

**U.S. SMALL BUSINESS ADMINISTRATION  
PRIOR APPROVAL SURETY PARTICIPATION AGREEMENT**

\_\_\_\_\_ [INSERT SURETY NAME] (“Surety”) and the U.S. Small Business Administration (“SBA”), an independent agency of the federal government, enter into this PRIOR APPROVAL SURETY BOND GUARANTEE AGREEMENT (Agreement) this \_\_\_ day of \_\_\_\_\_, 20\_\_\_.

**RECITALS**

**A.**     *[Select one of the following options by checking the paragraph that applies.]*

Surety is a surety bond company that is writing the bonds being guaranteed by SBA.

Surety is an agency or any other company employing individuals empowered to act on behalf of a surety writing the bonds being guaranteed by SBA.

**B.**     SBA is authorized by Part B of Title IV of the Small Business Investment Act of 1958 (15 U.S.C. Sec. 694a *et seq.*) to guarantee and enter into commitments to guarantee, upon such varying terms and conditions as it may prescribe, a surety against a portion of its loss resulting from a breach of the terms of a Bid Bond, Payment Bond, Performance Bond, Stand Alone Maintenance Bond or bonds ancillary thereto, by a Principal on any total work order or contract or subcontract amount that, at the time of Execution of the bond, does not exceed the authorized amount as adjusted for inflation in accordance with 41 U.S.C. 1908. In accordance with Subpart 411(a)(3) of the Act (15 U.S.C. § 694b(a)(3)) and SBA regulations (13 C.F.R. part 115), as may be amended from time to time, SBA may admit a Surety that satisfies certain requirements to the Prior Approval Surety Bond (Prior Approval) Program.

C. Surety has requested to participate in SBA’s Prior Approval Program. SBA has determined that Surety is eligible to participate in the Prior Approval Program and authorizes the Surety, with SBA approval, to issue and monitor bonds with SBA’s guarantee, subject to the terms of this Prior Approval Surety Bond Guarantee Agreement (“Agreement”) and all applicable laws, regulations and policies.

*[Select one of the following options by checking the paragraph that applies.]*

*[Option 1: Use if Surety is a surety bond company that is writing the bonds being guaranteed by SBA.]*

Surety may also service bonds subject to the SBA guarantee.

*[Option 2: Use if Surety is an agency or any other company employing individuals empowered to act on behalf of a surety writing the bonds being guaranteed by SBA.]*

Surety may NOT service bonds subject to the SBA guarantee.

## **AGREEMENT**

### ARTICLE 1

#### COMMENCEMENT, TERM, SUSPENSION AND TERMINATION

**§ 1.1** This Agreement shall commence as of the date that this Agreement is signed by both Surety and SBA, and no SBA guarantee attaches to bonds approved before SBA has signed this Agreement. This Agreement shall continue in effect until either Surety terminates this Agreement upon at least 30 days written notice to SBA or SBA suspends or terminates this Agreement in accordance with the Act and SBA regulations. SBA guarantees entered into under this Agreement before such suspension or termination shall remain in effect for all surety bonds in force as of the suspension or termination date, or as of the date of expiration of the term, until such bonds have been cancelled, released and/or have otherwise expired by their own terms or by operation of law. Final bonds that were approved after such termination or suspension, or after expiration of the term, pursuant to bid bonds issued, or instruments of commitment entered into, before such

termination or suspension, or before the expiration of the term, shall also be guaranteed, subject to SBA's right to deny liability under the guarantee. The suspension or termination, or the expiration of the term, of this Agreement will also not affect in any way Surety's continuing obligation to comply with this Agreement and with all SBA requirements with respect to any bond previously approved with the SBA guarantee.

*[Select one of the following options by checking the paragraph that applies.]*

*[Option 1: Use if Surety is a surety bond company that is writing the bonds being guaranteed by SBA.]*

Surety may voluntarily release SBA from its guarantee in writing.

*[Option 2: Use if Surety is an agency or any other company employing individuals empowered to act on behalf of a surety writing the bonds being guaranteed by SBA.]*

Surety may NOT voluntarily release SBA from its guarantee in writing.

