



BOARD FOR LICENSING CONTRACTORS
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<http://www.tn.gov/commerce/regboards/contractors/html>
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INDEMNITIES

Guaranty Agreement and Bond Information

GUARANTY AGREEMENT POLICY

The purpose of a Guaranty Agreement is now, and has always been, to supplement the net worth and working capital of a Contractor to enable that Contractor to obtain a higher monetary limitation than they would otherwise qualify. All previously submitted Guaranty Agreements shall expire (or shall be deemed to have expired) at the end of the license term for which the particular Guaranty Agreement was relied upon to supplement the Contractor's net worth and working capital. When a license is renewed, the contractor may utilize a new Guaranty Agreement, if appropriate, to raise the monetary limitation for which they would otherwise qualify.

MONETARY LIMITS

As a condition of initial licensing, the law requires the owner to supply a financial statement prepared by an independent Certified Public Accountant (CPA), with a "**Reviewed**" opinion (*required for a monetary limit of \$3,000,000.00 or less*); or "**Audited**" opinion (*required for a monetary limit exceeding \$3,000,000.00*). There is no exception and one must be supplied in order to obtain a license.

Upon **renewing** a license, the contractor is not required to supply a reviewed or audited financial statement. In lieu of a "Reviewed" statement, a compiled or one prepared by the contractor is acceptable to renew a license with a limit less than \$3,000,000.00. In lieu of an "Audit", a "Reviewed" statement by the CPA is acceptable to renew a license with a monetary limit in excess of \$3,000,000.00.

Each license is issued to either a sole proprietor; partnership; corporation; or LLC and licenses are issued to the entity in the exact name as on their financial statement. In addition, each license is assigned a monetary limit which may be based upon 10 times the working capital and net worth (10%); the lesser of the two; for "Unlimited", the working capital and net worth must be a minimum of \$300,000. Working capital and net worth is determined from the financial statement's assets and liabilities (*the application and renewal forms provide more details on items counted as current and long term*). Indemnities, such as a guaranty agreement or bond, may be used to 1) supplement both working capital and net worth; 2) support a cash only financial statement (*lacking fixed assets causes a deficiency with respect to plant and equipment*); or 3) provide evidence of financial solvency and security to the entity to be licensed when owned by another entity (*subsidiary of a parent company, etc.*).

Indemnity options available for a contractor to supplement working capital and net worth include a "Guaranty Agreement" or "Contractor's License Bond". Based upon the monetary limit rule outlined in Rule 0680-01-.13, an indemnity may be used up to 50% value of the total working capital and net worth from the guarantor's supplemental financial statement. Other options should be considered before providing a "personal" guaranty, such as placing more capital and fixed assets into the company; or if it's the working capital that needs to be increased, a "Line of Credit" from a bank. Also, consider obtaining a lower limit on the license and requesting an increase to the monetary limit at a later time when the business financial statement supports the limit. Whenever a substantial amount is needed to be supplemented, you may want to consider the use of a "*Contractor's License Bond*".

MONETARY LIMIT RULE

Based upon rule, the procedures for determining the monetary limit from the contractor's financial statement are as follows:

Rule 0680-01-.13 MONETARY LIMITATIONS

(1) Generally, the monetary limitation placed on a classification of a license may be determined as follows:

(a) for applicants having no apparent deficiency with respect to plant or equipment, the lesser of:

1. ten (10) times the applicants net worth; or
2. ten (10) times the applicant's working capital. Accounts receivable that are more than three (3) months overdue may not be included within the calculation of working capital.

(b) at the Board's discretion, renewal applicants having no apparent deficiency with respect to plant or equipment, but with limited working capital, the greater of:

1. ten (10) times the applicant's working capital; or
2. fifty percent (50%) of the applicant's net worth.

(c) for other applicants, a lesser amount reflecting the degree of lack of plant or equipment.

(2) Lines of credit and indemnities (on forms furnished by the Board) may be considered to raise a monetary limitation. Lines of credit may be added up to its full value to the working capital. Credit for indemnities will be limited to fifty percent (50%). However, if the applicant has a negative working capital, lines of credit will be recognized at 50% of value.

(3) A tolerance of ten percent (10%) will be allowed on the monetary limitation placed on any classification of a license other than a Limited Residential license.

(4) Subject to such tolerance, no contractor shall engage, or offer to engage, in any project of which the cost (including all material and labor furnished by or through another source other than the owner) would exceed the monetary limitation placed on his license. If a contractor holds a license with more than one classification with different monetary limits, the monetary limits shall not be combined to bid a project.

