

COLONIAL SURETY COMPANY

Duncannon, Pennsylvania

Administrative Office: 50 Chestnut Ridge Road, Montvale, New Jersey 07645

GENERAL INDEMNITY AGREEMENT

THIS AGREEMENT of Indemnity, made and entered into this _____ day of _____ 20____, is executed by the undersigned (jointly and severally, including the Principal as defined below, hereinafter collectively "Indemnitor") for the purpose of indemnifying COLONIAL SURETY COMPANY (the "Company") and any other entity who may act as Surety, as hereinafter defined, in connection with any Bonds written on behalf of:

of: _____
(hereinafter referred to as the "Principal.") (address)

NOW THEREFORE, in consideration of and in connection with the Company's and all its subsidiaries or affiliate companies presently in existence or hereinafter added, execution or procurement at the request of Indemnitor of the suretyship for which application is now pending, or which may be hereafter applied for, or other suretyship, in lieu thereof or in lieu of suretyship now outstanding, or related or in connection therewith, Indemnitor and the Company hereby undertake and agree:

1. DEFINITIONS.

The following terms, when capitalized in this Agreement have the meanings set forth herein:

Bond - Any contractual obligation undertaken by Surety for Principal, before or after the date of this Agreement, and any renewal, alteration, modification or extension of said obligation.

Principal - The person or entity set forth above or any one or combination thereof, or their successors in interest, whether alone or in joint venture with others named herein or not.

Indemnitor - All persons executing this Agreement with the Surety, including the Principal. The Principal and Indemnitor are sometimes referred to hereinafter as the "Undersigned."

Surety - COLONIAL SURETY COMPANY, its reinsurers and any other person or entity which the Company may procure to act as surety or co-surety on any Bond or any other person or entity who executes any Bond at the Company's request.

Contract - Any agreement of or other undertaking by Principal, the performance of which is bonded by Surety and all extensions, modifications and renewals thereof, whether made before or after the date of this Agreement, and all agreements between the Undersigned and Surety.

2. PREMIUM. Indemnitor will pay, or cause to be paid, to the Company, as and when each and every Bond is executed the premium therefore calculated on the contract price in accordance with the regular scheduled rates of the Company then in force, and annually thereafter shall pay or cause to be paid to the Company the annual premium therefore (and for any and all renewals, contract billing overruns or extensions thereof) in accordance with such rates until Principal shall serve upon the Company competent, written, legal evidence satisfactory to the Company of its final discharge from suretyship. All premium shall be considered earned when due. In the event of contract overruns, Indemnitor shall pay to the Company, upon audit, any additional premium which is due to the Company as a result of a contract overrun. It is understood and agreed that all premium is FULLY EARNED UPON issuance of the Bond AND IS NOT REFUNDABLE. Non-Payment of premium obligation by Indemnitor constitutes default of the obligations as outlined in this agreement. There are no premium returns for contract underruns.

3. INDEMNITY. Indemnitor and your successors agree to perform all the conditions of each Bond and Contract and to indemnify and save harmless Surety from and against any and all (i) demands, liabilities, losses, costs, damages or expenses of whatever nature or kind, including all fees of attorneys and all other expenses, including but not limited to costs and fees of investigation, adjustment of claims, procuring or attempting to procure the discharge of Bonds, enforcement of any Contract with Indemnitor, and in attempting to recover losses or expenses from Indemnitor, or third parties, whether or not Surety shall have paid out any or all of such sums, (ii) amounts sufficient to discharge any claim made against Surety on any Bond, which amounts may be used by Surety to pay such claim, or may be held by Surety as collateral security against any loss on any Bond, and (iii) any premiums due on Bonds issued by the Surety on behalf of the Principal (hereinafter the "Indemnity").

4. RIGHTS OF SURETY.

In furtherance of the Indemnity hereunder:

A. Surety shall have the right in its sole discretion to determine whether any claims shall be paid, compromised, defended, prosecuted or appealed.

