

# **COLONIAL SURETY COMPANY**

**Duncannon, Pennsylvania**

**Administrative Office: 123 Tice Blvd, Ste 250, Woodcliff Lake, NJ 07677**

## **GENERAL INDEMNITY AGREEMENT**

We the undersigned, individually and for and on behalf of all other Indemnitors (as hereinafter defined), enter into this General Indemnity Agreement (this "Agreement") in favor of the Surety (as hereinafter defined), on this \_\_\_ day of \_\_\_\_\_, 20\_\_.

NOW, THEREFORE, as an inducement to Surety and in consideration of Surety's execution and/or delivery of one or more Bonds, refraining from canceling one or more Bonds, and/or assumption of obligations by Surety of one or more Bonds, and for other good and valuable consideration, the Indemnitors jointly and severally agree with Surety as follows:

1. **Joint and Several Liability.** The obligations of the Indemnitors hereunder are joint and several. Surety is authorized to settle with any one or more of the Indemnitors individually, and without reference to the others, and any such settlements shall not bar or prejudice actions by Surety against or affect the liability of the other Indemnitors.

2. **Definitions.** For purposes of this Agreement, the following definitions apply, which definitions shall be equally applicable to both the singular and plural forms of such terms:

"**Bonds**" shall mean any and all bonds, undertakings, guarantees, contractual obligations, and writings or statements of prequalification or commitment, and modifications thereof, executed or procured by Surety on behalf of any one or more of the Indemnitors before or after the date of this Agreement.

"**Contract**" shall mean any agreement for which Surety has or shall issue a Bond.

"**Indemnitor**" shall mean the undersigned persons or entities, individually and collectively.

"**Principal**" shall mean any person or entity in whose name a Bond is executed; and shall include any Indemnitor for which Surety has issued or shall issue any Bond.

"**Default**" shall mean the occurrence of any one or more of the following: (A) a declaration of Contract default and/or termination by an obligee on any Contract; (B) failure to perform the work under a Contract in a timely and proper fashion; (C) actual breach or abandonment of any Contract; (D) failure to make payment of a properly due and owing bill or debt in connection with any Contract; (E) breach of this Agreement; (F) failure to deposit collateral security as required by this Agreement or otherwise; (G) Surety's establishment of a reserve; (H) the sustaining of a Loss by Surety in connection with any Bond; (I) the death, absconding, disappearance, incompetence, imprisonment or felony conviction of any Indemnitor; and/or (J) any Indemnitor's becoming the subject of any proceeding or agreement of bankruptcy, receivership, insolvency, or creditor assignment, or actually becoming insolvent.

"**Claim**" shall mean any claim, notice of default, notice of termination, demand for payment, demand for meeting, action, proceeding, suit, judgment, or any form of notice, claim or demand received by Surety and/or any Indemnitor in connection with any Bond or Contract.

"**Loss**" shall mean all demands, liabilities, losses, costs, damages and expenses of any kind or nature, including legal fees and expenses, which Surety incurs, or to which it may be exposed, in connection with any Bond or this Agreement.

"**Property**" shall mean Indemnitors' rights, title and interest, whether now held or hereafter acquired in, or growing in any manner out of, or in any way related to: (A) Contract in which any Indemnitor has an interest; (B) any and all sums due or which may hereafter become due under any Contract in which any Indemnitor has an interest and all damage claims and proceeds related thereto; (C) all rights arising under any surety bonds or insurance policies; (D) any and all accounts receivable, letters of credit, machinery, plants, equipment, tools, materials, supplies, inventory, vehicles, hardware, software, records, designs, as-builts, construction drawings and documents, and all electronically stored information; (E) any and all real property owned by the Indemnitors, including all fixtures and (F) any and all claims relating to or arising from any Contract in which any Indemnitor has an interest.

"**Surety**" shall mean Colonial Surety Company, any of its present or future direct or indirect parent companies, any of the respective present or future direct or indirect affiliates or subsidiaries of such companies and parent companies, and/or any of the aforementioned entities' successors or assigns, and/or any co-sureties, reinsurers or any other person or entity, including any other surety, underwriting or participating in underwriting any Bond at Surety's request.

3. **Bonds; Premiums.** At the request of the Indemnitors, Bonds (as hereinafter defined) have heretofore been and/or may hereafter be executed by Surety. The Indemnitors have a substantial, material and beneficial interest in the obtaining of Bonds by any of the Indemnitors. Surety may decline to execute any bond for which request is made without incurring any liability to and without affecting the obligations of the Indemnitors with respect to any other Bond issued hereunder. The Indemnitors agree to pay to Surety all premiums, renewal premiums, costs and charges due for any Bonds requested from and/or issued by Surety, until Surety, in its sole discretion, shall receive satisfactory evidence of its discharge or release from all liability under any Bonds. It is agreed that all premium is fully earned upon issuance of the Bond and is not refundable.

