

# XYZ Surety Company

## GENERAL AGREEMENT OF INDEMNITY

(Commercial Surety, License & Permit, Court, and Miscellaneous Bonds)

This General Agreement of Indemnity, herein called the "Agreement," is made and executed this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ by the undersigned, herein called the "Indemnitors," in favor of, and for the benefit of, XYZ Surety Company "XYZ" and its co-sureties, reinsurers, and other sureties through whom it may procure the execution of bonds and undertakings, XYZ and such co-sureties, reinsurers, and other sureties being herein collectively called the "Company." Wherever the term "Indemnitors" appears in this Agreement, it shall refer to all the Indemnitors, or any one or more of them, as applicable. Witnesseth:

**WHEREAS**, in the transaction of business certain bonds, undertakings and other writings obligatory in the nature of a bond may have heretofore been, and may hereafter be, required by, for, or on behalf of the Indemnitors or any one or more of the Indemnitors in whose bonds and undertakings the Indemnitors do hereby affirm to have a substantial material and beneficial interest, and as a condition precedent to the execution of any and all such bonds and undertakings, the Company requires execution of this Agreement.

**NOW, THEREFORE**, in consideration of the premises, and of the execution or continuance of such bonds or undertakings, and for other good and valuable consideration, the Indemnitors do, for themselves, their heirs, executors, administrators, personal representatives and assigns, jointly and severally, agree with, and make this Agreement in favor of, and for the benefit of, the Company as follows:

1. The Indemnitors shall pay to the Company, at its home office at 114045 Ballantyne Corporate Place, Suite 525, in the City of Charlotte, Mecklenburg County, North Carolina, premiums, fees, and charges at the rates and at the times specified by Company, and will continue to pay the same when such premium, fee, or charge is annual and when additional premiums, fees, or charges are due for changes to underlying bonded obligations. Premiums are due and payable upon execution of bonds and upon renewal thereof. The Indemnitors shall be liable for additional and renewal premiums hereunder until the Company shall be discharged and released from any and all liability and responsibility upon and from each such bond or liability arising therefrom, and until the Indemnitors shall deliver to the Company at its home office in Houston, Texas, competent written evidence, satisfactory to the Company, of the Company's discharge from all liability on such bond or bonds. The Indemnitors shall also pay to Company, its affiliates, or to third parties, as the case may be, all underwriting, inspection, audit, funds disbursement, escrow, special handling, filing, recording, and similar fees required or charged in connection with the underwriting of any bonds.

2. The Indemnitors will indemnify and save the Company harmless from and against every claim, demand, liability, cost, loss, charge, suit, judgment, award, fine, penalty, and expense which the Company may pay, suffer, or incur in consequence of having executed, delivered, or procured the execution of such bonds, or any renewals or continuations thereof or substitutes therefor, including, but not limited to, court costs, collection fees, mediation and facilitation fees and expenses, fees and expenses of attorneys, accountants, inspectors, experts, and consultants, whether on salary, retainer, as third party administrators, or otherwise, and the expense of procuring, or attempting to procure, release from liability, or in bringing suit to enforce the obligation of any of the Indemnitors under this Agreement. In the event the Company deems it necessary to respond to, make an investigation of, or settle, defend, or compromise a claim, demand or suit, the Indemnitors acknowledge and agree that all expense attendant to such response, investigation, settlement, defense, and compromise, whether incurred internally by Company or otherwise, is included as an indemnified expense and shall be paid by Indemnitors to Company on demand. In the event of payments by the Company, the Indemnitors agree to accept a voucher, affidavit, or other statement of such payments signed by an officer of Company as *prima facie* evidence of the propriety thereof, and of the Indemnitors' liability therefor to the Company.

3. Payment of loss or deposit of collateral shall be made to the Company by the Indemnitors as soon as liability exists or is asserted against the Company, whether or not the Company shall have made any payment therefor. Such payment shall be equal to the larger of (a) the amount of any reserve set by the Company, or (b) such amount as the Company, in its sole

judgment, shall deem sufficient to protect it from loss. The Company shall have the right to use the deposit, or any part thereof, in payment or settlement of any liability, loss or expense for which the Indemnitors would be obligated to indemnify the Company under the terms of this Agreement. If for any reason the Company shall deem it necessary to increase a reserve to cover any possible liability or loss, the Indemnitors will deposit with the Company, immediately upon demand, a sum of money equal to any increase thereof as collateral security to the Company for such liability or loss.