B. Surety shall have the right to incur such expenses in handling a claim as it deems necessary or advisable, including but not limited to the expense for investigation, accounting, engineering and legal services, and Surety's good faith determination as to the necessity or advisability of any such expense shall be final and conclusive upon Indemnitor.

C. Surety shall have the foregoing rights, irrespective of the fact that Indemnitor may have assumed, or offered to assume, the defense of Surety upon such claim.

D. In any claim or suit hereunder, an itemized statement of the aforesaid loss and expense, sworn to by an officer of Surety, or the vouchers or other evidence of disbursement by Surety, shall be prima facie evidence of the fact and extent of the liability hereunder of Indemnitor.

E. Surety shall have the right to reimbursement of its expenses, premiums and attorneys' fees hereunder, irrespective of whether any Bond loss payment has been made by Surety. Surety may recover from Indemnitor its expenses and attorneys' fees incurred in prosecuting or defending any action arising out of or relating to this Agreement or other Contract with Indemnitor. Indemnitor's duty to reimburse the Company for fees and expenses that it incurs shall arise upon the receipt of any claim by Colonial.

5. DEFAULT.

Indemnitor shall be in Default with respect to a Contract if any of the following occur:

A. Principal or any indemnitor breaches, abandons or repudiates any Contract.

B. Any beneficiary of a Bond or obligee of a Contract declares Principal to be in default.

C. Principal fails to pay for any labor or materials when such payment is due.

D. Principal diverts any Contract funds from one Contract to another, prior to the complete discharge of Surety.

E. Principal or any Indemnitor breaches any provision of this Agreement or Contract with Surety.

F. Principal fails to remit premiums when due.

G. Principal or any Indemnitor becomes the subject of any agreement or proceedings, voluntary or involuntary, of liquidation, insolvency, bankruptcy, reorganization, receivership, trusteeship, or assignment for creditors or actually becomes insolvent.

H. Principal, if an individual, dies, is adjudged mentally incompetent, convicted of a felony, becomes a fugitive from justice or disappears and cannot be located without costly or extraordinary methods.

6. REMEDIES UPON DEFAULT.

In the event of Default, as defined above, Surety may at its option and sole discretion take any or all of the following actions:

A. issue a stop payment directive to the obligees on the outstanding bonded Contract.

B. assume the administration of any Contract and arrange for its completion;

C. take possession of and operate and use the Principal's equipment, materials and supplies at the site of the work or elsewhere, and utilize the same for completion of any Contract without liability for any rental for or liability for losses arising from such use;

D. take possession of and operate and use the office equipment, books and records of Principal as are necessary for completion of any Contract;

E. loan such funds or guarantee a loan for such funds as Surety shall deem necessary for the completion of any Contract and for the discharge of Surety in connection with any Contract. Repayment of such loan shall be covered by the Indemnity hereunder; and,

F. file an immediate suit to enforce any or all of the provisions of this Agreement.

7. COLLATERAL SECURITY. If a claim is made against Surety, or if Surety deems it necessary to establish a reserve for potential claims, and upon demand from Surety, Indemnitor shall deposit with Surety cash or other property acceptable to Surety, as collateral security, to protect Surety with respect to such claim or potential claims and any anticipated expense and attorneys' fees. Such collateral security shall be in such amount as Surety in its sole discretion deems appropriate. Such collateral may be held by Surety until it has received satisfactory evidence of its complete discharge from such claim or potential claims, and until it has been fully reimbursed for all losses, expenses, fees, and paid all premiums due. Surety has no obligation to Indemnitor to provide interest on the collateral deposit.