Website for Rules: <http://publications.tnsosfiles.com/rules/0680/0680.html>

USE OF INDEMNITIES

Typical conditions when a contractor may be required or allowed to utilize an indemnity are as follows:

▪Supplement Working Capital and Net Worth

- Financial statement of the entity does not support the desired monetary limit

▪Subsidiary of a Parent Company

- Entity to be licensed is owned by another business entity

▪Cash Statement

- Financial statements without fixed assets are those identified in the rule as having a deficiency with respect to plant or equipment

GUARANTOR'S FINANCIAL STATEMENT The "Guaranty Agreement" to indemnify your business is a tool that may be used to supplement the working capital and net worth. However, in order for a guaranty to be utilized, the guarantor's supplemental financial statement (*personal or parent*) must show to be financially solvent enough to cover the shortfall or monetary limit of the entity obtaining the license.

There are two (2) types of guarantees:

I. Personal Guaranty Agreement - The Board *discourages* the use and advises only to consider as a *last resort*, as these may be considered to fulfill construction related obligations, personally, if not satisfied by the licensed business. It would be best to look into other options, such as having your CPA prepare a review or audit on a business already established; or utilizing a "Line of Credit" to supplement the working capital; or if feasible, a "Contractor's License Bond".

When utilizing a personal guaranty, it must be supplied with a supplemental personal financial statement, which may be a self-prepared (*you may use the Board's sample personal balance sheet format attached; or one from a bank; or one developed from your in-house accounting computer software*). Note: The supplemental financial statement is "in addition" to the licensed entity's Reviewed or Audited financial statement prepared by an independent CPA; considered at 50% value and must be financially solvent enough to cover the shortfall for the monetary limit of the entity obtaining the license.

-and-

II. Corporate Guaranty Agreement - The Board requires a contractor owned by another business entity, to provide an indemnity such as the "*Guaranty Agreement*" with a supplemental parent company financial statement or a personal statement from that entity's owner (or a "*Contractor's License Bond*"). This is in addition to the license entity's Reviewed or Audited financial statement. The corporate guarantor's supplemental statement will need to support the monetary limit at 50% value and must be financially solvent enough to cover the shortfall and/or the monetary limit of the entity obtaining the license.

If the subsidiary of the parent company does not have a separate financial statement with a Review or Audit, they may supply an in-house statement with the parent's Reviewed or Audited statement, unless, the subsidiary is broken out separately in the parent's financial statement. If the parent is supporting more than one licensed entity, it must support all entities. The guaranty liability is limited to 10%; for unlimited monetary limits, the amount would be \$300,000.00.

GUARANTY AGREEMENT INFORMATION

The following information has been compiled based upon the Board's "*Guaranty Agreement Policy*":

➤ **Expiration**

- Guaranty Agreement's will expire at the time of renewal (two years). If it is needed when renewing, a new "Guaranty Agreement" must be provided at each renewal cycle.
- Guaranty Agreements on file for more than two (2) years, will be considered inactive.
- Guaranty Agreements provided with their application or renewal in error (*those supplied in error or it was not needed*) would not be considered utilized by the Board and considered inactive.
- The contractor may request to the Board in writing to withdraw their Guaranty Agreement before the license is up for renewal by providing an alternative indemnity,

such as a “Contractor’s License Bond” or an updated financial statement; or by placing the license in an inactive (*retirement*) status.

- Inactive or expired Guaranty Agreements will be stamped as such whenever copies are provided in response to public records request, those with a subpoena and protective order.

➤ **Signatures**

- Personal - Individual(s) listed on the personal supplemental financial statement must sign the guaranty. If a spouse is listed, they would need to also sign.
- Corporate/Parent Company - Individual authorized by the corporate or parent company (CEO, Officer, Owner, etc.)

➤ **Confidentiality**

- Considered as part of the financial statement and confidential pursuant to T.C.A. § 62-6-124 (*not public record*).
- A subpoena, with a protective order filed with the court clerk, would be required in order to inquire or obtain any financial records.

➤ **Liability**

- The Guaranty Agreement will be limited to 10% of the amount needed for the assigned monetary limit (*this is the same amount utilized to determine the monetary limit from the financial statement*). See “*Procedures for Calculations*” provided below.
- The supplemental financial statement would need to show enough working capital and net worth to qualify for the monetary limit or shortfall needed to supplement at 50% value.