4. **Indemnity.** The Indemnitors hereby jointly and severally covenant, promise and agree to exonerate, defend, indemnify and save harmless Surety from and against any and all Loss, irrespective of whether Surety has made any payment under any of its Bonds or whether the Indemnitors may have assumed, or offered to assume, the defense of Surety upon any claim. Surety shall be entitled to immediate reimbursement for any and all Loss incurred by it in good faith and under the belief that it was liable for the sums and amounts so disbursed, or that it was necessary or expedient to make such payments. An itemized, sworn statement of Loss by an employee of Surety, or other evidence of payment, shall be *prima facie* evidence of the propriety, amount and existence of Indemnitors' liability. Indemnitors shall pay to Surety interest on all disbursements made by Surety at the maximum rate permitted by law. The Indemnitors will, upon demand, procure the discharge of the Surety from any Bond and all liability by reason thereof.

5. **Settlements.** Indemnitors shall immediately notify Surety in writing of any Claim. Surety shall have the right to adjust, settle or compromise any Claim. Surety's decision to adjust, settle or compromise any Claim shall be final and binding upon the Indemnitors.

6. **Collateral Security.** Immediately upon demand by Surety, the Indemnitors shall deposit with Surety funds, as collateral security, in an amount Surety, in its sole and absolute discretion, deems necessary at the time of said demand to protect Surety from actual or anticipated Loss. Demand may be made as soon as: (A) the assertion of any Claim against Surety; or (B) Surety determines that liability exists under any Bond; or (C) Surety has a reasonable basis to believe that it may incur or sustain liability or Loss; or (D) Surety deems itself insecure, whether or not Surety has made any payment or established any reserve and whether or not it has received notice of, accepted or denied any Claim in whole or in part. Surety shall be entitled to apply any collateral security to the satisfaction of or in reimbursement of Surety as a result of its satisfaction of any Claim and to the direct payment of or reimbursement to itself of any

Loss. Surety shall have no duty to invest, or provide interest on, any collateral security. The Indemnitors acknowledge and agree that their failure to immediately deposit with Surety any sums demanded under this section shall cause irreparable harm to Surety for which it has no adequate remedy at law.

7. **Books and Records.** Surety, at any time, shall have continuous and uninterrupted access to the books, records, accounts and non-consumer and consumer credit reports of the Indemnitors and to all matters and information concerning any Bond(s) or instrument(s) executed by Surety and the financial condition, credit worthiness and assets of any Indemnitor until the liability of Surety under each and every Bond and each and every obligation of the Indemnitors under this Agreement is terminated and discharged to the satisfaction of Surety. Banks, depositories, consumer credit reporting agencies, and all other persons and organizations are hereby authorized to furnish Surety any information (including copies thereof) requested.

8. **Remedies Upon Default.** Effective as of the date of this Agreement or the date of any Bond, whichever is earlier, Indemnitors irrevocably assign, convey and transfer to Surety all of their rights, title and interests in, or growing in any manner out of the Property, and, in the event of Default, Surety shall have the right, in its sole discretion, to take any or all of the following actions: (A) assert or prosecute any right or claim in the name of any Indemnitor and to settle any such right or claim as Surety sees fit; (B) execute in the name of any Indemnitor, any instruments deemed necessary or desirable by Surety to: (i) provide Surety with title to the Property, (ii) take immediate possession of the Property, including but not limited to Contract funds whether earned or unearned, (iii) collect such sums as may be due Indemnitors and to endorse in the name of Indemnitors, and (iv) collect on any negotiable instruments; (C) be subrogated to all the rights, remedies, properties, funds, securities and receivables relating to Indemnitors' Contracts or contracts, and have the right to offset Loss on any Contract or Bond against proceeds, funds or payments, monies and properties that are due or may become due on any Contract or contract; (D) require any obligee on any Bond to withhold payment of Contract funds unless and until Surety consents to its release; and/or (E) file suit to enforce any or all of the provisions of this Agreement.

9. **Security Interest.** As security for the performance of all of the provisions of this Agreement, Indemnitors hereby assign, transfer, pledge, convey and grant to Surety a security interest in the Indemnitors' Property. This Agreement shall for all purposes constitute a Security Agreement for the benefit of Surety in accordance with the Uniform Commercial Code ("UCC") and all similar statutes. Indemnitors hereby irrevocably authorize Surety, without notice to any Indemnitor, to perfect the security interest granted herein, by filing this Agreement or a copy or other reproduction of this Agreement. Surety may add schedules or other documents to this Agreement as necessary to perfect its rights. The failure to file or record this Agreement or any financing statement shall not release or excuse any of the obligations of Indemnitors under this Agreement. The Surety's exercise of any of its rights as a secured creditor under this Agreement shall not be a waiver of any of Surety's legal or equitable rights or remedies, including Surety's right of subrogation.