8. ASSIGNMENT.

As security for the performance of all of the provisions of this Agreement each Indemnitor hereby:

A. assigns, transfers, pledges and conveys to Surety any and all claims of such Indemnitor against, or any sums due and owing to such Indemnitor by, the Principal and (effective as of the date of each Bond) all rights in connection with any Contract, including but not limited to:

1. all subcontracts made in connection with a Contract and such subcontractors' Surety bonds;
 2. all rights, title, and interest of Principal in and to all machinery, facilities, equipment, tools, materials or supplies which are used or required in connection with the Contract, including all materials ordered for the Contract, whether located at the site of the work under such Contract, or elsewhere;
 3. all accounts receivable, including any and all sums due or which may thereafter become due under a Contract and all sums due or to become due on all other contracts, bonded or unbonded, in which any Indemnitor has an interest;
 4. any and all real property owned by Indemnitor including, all fixtures; and
 5. all rights arising out of insurance policies held by any Indemnitor, or of which any Indemnitor is a beneficiary; and
- B. agrees that all monies due or to become due Principal under any Contract are trust funds, whether in possession of Principal or otherwise, for the benefit of and payment of Principal's obligations for labor, materials and supplies furnished in performance of such Contract for which Surety would or could be liable under any Bond for such Contract. If Surety discharges any such obligation, it shall be entitled to assert the claim of such person to the trust funds.

9. POWER OF ATTORNEY. The Undersigned hereby irrevocably nominate, constitute, appoint and designate the Company or its designee as their attorney-in-fact with the right but not the obligation, to exercise all of the rights assigned, transferred and set over to Surety by the Undersigned in this Agreement, and to make, execute and deliver any and all additional or other assignments, documents, instruments or papers, including but not limited to vouchers, releases, bills of sale, financing statements and schedules thereto and the endorsements of checks or other instruments representing payment of Contract monies, and any other document deemed necessary or appropriate by Surety to give full effect, not only to the intent and meaning of the within assignment, but also to the full protection intended to be herein given to the Surety under all other provisions of this Agreement. The Undersigned hereby ratifies and affirms all acts and actions taken and done by the Surety or its designee as attorney-in-fact. This power of attorney is irrevocable and is coupled with an interest and shall survive the subsequent disability or legal incapacity of any or all the Undersigned.