PROCEDURES FOR CALCULATING WORKING CAPITAL AND NET WORTH (See Rule 0680-1-.13)

In order to determine the liability of the guarantor, the working capital and net worth must first be assessed. The amount of the liability will be based upon 10% of the shortfall; or for cash statements and required guarantors as parent companies, 10% of the monetary limit. Unlimited requires \$300,000.00 in working capital and net worth.

- **Formula for Determining Monetary Limit** - The same formula, as currently used by the Auditors on staff, will be used to determine the working capital and net worth. Working capital is based upon current assets minus current liabilities; net worth is based upon total assets minus total liabilities. (*More information is available in the license application and financial statement resources as to items considered as current and long term.*)
 - **Example:** \$500,000 monetary limit would need to show a financial statement with a minimum of \$50,000 for both working capital and net worth (*limit is based on the lesser amount of the two*).

- **Renewals without Required Working Capital** - For renewals, if 50% of the net worth supports the actual licensed monetary limit, the working capital would not need to be considered.
 - **Example:** \$500,000 monetary limit, a net worth of \$1,000,000 would be acceptable.

LIMIT OF GUARANTY

Based upon the working capital and net worth, the following are examples for utilizing and determining the amount to limit the liability on the Guaranty Agreement.

- A. **Supplement Working Capital and Net Worth** - Contractors needing to increase both their working capital and net worth on their financial statement may provide a supplemental statement (personal or parent) as an option to supplement their CPA prepared statement in order to support their requested monetary limit:

Example: A contractor requesting a monetary limit of \$500,000 is required to show at least \$50,000 in both working capital and net worth (*10 times the lesser of working capital and net worth - 10%*). If a contractor has \$40,000 working capital and \$100,000 net worth, the lesser of the working capital creates the shortfall.

Limit of Guaranty: \$10,000

Altogether, the contractor has three (3) options to supplement working capital for the **\$10,000** shortfall:

1. Supply a "Line of Credit" in the amount of \$10,000 (*LOC is considered at full value since they have a positive working capital and are not negative*); - **or** -
2. Supply an indemnity, such as a personal or parent financial statement with a "Guaranty Agreement".
 - The personal or parent company's supplemental statement would need to show at least \$20,000 in working capital (*supplemental personal statements are considered at 50% and these are not required to be a review or audit*).
 - \$40,000 + \$10,000 (50% of \$20,000) = \$50,000 working capital
 - The guaranty would be limited to \$10,000; - **or** -
3. If a contractor does not want to obtain a "Guaranty Agreement", they have the option to obtain a "Contractor's License Bond", but the lowest amount established by the Board is \$500,000 for monetary limits less than \$3,000,000 (*above \$3,000,000 is \$1,000,000*).

- B. **Subsidiaries Obtaining a License** – For those contractors owned by another business entity and the parent company will not be the holder of the license, the business entity obtaining the license would then need an **indemnity by the controlling owner or parent company** of the business entity to be licensed.

Example: A contractor requesting a monetary limit of \$500,000, the entity's financial statement must show \$50,000 in both working capital and net worth; and the one providing the indemnity would need to show \$100,000 in both working capital and net worth (50%).

Limit of Guaranty: \$50,000.00

- i. An in-house financial statement is acceptable for those subsidiaries without a separate Review or Audit, as long as a Review or Audit by an independent CPA is provided by the owner/parent company and the financial statement supports the monetary limit. The value of the statement would be considered at 50%. In lieu of a guaranty, a bond in the amount of \$500,000.00 may be utilized (the least amount for a "Contractors' License Bond").

C. **Cash Statements** - Contractors showing a deficiency on their financial statement, such as a ***cash only financial statement without fixed assets*** (see Rule 0680-01-.13) fall into the category as having a deficiency in respect to plant or equipment, in lieu of supply a business operating statement, and would require an indemnity, such as from a supplemental financial statement (*personal or parent*) as an option to support the CPA prepared Reviewed or Audited financial statement, to provide evidence of financial security and stability.

Example: A contractor requesting a monetary limit of \$1,500,000, if the entity places \$150,000 cash into the company without any other assets, then an indemnity (personal or parent) would need to show \$300,000 in both working capital and net worth (50%).

Limit of Guaranty: \$150,000

OTHER OPTIONS

I. Line of Credit (*form may be downloaded from the website*)

A “Line of Credit” (LOC) in the Board’s **exact format** may be used to supplement working capital, only. (*Any changes/omissions to the form will render the Line of Credit unacceptable and would not be utilized*).

