescribed at Schedule D, hereinafter called the “**Surety’s Position**”.

8. For each Notice of Claim given by a Sub-subcontractor:
 - 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 C, 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 fifteen (15) business days after receipt by the Surety of the Information, or thirty-five (35) business days after receipt by the Surety of a Notice of Claim, whichever is earlier, or within such longer time as is agreed by the Surety and the Sub-subcontractor, the Surety shall provide a position in response to the Notice of Claim, substantially in the form prescribed at Schedule D, 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. Despite anything in this Bond, 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 of King's Bench of New Brunswick for direction in the interest of all Claimants.
12. Upon payment to a Claimant under this Bond in respect of any indebtedness of the Contractor or Subcontractor to the Claimant, 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 services (including labour) and materials for which the Claimant has been paid.
13. As a condition precedent, any action under this Bond must be commenced within one (1) year after the date on which the Contractor 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 action is to be brought in the Court of King's Bench of New Brunswick and agree to submit to the jurisdiction of that court notwithstanding any terms to the contrary in the Contract.
15. The rights and obligations of the Owner, the Contractor, 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 Province of New Brunswick.
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 the person 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 three (3) 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 the person did not, acting in good faith, receive the Notice until that later date. The address for the Surety is publicly available on the Financial and Consumer Services Commission of New Brunswick website. The address for the Owner or the Contractor 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 Owner:

[Owner proper name]
[address]
[fax]
[email]

The Contractor:

[Contractor corporate name]
[address]
[fax]
[email]

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

[Contractor proper name]

Witnessed by:

By: _____

Name: _____

Name of Witness: _____

Title: _____

Address of Witness: _____

I have authority to bind the corporation.

[Surety corporate name]

By: _____

Name: _____

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 licensed under the Insurance Act (New Brunswick) to transact guarantee insurance or surety insurance and hereinafter collectively called the “Surety””.**

***** INSERT THE CROWN OR LOCAL GOVERNMENT OWNER, AS APPLICABLE, OR SUCH SPECIAL PURPOSE ENTITY DEEMED TO BE THE OWNER UNDER THE ACT AND ENTERING INTO THE CONTRACT WITH THE CONTRACTOR.**

SCHEDULE A
Notice of Claim
[Subcontractor]

[date]

[Surety name]
[Surety address – line 1]
[Surety address – line 2]
[Surety email address]
[Attention]

Re: _____

Bond No: _____

Contractor: _____

Subcontractor: _____

Owner: _____

Contract: _____

Dear _____

We have a subcontract with the Contractor for _____
(title or description of the Subcontract)
(our “Subcontract”) related to the Contract between the Owner and the Contractor for
_____ in _____.
(title or description of the Contract) *(municipality, province)*

We have given notice to the Contractor as required under our Subcontract that an amount is due and payable under the Subcontract and remains unpaid contrary to the terms of the Subcontract.

For Holdback amounts we hereby demand payment of \$ _____ under the captioned Bond.

For amounts other than Holdback we hereby demand payment of \$ _____ under the captioned Bond for all services (including labour) and materials used or reasonably required for use in the performance of the Contract.

To assist in your evaluation of this Notice of Claim we invite you to contact our representative as follows:

[Name]
[Title]
[Company address]
[Phone (mobile)]
[Email address]

We also enclose the following documents supporting our Notice of Claim:

(The following is a suggested list of documents to be considered for delivery to the Surety. Please check off the documents (if any) that you are providing with this Notice of Claim.)

- Copy of full, executed Subcontract (or Purchase Order), including approved changes and pending changes relevant to this Notice of Claim

- Copy of the Contract between the Contractor and the Owner
- Copy of original schedule and latest approved schedule for the Subcontract
- Copies of all invoices submitted to the Contractor
- Copies of all payments from the Contractor to the Claimant
- Summary reconciliation of all invoices issued under the Subcontract
- Summary reconciliation of all payments received under the Subcontract
- Confirmation from the Owner or Contractor that the Claimant has completed all of its work including rectification of all identified deficiencies and the delivery of all required close-out documents
- Copy of any notice or correspondence to and from the Contractor relevant to this Notice of Claim
- Confirmation of the last day the Claimant performed work pursuant to the Subcontract including proof thereof
- Copy of any claim for lien, legal proceeding or other documents to enforce entitlement to payment
- Copy of the executed Labour and Material Payment Bond under which this Notice of Claim is being made
- [additional documents]

We look forward to receiving your acknowledgment of this Notice of Claim within three (3) business days of receipt and your request for any additional documentation or information you require to meet your obligations under the Bond.