10. GENERAL PROVISIONS.

- A. The obligations of the Indemnitor hereunder are joint and several. Surety may bring separate suits hereunder against any or all of the Undersigned as causes of action may accrue hereunder. Surety need not proceed first against the Principal.
- B. Indemnitor will, on request of Surety, procure the discharge of Surety from any Bond and all liability by reason thereof.
- C. Indemnitor warrants that each is specifically and beneficially interested in the obtaining of each Bond. To the extent a spousal signature to this Agreement is requested by Surety, the Undersigned hereby acknowledge that each has a substantial, material, beneficial interest in Principal obtaining the Bonds and that neither the Principal nor spouse independently satisfied Surety's credit standards. Further, the Undersigned hereby warrant the validity of the signatures of each other Indemnitor hereunder.
- D. Indemnitor waives notice of any Default, the making of a claim against Surety, Surety's loaning of funds to Principal or any defense which could arise by the granting by Surety of any indulgence to the Principal.
- E. Indemnitor agrees to give to Surety prompt notice: (i) of any facts which might give rise to any claims or suit against Surety upon any Bond; (ii) any material change in the financial condition of any Indemnitor; and (iii) of any lawsuits, liens, or judgments against the Undersigned.
- F. Surety shall have the right, at its option and in its sole discretion, to decline execution of any Bond, including performance and payment bonds when it has furnished a bid bond. Surety may decline to execute any bond applied for, regardless of the bonding line, without incurring any liability whatever to the Undersigned. Further, the Undersigned waive any claims and rights based upon principles of promissory estoppel, detrimental reliance, negligent misrepresentation, breach of fiduciary relationship, and custom and usage that could affect Surety's absolute right to decline to write any Bond. Surety's declination of any bond request shall not affect the obligations of Indemnitor with respect to any other Bond.
- G. Surety may consent to any changes or alterations in a Contract, without affecting the liability hereunder of Indemnitor.
- H. Surety shall have every right, defense or remedy which a personal surety without compensation would have, including the remedies of exoneration and *quia timet* relief.
- I. Until Surety shall have been furnished with conclusive evidence of its discharge without loss from any Bonds, and until Surety has been otherwise fully indemnified as hereunder provided, Surety shall have the right to free access to the books, records, and accounts of Indemnitor for the purpose of examining and copying them. The Undersigned hereby authorizes third parties, including, but not limited to depositories of funds of the Undersigned, to furnish to Surety any information requested by Surety in connection with any transaction. Surety may furnish any information, which it now has or may hereafter acquire concerning the Undersigned, to other persons, firms or entities for the purpose of procuring co-suretyship or reinsurance or of advising such persons, firms or entities as it may deem appropriate.
- J. To the full extent permitted by law, Indemnitor waives all right to claim any property, including your homesteads, as exempt from legal process in any action hereunder.
- K. If the execution hereof by any Indemnitor may be defective or invalid for any reason, such defect or invalidity shall not affect the validity hereof as to any other Indemnitor. Invalidity of all or part of any provision hereof by reason of the law of any jurisdiction or for any other reason shall not render the remainder of the Agreement invalid.
- L. The Surety may, at its option, file or record this Agreement or any other document executed by any or all Indemnitors, individually or jointly, in connection with application, issuance or execution of any Bond coming within the scope of this instrument, as a security agreement or as a part of a financing statement or as a notice of its prior interest and assignment under the provisions of the Uniform Commercial Code or any other statute, ordinance or regulation of any jurisdiction or agency, but that the filing or recording of such document shall be solely at the option of Surety and that the failure to do so shall not release or impair any of the obligations of Indemnitor under this Agreement.
- M. Surety shall have the right to fill in any blanks left herein and to correct any errors in filling in any blanks herein.
- N. Indemnitor waives any defense that this instrument was executed subsequent to the date of any such Bond, admitting and covenanting that such Bond was executed pursuant to Indemnitor's request and in reliance on Indemnitor's promise to execute this Agreement.
- O. This Agreement (including this section) may not be changed nor modified orally. No change or modification shall be effective unless specifically agreed in writing by each party against whom enforcement is sought.
- P. In the event that any Indemnitor shall (i) fail to execute this instrument; or (ii) become insolvent; or (iii) fail to be bound hereby for any reason, the remaining Indemnitors shall, nevertheless, be bound hereunder for the full amount of the liability as aforesaid.
- Q. Repeated actions may be brought under this Agreement as breaches thereof may occur, without any former action operating as a bar to any subsequent action.
- R. Wherever used in this instrument the plural shall include the singular and the singular shall include the plural, as the circumstances require.
- S. The liability of Indemnitors hereunder shall not be affected by the failure of the Principal to sign any Bond or by any claim that other indemnity or security was to have been obtained, nor by the release of any indemnity or the return or exchange of any collateral, that may have been obtained.
- T. To the full extent permitted by law, Indemnitor waives the right to interpose any defense, including any set-off or counterclaim of any nature or description in any action pursued by Surety for enforcement of this Agreement or any Contract. Further, in any action by Surety against Indemnitor, each agrees that service of process may be made on anyone of them and will be effective as to all of the Undersigned. **FURTHER, INDEMNITOR HEREBY EXPRESSLY WAIVES THE RIGHT TO DEMAND A JURY TRIAL IN ANY ACTION WITH SURETY.**
- U. Principal agrees and acknowledges that it will be solely responsible for ensuring that the Bonds comply with the contract specifications and Indemnitor agrees to hold Surety harmless from any error related to non-compliance with contractual specifications or statutory requirements. Further, it is acknowledged by the Undersigned that Surety does not guarantee the acceptance of its Bonds by any obligee.
- V. If the Undersigned desire that a claim or demand against surety shall be defended, the Undersigned shall (i) give written notice to the Surety to this effect and (ii) simultaneously deposit with the Surety cash or collateral satisfactory to the Surety in an amount sufficient to cover the claim or demand, interest, and other exposure thereon, to the probable date of disposition. Otherwise, Surety shall have the sole and exclusive right to pay or settle any such claim or demand, and such payment or compromise shall be binding upon the Undersigned and included as a liability, loss, or expense covered by the Undersigned's Indemnity obligations.
- W. Surety may reduce the amount of Indemnitor's liability to Surety by applying to such liability any money payable to Principal by Surety.
- X. This Agreement is to be liberally construed so as to protect, exonerate, and indemnify Surety.
- Y. The Undersigned acknowledge and agree that the failure of the Undersigned to deposit with the Surety, immediately upon demand, the sum demanded by Surety as collateral security shall cause irreparable harm to Surety for which Surety has no adequate remedy at law. The Undersigned agree that Surety shall be entitled to injunctive relief for specific performance of the obligation of Undersigned to deposit with Surety the sum demanded as collateral security and hereby expressly waive any claims or defenses to the contrary.