4. The Indemnitors immediately upon becoming aware of any demand, notice, or proceeding preliminary to determining or fixing any liability with which the Company may be subsequently charged under any such bond, shall notify the Company thereof in writing at its home office, 14045 Ballantyne Corporate Place, Suite 525, Charlotte, North Carolina, 28277.

5. The Company shall have the exclusive right to determine for itself and the Indemnitors whether any claim or suit brought against the Company or any Indemnitor, or by any Indemnitor against a third party, upon or relating to any such bond shall be settled, compromised, prosecuted or defended and Company's decision shall be binding and conclusive upon the Indemnitors.

6. The Company, and its designated agents, consultants, and representatives, shall at any and all reasonable times, have free access to the books and records of the Indemnitors. Indemnitors consent to Company's requests for, and use of, consumer credit reports and investigative consumer credit reports with respect to any of the individual Indemnitors. Any bank, depository, creditor, credit bureau or credit reporting agency, obligee of a bond, subcontractor, material supplier, claimant, prior surety, agent, or other person, firm or corporation possessing records or having information concerning the financial affairs and records or having information concerning the current or past financial affairs and operations of the Indemnitors is hereby authorized to furnish to the Company and its representatives, consultants, and affiliates, any such records or information requested by the Company. Indemnitors will execute, as requested by the Company, any additional documents necessary to cause the release and production of records and information authorized by this paragraph.

7. In the event the Indemnitors, or any of them, shall: (a) fail to pay any premium or underwriting charge or fee when due, or (b) fail to pay any amounts due hereunder, or (c) abandon, forfeit or breach a bonded obligation, or have been alleged to have abandoned, forfeited, or breached any such obligation, or (d) breach or be declared to have breached any bond issued by or at the request of Company, (e) have proceedings instituted against them, or any them, alleging that they are insolvent, or for the appointment of a receiver or trustee for the benefit of creditors, whether such Indemnitor(s) are insolvent or not, or (f) fail to cooperate with Company in the investigation of claims made or threatened to be made against Company, or if the Company shall become insecure or unsure of the Indemnitors' ability or willingness to perform their obligations hereunder, the Company shall have the right, but not the obligation, to take such action as the Company may, in its sole discretion, deem advisable, prudent, or necessary to mitigate against, settle, compromise, or prevent a loss.

8. Indemnitors shall pay interest on, and interest shall accrue on, all unpaid indebtedness of Indemnitors to Company at an interest rate equal to the lesser of: (a) eighteen percent (18%) per annum or (b) the Highest Lawful Rate (as such term is defined below). Interest on unpaid premiums shall not begin to accrue, however, until 45 days following the date of execution of a bond, or the renewal of a bond, by Company or its attorney-in-fact. Notwithstanding any other provision herein, the aggregate interest rate charged under this Agreement, including all charges, fees, or other payments in connection herewith or therewith deemed in the nature of interest under applicable law shall not exceed the Highest Lawful Rate. It is the intention of Company and Indemnitors to conform strictly to any applicable usury laws. Accordingly, if Company contracts for, charges, or receives any consideration which constitutes interest in excess of the Highest Lawful Rate, then any such excess shall be canceled automatically and, if previously paid, shall at Company's option be applied to the outstanding principal balance due hereunder or be refunded to Indemnitors. As used in this paragraph, the term "Highest Lawful Rate" means the maximum lawful interest rate, if any, that at any time or from time to time may be contracted for, charged, or received under the laws applicable to Company which are presently in effect or, to the extent allowed by law, under such applicable laws which may hereafter be in effect and which allow a higher maximum non-usurious interest rate than applicable laws now allow.