**§ 1.2** By participating in SBA's Surety Bond Guarantee program, Surety accepts responsibility to independently understand and adhere to all program statutes, regulations, and requirements and to maintain knowledge of all amendments thereto. Submissions requiring SBA's approval do not reduce Surety's responsibility to independently verify and document that an applicant, contract, and bond meet all requirements of the program for eligibility. Surety understands that failure to adhere to all statutes, regulations, requirements, and conditions of an SBA bond guarantee approval may result in SBA denying liability, requiring corrective action limits in the program, suspending, terminating, and or commencing legal action.

## ARTICLE 2 REQUIREMENTS FOR SBA BOND GUARANTEE

**§ 2.1** SBA's guarantee of any bond is subject to the following requirements:

(1) "SBA Surety Bond Guarantee Program Requirements" are requirements imposed upon Sureties by statute; SBA and applicable government-wide regulations including but not limited to

13 CFR Part 115; any agreement Surety has executed with SBA or to which Surety is subject; SBA Standard Operating Procedures (SOPs); Federal Register notices; and official SBA notices and forms applicable to the SBA Surety Bond Guarantee Program, as such requirements are issued and revised by SBA from time to time. This Agreement covers only bonds duly approved hereafter for guaranty by SBA subject to SBA Surety Bond Guarantee Program Requirements and as amended from time to time, all of which are incorporated by reference into this Agreement. Surety shall underwrite, issue, the bond in accordance with SBA Surety Bond Guarantee Program Requirements.

*[Select one of the following options by checking the paragraph that applies.]*

*[Option 1: Use if Surety is a surety bond company that is writing the bonds being guaranteed by SBA.]*

- Surety may also monitor, service, and pursue salvage and recovery with respect to the bonds subject to the SBA guarantee.

*[Option 2: Use if Surety is an agency or any other company employing individuals empowered to act on behalf of a surety writing the bonds being guaranteed by SBA.]*

- Surety may NOT service and pursue salvage and recovery with respect to the bonds subject to the SBA guarantee.

(2) Surety shall not reduce its agreed percentage of loss of any guaranteed bond by an agreement of co-surety, sub-surety, reinsurance or any other agreement.

(3) Surety must underwrite and provide approval for each submitted bond guarantee application, contingent on SBA's support, prior to its submission to SBA.

(4) Surety must submit each increase and decrease in the Contract or bond amount that aggregates above SBA's reporting threshold, as soon as Surety acquires knowledge of the change. Claims arising from bonds for which timely notice is not provided to SBA may be denied.

(5) Surety must pay any fee it owes to or collects on behalf of SBA no later than the timeframe set by SBA in 13 CFR 115, as may be amended from time to time. Prior to closeout of the bond guarantee, any additional fees owed by the Principal and Surety to SBA as a result of increases in the Contract or bond amount must be remitted to SBA by Surety when the increases aggregate 25% of the Contract or bond amount or \$500,000, whichever is less, as required by 13 CFR 115, as may be amended from time to time. At closeout of the bond guarantee in CAFS, any additional fees owed by the Principal and Surety to SBA as a result of increases in the Contract or bond amount must be remitted to SBA by Surety when the increases create a fee due that equals or exceeds \$250, as required by 13 CFR 115 and as amended from time to time by SBA.

(6) Surety must fulfill all approval terms and conditions set by SBA.

(7) For all Quick Bond agreements, Surety is wholly responsible for understanding and independently performing eligibility and small business size determination, verification, and documentation of each applicant business and its owner(s) as required by 13 CFR 115 and SOP 50 45. Business and Principal eligibility outlined in SBA Surety Bond Guarantee Program Requirements is not negotiable and must be strictly adhered to by Surety.

(8) Surety must submit for approval to SBA the SBA-submission authority set by Surety for all attorneys-in-fact, and such attorneys-in-fact must only submit to SBA bonds with an original contract amount at or below SBA's statutory ceiling specified in 13 CFR Part 115. SBA-submission authority is not the Surety's bond underwriting authority, which is a separate authority that must strictly adhere to underwriting authority restrictions set forth in 13 CFR 115.