10. **Power of Attorney.** The Indemnitors hereby irrevocably nominate, constitute, appoint and designate Surety or its designee as their attorney-in-fact with the right, but not the obligation, to exercise all of the rights of the Indemnitors assigned, transferred and conveyed to Surety in this Agreement, and in the name of any Indemnitor, to make, execute or endorse and deliver any and all additional or other assignments, releases, agreements, documents or papers deemed necessary and proper by Surety in order to give full effect not only of the intent and meaning of the within assignments, but also to the full protection intended to be given herein to Company under all other provisions of this Agreement, the Bond(s) or otherwise. 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 of the Indemnitors. The Indemnitors hereby ratify and affirm all acts and actions taken and done by Surety as such attorney-in-fact. The Indemnitors waive any and all claims they had, now have or may ever in the future have against Surety as a result of its having taken any action or done anything as such attorney-in-fact or otherwise under this Agreement. The Surety shall have the right as such attorney-in-fact to assert, pursue, prosecute, compromise or settle, in whole or in part, and at the Indemnitors' expense, all of the Property, rights, actions, causes of action, claims, and demands assigned by the Indemnitors to the Surety.

11. **Trust Funds.** All monies due and to become due under any Contract(s) are trust funds. The trust funds shall be for the benefit and payment of all obligations for which Surety may be liable under any Bond(s). The trust funds shall inure to the benefit of Surety for any liability or loss it may have or sustain under any Bond(s), and this Agreement and declaration constitute notice of such trust. Upon demand by Surety, the Indemnitors shall implement the trust or trusts provided for by this paragraph of this Agreement by the creation of an account or accounts with a bank or similar depository designated by Surety, and such account shall be controlled by an escrow agent to be designated by Surety, which account or accounts shall be designated as a trust account or accounts for the deposit of such trust funds, and shall deposit there all monies received for or on account of any Contract(s).

12. **Invalidity, Severability.** If any provision of this Agreement is deemed void or unenforceable under any law governing its construction or enforcement, this Agreement shall not be voided or terminated thereby, but shall be enforced with the same effect as though such provision were omitted. If any Indemnitor fails to execute or improperly executes this Agreement or if any Indemnitor shall fail to be bound hereby for any reason, the remaining Indemnitors shall nevertheless be bound hereunder. This Agreement may be executed in counterparts, and facsimile or electronic signatures shall be acceptable as originals.

13. **Surety's Rights.** Surety's rights under this Agreement are cumulative with, and in addition to, all other rights of the Surety, however derived. Surety shall have every right, remedy or defense of a personal surety without compensation.

14. **Termination; Changes to Agreement.** Any Indemnitor, other than an Indemnitor designated as a principal on a Bond, shall have the right at any time to request cancellation of this Agreement as to such Indemnitor by delivering written notice to Surety by certified or registered mail. Such cancellation shall not become effective until the earlier of thirty (30) days after Surety's actual receipt of such notice or the date of written acceptance thereof by Surety. Such cancellation shall not relieve such Indemnitor from liability for any Bond or other instrument executed by Surety prior to the date of such cancellation and any Modifications thereof, nor shall it affect any obligations or liability of any Indemnitors who do not request cancellation. This Agreement may only be modified by a written rider signed by an officer of Surety.

15. **Suits.** The Indemnitors submit to the jurisdiction of the state and federal courts situated in New York, waiving any defenses of lack of personal jurisdiction and waiving venue arguments, including forum non conveniens, in any action brought by Surety in the State of New York. In any action by Surety against the Indemnitors, or any of them, each agrees that service of process may be made on any one of them and will be effective as to all of the Indemnitors. This Agreement shall be governed by the laws of the State of New York, without regard to conflicts of laws principles. Separate suits or proceedings may be brought by Surety on this Agreement as causes of action accrue.

16. **Jury Waiver.** THE INDEMNITORS HEREBY KNOWINGLY AND VOLUNTARILY WAIVE TRIAL BY JURY IN ANY ACTION OR PROCEEDING ARISING OUT OF THIS AGREEMENT.

**COLONIAL SURETY COMPANY  
GENERAL INDEMNITY AGREEMENT – ACKNOWLEDGEMENT OF SIGNATURE BY THE BANK**

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