9. The indemnitors hereby irrevocably nominate, constitute, appoint and designate the Company and its designees as their attorney-in-fact with the right, power, and authority, but not the obligation, to exercise all of the rights and powers of the Indemnitors assigned, transferred, and set over to the Company in this Agreement, and in the name of the Indemnitors, or any one or more of them, to make, endorse, execute, and deliver any and all additional or other assignments, financing statements, documents, instruments, checks, drafts, applications, certificates, draw requests, orders, reports, releases, or papers deemed necessary and proper by the Company in order to give the full protection intended to be herein given to the Company under all other provisions of this Agreement. The Indemnitors hereby ratify and confirm all acts and actions taken and done by the Company and its designees as such attorney-in-fact.

10. The Indemnitors understand and agree that the circumstances, financial or otherwise, of any one or more of the Indemnitors may change substantially over the period of this agreement and the Indemnitors therefore agree to keep themselves

fully informed as to the business activities and financial affairs of any one or more of the Indemnitors and of the risks being engaged in so that the Indemnitors are always aware of the risks of hazards in continuing to act as Indemnitors. The Indemnitors hereby expressly waive any requirement for notice from the Company of any fact or information coming to the notice or knowledge of the Company affecting its rights or the rights or liabilities of the Indemnitors.

11. In the event of any claim or demand being made by the Company against the Indemnitors, or any one of more of the parties so designated, by reason of the execution of a bond or bonds, the Company is hereby expressly authorized to settle or compromise with any one or more of the Indemnitors individually, and without reference to the others, and such settlement or composition shall not affect the liability of any of the others and the Indemnitors hereby expressly waive the right to be discharged by reason of the release of one or more of the joint debtors, and hereby consent to any settlement or composition that may hereafter be made.

12. The Company is not required, by reason of any application for a bond or by reason of having issued a previous bond, bid bond, or otherwise, to execute or procure the execution of or participate in the execution or renewal of any further bond or bonds. The Company, at its sole option and without assigning any reason therefor, may decline to execute or to participate in or procure the execution or renewal of any bond without impairing the validity of this Agreement or incurring any liability to Indemnitors.

13. The Indemnitors acknowledge and agree that it is their sole responsibility to provide the proper forms for the bonds and undertakings to be executed by the Company, and to review and approve any bond and undertaking executed by the Company on its own forms, and neither the Company nor its agents shall have any liability whatsoever to the Indemnitors if they shall fail to furnish the Company with the proper forms or to object to forms furnished by the Company. It shall be the sole responsibility of the Indemnitors to review all bond forms executed by the Company for appropriateness and for any errors or omissions prior to delivery of the bonds to an obligee. The Company and its agents shall have no liability to the Indemnitors on account of any such errors and omissions. Prior to requesting that the Company issue any bond, the Indemnitors shall obtain confirmation that the proposed obligee on the bond will accept the Company as surety on the proposed bond, and neither the Company, nor its agents, shall have any liability whatsoever if any obligee refuses, for whatever reason, to accept the Company as surety on any bond. The Indemnitors agree that the Indemnitors shall be solely responsible for arranging, independent of the Company, for the timely delivery of any bond to the obligee. The Company and its agents shall have no liability to the Indemnitors if any bond is not timely delivered to any obligee for any reason whatsoever, including any negligent acts or omissions on the part of the Company or its agents.

14. The Indemnitors agree that the Company's liability, if any, to the Indemnitors, or to any of them, on account of any acts or omissions by the Company or any of its consultants, affiliates, agents, or representatives (whether such acts or omissions arise in tort, trespass, breach of contract, by statute, or at law) arising out of or related to any bonds or any other conduct of the Company or its agents, representatives, employees, attorneys, attorneys-in-fact, adjustors, or consultants is hereby expressly limited to an amount not to exceed the premium actually paid to the Company for such bond.

15. If the Company procures the execution of bonds or undertakings through other sureties or executes the bonds with co-sureties, or reinsures any portion of the bonds, then all the terms and conditions of this Agreement shall apply and operate for the benefit of, and may be enforced by, such other companies, co-sureties and reinsurers as their interests may appear to the same extent as if they were the Company. A written statement, signed by an officer of XYZ, attached to a copy of this Agreement before or after execution hereof by Indemnitors, confirming procurement of execution, fronting, co-surety, or reinsurance by such other companies, shall be prima facie evidence of the rights of such other companies hereunder and shall be binding on Indemnitors to the same extent as if such companies were named as the Company herein in the first instance. Any action to enforce this Agreement may be brought in the name of such other companies without the necessity of joinder of Company.