(9) Surety's acknowledges that under 115.18(b)(5) its future participation in the Bond Guarantee Program requires that the Surety, and any of its officers, directors, partners, or other individuals holding at least 20% of the Surety's voting securities, and any agents, underwriters, or any individual empowered to act on behalf of any of the preceding have never been:

- i. Debarred, suspended, proposed for debarment, declared ineligible to participate in, or voluntarily excluded or revoked from Federal procurement programs and/or Federal non-procurement programs;
- ii. The subject of any suspension, debarment, voluntary exclusion, revocation, or any other regulatory enforcement action by a state or federal agency, or any other regulatory enforcement body;
- iii. The subject of any other decision by a federal, state or local governmental agency undertaking administrative enforcement due to fraud, lack of business integrity, ethics violations, or noncompliance with other governmental requirements; or
- iv. The subject of any investigation or disciplinary hearing or proceeding by a governmental agency, regulatory body, or professional association.

ARTICLE 3  
CERTIFICATION OF SURETY BOND GUARANTEE APPLICATIONS,  
CLAIMS, AND RECOVERIES

**§ 3.1** Under this Agreement, Surety agrees that by submitting to SBA a Surety Bond guarantee application, claim for reimbursement, or itemization of losses and recoveries by Surety, its staff, its authorized agencies, or attorneys-in-fact that Surety is making the following certifications, as applicable to the guarantee and submission:

- (1) SBA Form 990, Surety Bond Guarantee Agreement Certifications, and Terms and Conditions

Under this Agreement, the Surety agrees that at the time a surety bond guarantee application is submitted to SBA by the Surety, its staff, its authorized agencies, or attorneys-in-fact that the Surety hereby certifies: it is the opinion of Surety that the Principal of the surety bond appears to have the financial, management, and technical abilities to successfully complete this contract; Surety has determined that the Principals fall below the normal underwriting standard of this

Surety, who will not issue the bond with reasonable terms without the SBA guarantee; that the Principal meets the eligibility requirements set forth in SBA regulations and Standard Operating Procedures.

By virtue of the application being submitted to SBA, Surety hereby certifies that all information provided in connection with Surety's application for a surety bond guarantee from SBA, including any supporting documents submitted to SBA, including but not limited to applicable forms authorized under OMB control number 3245-007, is true, correct and complete to the best of Surety's knowledge. Under this Agreement Surety hereby certifies it understands that knowingly making a false statement or submitting false information to SBA is a violation of Federal law and could result in criminal prosecution or civil penalties under 18 U.S.C. Subpart 287, 371, 1001, 15 U.S.C. Subpart 645, or 31 U.S.C. Subpart 3729.

Submission of the application to SBA shall obligate Surety to the following terms and conditions set forth in SBA Form 990.

- i. SBA's guarantee of this bond is subject to the "SBA Surety Bond Guarantee Program Requirements" which means: requirements imposed upon Sureties by statute; SBA and applicable government-wide regulations including but not limited to 13 CFR Part 115; any agreement Surety has executed with SBA or to which Surety is subject; SBA Standard Operating Procedures (SOPs); Federal Register notices; and official SBA notices and forms applicable to the SBA Surety Bond Guarantee Program, as such requirements are issued and revised by SBA from time to time.
- ii. If Surety determines that the Contract price is reasonable, and the Contract amount does not exceed the statutory ceiling specified in 13 CFR Part 115, Surety shall, subject to the approval of an SBA guarantee, become Surety on the bid, performance and payment bond(s) required for the award of the Contract. Surety may withdraw its decision to