Yours truly;

[Full corporate title]

By: _____

[Name]

[Title]

[Phone]

[Email address]

CC: [Contractor]

SCHEDULE B
Notice of Claim
[Sub-subcontractor]

[date]

[Surety name]
[Surety address – line 1]
[Surety address – line 2]
[Surety email address]
[Attention]

Re: _____

Bond No: _____

Contractor: _____

Subcontractor: _____

Owner: _____

Contract: _____

Dear _____

We have a written subcontract with _____ (the “Subcontractor”) for
(name of the subcontractor)
_____ (our “Sub-subcontract”) related to the Contract
(title or description of the Sub-subcontract)
between the Owner and the Contractor for _____ in
(title or description of the Contract)
_____.
(municipality, province)

We have given notice under our Sub-subcontract to the Subcontractor that an amount is due and payable under the Sub-subcontract and remains unpaid contrary to the terms of the Sub-subcontract. A copy of that notice has also been provided to the Contractor.

We hereby demand payment of \$ _____ under the captioned Bond.

To assist in your evaluation of this Notice of Claim we invite you to contact our representative as follows:

[Name]
[Title]
[Company address]
[Phone (mobile)]
[Email address]

We also enclose the following documents supporting this Notice of Claim:

(The following is a suggested list of documents to be considered for delivery to the Surety. Please check off the documents (if any) that you are providing with this Notice of Claim.)

- Copy of full, executed Sub-subcontract (or Purchase Order), including approved changes and pending changes relevant to this Notice of Claim
- Copy of the contract between the Subcontractor and the Contractor
- Copy of original schedule and latest approved schedule for the Sub-subcontract
- Copies of all invoices submitted to the Subcontractor
- Copies of all payments from the Subcontractor to the Claimant
- Summary reconciliation of all invoices issued under the Sub-subcontract
- Summary reconciliation of all payments received under the Sub-subcontract
- Confirmation from the [Owner, Contractor or Subcontractor] that the Claimant has completed all of its work including rectification of all identified deficiencies and the delivery of all required close-out documents
- Copy of any notice or correspondence to and from the Subcontractor or Contractor relevant to this Notice of Claim
- Confirmation of the last day the Claimant performed work pursuant to the Sub-subcontract including proof thereof
- Copy of any claim for lien, legal proceeding or other documents to enforce entitlement to payment
- Copy of the executed Labour and Material Payment Bond under which this Notice of Claim is being made
- [additional documents]

We look forward to receiving your acknowledgment of this Notice of Claim under the Bond and your request for any additional documentation or information you require to meet your obligations under the Bond.

Yours truly;

[Full corporate title]

By: _____

[Name]

[Title]

[Phone]

[Email address]

CC: [Contractor and Subcontractor]

SCHEDULE C
Acknowledgement of Notice of Claim

[date]

[Name/corporate title of the Subcontractor or Sub-subcontractor]

[Surety address – line 1]

[Surety address – line 2]

[E-mail address (if provided in the Notice of Claim)]

[Attention]

Re: _____

Bond No: _____

Contractor: _____

Owner: _____

Contract: _____

Dear _____

We acknowledge receipt on _____ of your Notice of Claim dated _____.
(date of receipt)

Subject to a full reservation of all of our rights pursuant to the Bond and at law and to assist us in evaluating your Notice of Claim we ask that you provide the following information and/or documentation promptly:

This request is not an acknowledgement of the validity of your claim. We look forward to hearing from you.

Yours truly;

[Corporate name of the Surety]

By: _____

[Name]

[Title]

[Phone]

[Email address]

CC: [Contractor]

SCHEDULE D
Surety's Position

[date]

[Name/corporate title of the Subcontractor or Sub-subcontractor]

[Surety address – line 1]

[Surety address – line 2]

[E-mail address (if provided in the Notice of Claim)]

[Attention]

Re: _____

Bond No: _____

Contractor: _____

Owner: _____

Contract: _____

Dear _____

Having reviewed the information and documentation provided to us in support of your Claim, we can advise as follows:

A – Disputed Amount(s)

The following amounts in your Claim are disputed at the present time for the reasons indicated:

With respect to any disputed amounts we invite you to contact us promptly with further information or documentation in support of your Claim.

B – Undisputed Amount(s)

The following amounts in your Claim are not disputed at the present time, however we reserve the right to dispute any amount should an ultimate determination find that amounts included in your Claim were not payable by the Contractor:

We continue to reserve all of our rights pursuant to the Bond and at law.

If you have any questions or concerns, please do not hesitate to contact us.

Yours truly;

[Corporate name of the Surety]

By: _____

[Name]

[Title]

[Phone]

[Email address]

CC: [Contractor]

2023, c.17, s.42