16. The liability of the Indemnitors hereunder shall not be affected by the failure of the Indemnitors, or any one or more of them, to sign any contract, bond, rider, undertaking, or this Agreement, nor by any claim that other indemnity, security, or collateral was to have been obtained, nor by the release of any indemnity, nor the return or exchange of any collateral, nor the forbearance or neglect in the enforcement of any requirements relating to the disbursement, administration or control or contract proceeds, that may have been obtained or occurred. If any party signing this Agreement is not bound for any reason, this Agreement shall still be binding upon each and every other Indemnitor. The Company may, but shall not be obligated to, accept other and further Agreements of Indemnity from Indemnitors or others, and may allow Indemnitors or additional indemnitors to execute Agreements of Indemnity in multiple counterparts. It is understood and agreed that the execution of multiple, successive, replacement, or additional Agreements of Indemnity or the release or partial release or the capping of liability of some of the Indemnitors shall not operate to release Indemnitors. Indemnitors waive any and all claims that such other or additional Agreements of Indemnity constitute novations, substitutions or releases of the Indemnitors.

17. This Agreement may be terminated by the Indemnitors, or any one or more of the parties so designated, upon written notice, of not less than thirty (30) days, sent by registered mail to the home office of the Company, 14045 Ballantyne Corporate Place, Suite 525, Charlotte, Mecklenburg County, North Carolina 28277. In no event, however, shall any such termination notice operate to modify, bar, discharge, limit, affect or impair the liability of the party sending such termination notice, with respect to, upon or by reason of any and all such bonds, undertakings and obligations executed prior to a date thirty (30) days after the date of the Company's actual receipt of such notice in its home office as aforesaid. Any such termination notice shall not operate to modify, bar, discharge, limit, affect or impair the liability of non-terminating Indemnitors, with respect to, upon or by reason of any and all bonds, undertakings and obligations issued by Company.

18. The Indemnitors understand and agree that this document is a continuing agreement to indemnify over an indefinite period and that bonds and undertakings issued by the Company pursuant to this Agreement may vary widely in amounts and nature and that the Indemnitors will be bound by all such bonds and undertakings, and any increases in the penal limits of such bonds and undertakings. The Indemnitors shall continue to remain bound under the terms of the Agreement even though the Company may have from time to time heretofore or hereafter, with or without notice to or knowledge of the Indemnitors, accepted or released other agreements of indemnity, collateral, or conditions in connection with the procurement of bonds or other undertakings, from Indemnitors or others, it being expressly understood and agreed by the Indemnitors that any and all other rights which the Company may have or acquire against the Indemnitors or others under any such other or additional agreements of indemnity or collateral shall be in addition to, and not in lieu of, the rights afforded Company under this Agreement.

19. If any provision or provisions, or portion thereof, of this Agreement shall be void or unenforceable under the laws of any jurisdiction governing its construction, this Agreement shall not be void or vitiated thereby, but shall be construed and enforced with the same effect as though such provision or provisions, or portion thereof, were omitted.

20. This General Agreement of Indemnity applies to bonds, undertakings and other writings obligatory in the nature of a bond, written by or at the request of Company as surety, co-surety, or reinsurer on behalf of the undersigned Indemnitors, or any of them, and any and all of their wholly or partially owned subsidiary companies, subsidiaries of subsidiaries, proprietorships, divisions or affiliates, partnerships, joint ventures or co-ventures in which any of the undersigned Indemnitors, their wholly or partially owned subsidiary companies, subsidiaries of subsidiaries, divisions, proprietorships, or affiliates, have any interest or participation whether open or silent; jointly, severally, or in any combination with each other; now in existence or which may hereafter be created or acquired.

21. The Indemnitors hereby warrant the accuracy of all financial statements submitted or to be submitted to the Company, and covenant and agree that the assets described therein are dedicated to and imposed with a trust for the purpose of this Agreement of Indemnity.

22. It is expressly understood and agreed that all monies due and to become due under any contract or contracts covered by bonds or undertakings issued by the Company are trust funds, whether in the possession of the Indemnitors or otherwise, for the benefit of and for payment of all obligations for which the Company would be liable under any of said bonds and undertakings., which said trust also inures to the benefit of the Company for any liability or loss it may have or sustain under any of said bonds or undertakings, and this Agreement shall constitute notice of such trust.