- issue such bond(s) if prescribed underwriting conditions are not met or if additional information comes to the attention of Surety that adversely affects its underwriting determination.
- iii. Surety represents that the terms and conditions of such bond(s) are, and will be, in accord with SBA Surety Bond Guarantee Program Requirements, and with those standards established and generally accepted by the surety industry for the type of contract for which such bond(s) are required to be furnished by Principal, and Surety represents that such bonds would not be provided for Principal on the associated Contract without an SBA guarantee.
  - iv. If any suit or claim is filed against Surety upon said bond(s), Surety must inform SBA of the same within the time frame required in 13 CFR Part 115 and SOP 50 46. Unless SBA decides otherwise, and so notifies Surety, Surety shall take charge of all suits or claims arising under SBA guaranteed bond(s) and compromise, settle, or defend such suit or claim until so notified. Surety shall take all steps necessary to mitigate any loss resulting from a Principal's default. Surety shall not join SBA as a party in any lawsuit to which Surety is a party unless SBA has denied liability or has agreed to such joinder inwriting.
  - v. No employee of SBA has authority to waive, change or alter these terms, unless such alterations are separately attached, and both the SBA and Surety's authorized representatives have signed and dated their assent.
  - vi. SBA's bond guarantee agreements are made exclusively for the benefit of SBA and Surety and do not confer any rights or benefits on any other party, such as any right of action against SBA by any person claiming under SBA-guaranteed bonds or otherwise.
- In the event of Surety's insolvency, SBA shall not be liable to the receiver or other

representative of Surety except for any loss incurred and monies actually paid by such representative under the bonds guaranteed by SBA.

- vii. The Surety agrees to comply with SBA Surety Bond Guarantee Program Requirements. If any provision of this Agreement is inconsistent or conflicts with any SBA regulation, such regulation shall prevail in construing or applying this Agreement.

(2) For SBA Form 994B, Surety Underwriting Review Certification

Under this Agreement, Surety hereby certifies for each application submitted to SBA by Surety, its staff, its authorized agencies, or attorneys-in-fact: that it is the opinion of the Surety that the principals appear to have the financial, management, and technical abilities to successfully complete application contracts; that the Surety has determined the contractors fall below the normal underwriting standard of its company, it will not issue bonds to the contractors without SBA's guarantee, and that the bond(s) applied for are required by the original contract or bid solicitation.

(3) For SBA Form 994H, Default Report, Claims for Reimbursement, Report of Recoveries

Under this Agreement, Surety certifies that all submissions related to claims default, itemization, and summary of losses and recoveries received on bonds issued in conjunction with the U.S. Small Business Administration's Surety Bond Guarantee Program are true and correct to the best their knowledge, information and belief. Surety further certifies that all losses and recoveries received are substantiated by payroll sheets, copies of Surety's drafts, claimants' invoices, assignments and releases (where applicable), recovery instruments, etc., and that such substantiating documents are retained in Surety's office, Surety's agent's office, or in the office of Surety's claim account trustee. Surety further certifies its compliance with all SBA Surety Bond Guarantee Program regulations in 13 CFR Part 115 and all SBA program requirements in

conjunction with any submission to SBA made pursuant to its participation in the SBA Surety Bond Guarantee Program. Under this Agreement Surety hereby certifies it understands that knowingly making a false statement or submitting false information to SBA is a violation of Federal law and could result in criminal prosecution or civil penalties under 18 U.S.C. Subpart 287, 371, 1001, 15 U.S.C. Subpart 645, or 31 U.S.C. Subpart 3729.

(4) For Form 994 Debarment certification

Under this Agreement, Surety hereby certifies to the best of its knowledge for each SBA Form 994 submitted to SBA by Surety, its staff, its authorized agencies, or attorneys-in-fact, that the applicant business is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in federal assistance program by any Federal department or agency.

ARTICLE 4  
REPORTS

**§ 4.1** Surety shall submit all reports required by SBA within the timeframe and in the manner prescribed by SBA Surety Bond Guarantee Program Requirements, as such requirements are issued and revised by SBA from time to time, including but not limited to bond closeout reports, claims, salvage and recovery, and claims closeout.