11. TERMINATION. This Agreement is a continuing obligation of Indemnitor unless terminated by written notice to Surety as hereinafter provided, and such termination as to an Indemnitor shall in no way affect the obligation of any other Indemnitor who has not given such notice. The liability of Indemnitor hereunder as to future Bonds of Principal shall not terminate by reason of the failure of Surety to disclose facts known or learned by Surety about the Principal, even though such facts materially increase the risk beyond that which Indemnitor might intend to assume. Surety may have reason to believe such facts are unknown to Indemnitor, and Surety may have reasonable opportunity to communicate such facts to Indemnitor and the Undersigned hereby waive notice of such facts. In order to terminate liability as to future Bonds of Principal, an Indemnitor must:

- A. give written notice by certified or registered mail to Surety at its Administrative Office, Montvale, New Jersey, of such termination; and
- B. state in such notice the effective date (not less than thirty days after receipt thereof by Surety) of termination of such Indemnitor's liability to future Bonds.

After the effective date of such termination, any Indemnitor who has given notice shall nonetheless be liable hereunder for:

- A. Bonds executed or authorized prior to such date, and renewals, substitutions and extensions thereof;
- B. Bonds executed pursuant to a bid or proposed Bond executed or authorized prior to such date and renewals, substitutions and extensions thereof; and
- C. any maintenance or guarantee Bonds executed incidental to any other Bond executed prior to such date, and renewals, substitutions and extensions thereof

12. The Undersigned represent to the Surety that they have carefully read this entire Agreement and that there are no other agreements or understandings which in any way lessen Indemnitors' obligations set forth herein. Further, the Undersigned represent, warrant, and certify that they have no indemnification arrangements or agreements in effect with any other surety.

IN WITNESS WHEREOF, we have hereunto set our hands and seals, and the Undersigned who are partnerships, corporations, or unincorporated associates, have caused the Agreement to be duly executed by their duly authorized representatives, the day and year first above written.

COLONIAL SURETY COMPANY
GENERAL INDEMNITY AGREEMENT - SIGNATURE GUARANTEE PAGE

BANK SIGNATURE GUARANTEE

PLACE STAMP
HERE

Firm Name

By _____
(Signature) Title (Date)

Business Address



PLACE STAMP
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Firm Name

By _____
(Signature) Title (Date)

Business Address



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(Signature) Title (Date)

Business Address



COLONIAL SURETY COMPANY

_____ By _____ (SEAL)

**COLONIAL SURETY COMPANY
GENERAL INDEMNITY AGREEMENT - SIGNATURE GUARANTEE PAGE**

BANK SIGNATURE GUARANTEE

(Signature) Individual Indemnitor (Date)

Residence Address

(Signature) Spouse Indemnitor (Date)

(Signature) Individual Indemnitor (Date)

Residence Address

(Signature) Spouse Indemnitor (Date)

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