**23. THE UNDERSIGNED REPRESENT TO THE COMPANY THAT THEY HAVE CAREFULLY READ THIS ENTIRE AGREEMENT CONSISTING OF THIS PAGE, THE PRECEDING PAGES, AND ANY PAGES WHICH FOLLOW, AND THAT THERE ARE NO OTHER PROMISES, AGREEMENTS OR UNDERSTANDINGS WHICH IN ANY WAY LESSEN OR MODIFY THE OBLIGATIONS SET FORTH HEREIN. THE EFFECTIVE DATE OF THIS AGREEMENT OF INDEMNITY SHALL BE THE DAY AND YEAR FIRST ABOVE WRITTEN, REGARDLESS OF THE DATE OR DATES ON WHICH THE UNDERSIGNED MAY EXECUTE THIS AGREEMENT AND REGARDLESS OF WHETHER BONDS OR UNDERTAKINGS WERE ISSUED BY THE COMPANY BEFORE OR AFTER THE EXECUTION OR EFFECTIVE DATE OF THIS AGREEMENT. THE COMPANY'S ACCEPTANCE OF THIS AGREEMENT SHALL BE PRESUMED AND IS DEEMED EFFECTIVE BY ITS RECEIPT OF THIS AGREEMENT, ITS RELIANCE HEREON, OR BY ITS EXECUTION OF ANY BOND OR UNDERTAKING FOR INDEMNITORS OR ANY OF THEM, WITH OR WITHOUT THE COMPANY'S SIGNATURE BEING AFFIXED HERETO.**

**Corporate/Partnership**

**Individual**

Company Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

By: \_\_\_\_\_  
Signature

Signature \_\_\_\_\_

Printed Name/Title: \_\_\_\_\_

Street or P.O. Box City State/Zip

Street or P.O. Box City State/Zip

**Corporate Notary Acknowledgment**

State of \_\_\_\_\_ §

County of \_\_\_\_\_ §

On this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, \_\_\_\_\_ before me personally appeared

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity as the \_\_\_\_\_ of \_\_\_\_\_, said corporation, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal

\_\_\_\_\_  
Notary Public  
Commission Expires

**Partnership Notary Acknowledgment**

State of \_\_\_\_\_ §

County of \_\_\_\_\_ §

On this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, \_\_\_\_\_ before me personally appeared

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized

capacity as a member of the Partnership of \_\_\_\_\_  
And acknowledged that he/she executed the foregoing instrument as the act of the said partnership.

WITNESS my hand and official seal

\_\_\_\_\_  
Notary Public  
Commission Expires

## LLC Notary Acknowledgment

State of \_\_\_\_\_ §

County of \_\_\_\_\_ §

On this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, \_\_\_\_\_ before me personally appeared

\_\_\_\_\_ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity as the

\_\_\_\_\_ of \_\_\_\_\_

which executed the foregoing instrument; that he/she is a manager, member or director of said LLC and that he/she signed his/her name to the said instrument by like order.

WITNESS my hand and official seal

\_\_\_\_\_  
Notary Public  
Commission Expires \_\_\_\_\_

## Limited Partnership Notary Acknowledgment

State of \_\_\_\_\_ §

County of \_\_\_\_\_ §

On this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, \_\_\_\_\_ before me personally appeared

\_\_\_\_\_ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity as the

\_\_\_\_\_ of \_\_\_\_\_

**General Partner** \_\_\_\_\_

which executed the foregoing instrument; that he/she is a manager, member or director of said company and that he/she signed his/her name to the said instrument by like order.

WITNESS my hand and official seal

\_\_\_\_\_  
Notary Public  
Commission Expires \_\_\_\_\_

## Individual Notary Acknowledgment

State of \_\_\_\_\_ §

County of \_\_\_\_\_ §

On this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, \_\_\_\_\_ before me personally appeared

\_\_\_\_\_ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within and foregoing instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument, the person(s) executed the instrument.

WITNESS my hand and official seal

\_\_\_\_\_  
Notary Public  
Commission Expires \_\_\_\_\_