ARTICLE 5  
AUDITS AND INVESTIGATIONS

**§ 5.1** SBA may audit or examine in the office of a Surety, its attorneys or consultants, or the Principal or its subcontractors, all documents, files, books, records, tapes, disks and other material relevant to SBA's guarantee, commitments to guarantee a surety bond, or agreements to indemnify Surety. The failure of Surety to consent to the audit/examination, or to maintain and produce records required by SBA, constitutes grounds to suspend Surety's status and to refuse to honor claims submitted by Surety until the Surety complies with these requirements.

Each Surety is subject to an examination at the determination of SBA's Office of Surety Guarantees.

**§ 5.2** SBA will monitor and investigate Surety for its underwriting, efforts to minimize loss, claims or recovery practices, and documentation related to SBA guaranteed bonds for adherence to prudent standards and practices, including any standards or practices required by SBA, as compared to those of other Sureties participating in the same SBA Surety Bond Guarantee Program to a comparable degree. SBA will monitor and investigate Surety's SBA portfolio for excessive losses on SBA guaranteed bonds relative to those of other Sureties participating in the same SBA Surety Bond Guarantee Program to a comparable degree, and may also require the renegotiation of the guarantee percentage and/or SBA's charge to the Surety for bonds executed thereafter.

#### ARTICLE 6 PERCENTAGE OF INDEMNIFICATION

**§ 6.1** *[Select one of the following options by checking the paragraph that applies.]*

*[Option 1: Use if Surety is a surety bond company that is writing the bonds being guaranteed by SBA.]*

SBA reimburses Surety in the same percentages and under the same terms set forth in 13 CFR Part 115, as may be amended from time to time.

*[Option 2: Use if Surety is an agency or any other company employing individuals empowered to act on behalf of a surety writing the bonds being guaranteed by SBA.]*

Not applicable.

#### ARTICLE 7 DUAL OBLIGEE BONDS

**§ 7.1** SBA's guarantee of dual-obligee (other than a Federal department or agency) bonds is available only with the addition of a clause to the bond which provides substantially as follows:

"The surety bond company shall not be liable under this bond to the Obligees, or either of them, unless the said Obligees, or either of them, shall make payments to the Principal, or in the case the surety bond company arranges for completion of the contract, to the surety bond company, strictly in accordance with the terms of said contract as to payments, and shall perform all other obligations to be performed by the obligee under said contract at the time and in the manner therein set forth; provided, however, that the aggregate liability of the surety bond company under said bond to the Co-obligees, as their interests may appear, is limited to the penal sum of said bond, and provided, further, that the surety bond company may, at its option, make any payments under said bond jointly to the Co-obligees".

## ARTICLE 8 MISCELLANEOUS

**§ 8.1** This Agreement supersedes all earlier agreements and understandings, both written and oral, regarding the subject matter in this Agreement.

**§ 8.2** All provisions of this Agreement are severable.

**§ 8.3** If any provision of this Agreement is found invalid or unenforceable, the other provisions will not be affected.

**§ 8.4** SBA may choose not to insist on strict compliance with a provision of this Agreement, and such action does not mean that SBA waives the provision.

**§ 8.5** Initially capitalized terms used but not defined in this Agreement will have the meanings given them in the Act and SBA regulations and policies.

**§ 8.6** In the event of a conflict between any provision of this Agreement and any provision of the Act or SBA's regulations and policies, the provisions of the Act or SBA's regulations and policies shall control.

*[Signature page follows]*

Clearance Copy

IN WITNESS WHEREOF the parties have signed this Agreement by their authorized

Representatives below:

U. S. Small Business Administration

Surety

(Authorized Signature)	(Authorized Signature)
(Name Printed)	(Name Printed)
(Title)	(Title)
(Date)	(Date)

**PLEASE NOTE:** The estimated burden for completing this form is approximately 15 minutes per response. You are not required to respond to any collection of information unless it displays a currently valid OMB Control number (3245-0007). Comments on the burden should be sent to U.S. Small Business Administration, Director, Records Management Division, 409 3rd St., S.W., Washington, D.C. 20416 and/or Desk Officer for the Small Business Administration, Office of Management and Budget, New Executive Office Building, Room 10202 Washington, D.C. 20503. **PLEASE DO NOT SEND COMPLETED FORMS TO OMB.**