- LOC will be added to overall working capital (*does not affect net worth*)
- If contractor’s financial statement shows a “negative” working capital, the LOC amount added to working capital is reduced by 50%; therefore, an additional or increased LOC would be needed.
- The LOC must be from a lending institution, such as a bank, savings and loan which is FDIC approved
- The LOC does not waive the requirement for a financial statement

II. Contractor’s License Bond (*form may be downloaded from the website*)

If there are extenuating circumstances such as legal conflicts preventing the parent company from supplying a “Guaranty Agreement” as the indemnity, the contractor may request to supply the Board with an original “*Contractor’s License Bond*”. It must have the original signatures and in the exact format as the Board’s form; no deviation from the language is acceptable.

Depending on the financial statement and monetary limit requested, the Board will consider either a \$500,000 (*for limits less than \$3,000,000.00*) or \$1,000,000 (*for a limit more than \$3,000,000.00*) bond amount. Please note, the “*Contractor’s License Bond*” may be used only in lieu of the “*Guaranty Agreement*” and does not waive any other license requirements.

- The bond must have a “Power of Attorney” attached from the bonding/insurance provider.
- The provider must have an approved rating from “*A.M Best Company, Inc.*”
- The bond cannot be released from liability for one (1) year after the license expiration or replacement of another indemnity (if required based on financial statement).

See attached for supplemental forms

PERSONAL FINANCIAL STATEMENT

(Attach Guaranty Agreement)

Date: / /

Name: _____

Residence Address: _____

City, State & Zip _____

CURRENT ASSETS (<i>Readily Converted to Cash</i>)		Dollars Only	
	Cash on Hand & in Banks		
	Savings Accounts		
	IRAs, 401(k) or Other Retirement Accounts		
	Accounts & Notes Receivable		
	Life Insurance (Cash Surrender Value)		
	Securities, Stocks and Bonds		
	Other Assets Readily Convertible to Cash (List)		
A	TOTAL CURRENT ASSETS		
	NON-CURRENT ASSETS (<i>NOT Readily Converted to Cash</i>)		
	Personal Residence		
	Other Real Estate Owned		
	Personal Property (automobiles, boats, jewelry, etc.)		
	Other Personal Property (household items, jewelry, collections)		
	Accounts & Notes Receivable		
	Other Non-Current Assets (List:)		
B	TOTAL ASSETS		
	CURRENT LIABILITIES (<i>Due within one (1) Year</i>)		
	Current Debt (credit cards, accounts)		
	Notes Payable (residence, home equity)		
	Other Notes Payable (other real estate)		
	Other Notes Payable (automobiles, boats, etc.)		
	Unpaid Taxes		
	Other Current Liabilites (List)		
C	TOTAL CURRENT LIABILITIES		
	LONG TERM LIABILITIES (<i>NOT due within one (1) Year</i>)		
	Notes Payable (residence, home equity)		
	Other Notes Payable (other real estate owned)		
	Other Notes Payable (automobiles, boats, etc.)		
	Loan on Life Insurance		
	Other (List)		
D	TOTAL LIABILITIES		
E	NET WORTH <i>(Total Assets minus Total Liabilities = Net Worth)</i>		
	TOTAL LIABILITIES & NETWORTH		

I certify that the information provided in this personal financial statement disclosure is true and accurate, to the best of my knowledge.

X _____
Signature of #1 Person on Personal Financial Statement

Date

X _____
Signature of #2 Person on Personal Financial Statement

Date

NOTICE: A personal financial statement with an executed Guaranty Agreement should only be provided as a last resort! Due to the personal liability and risk, the Board encourages to first consult with an attorney.



GUARANTY AGREEMENT

(Required with supplemental financial statements to increase working capital or net worth or by parent companies indemnifying subsidiaries)

Personal Guarantors must attach "Notice of Liability" statement (see attached) acknowledging risk. The Board encourages obtaining advice from an attorney.

I/we, the undersigned person(s), natural or corporate, do hereby pledge and agree to guarantee the debts and obligations of the within named contractor for all debts and obligations arising out of the contracting activities of the Contractor as defined by TENNESSEE CODE ANNOTATED, section 62-6-101, et seq.

I/we the undersigned Guarantors agree and contract to pay any and all debts and obligations of said Contractor as provided for above should they fail and refuse to pay and/or default on same.

I/we the undersigned Guarantors, agree to furnish and supply the Board with any and all financial reports, statements and information to which they may request in order to provide evidence of my/our financial security and stability.

I/we understand and agree that where the words "indemnities" appear in Rule #0680-1-.13 of the rules of the Board, it shall be in reference to this document, its title and wording to the contrary.

This document and the obligation undertaken shall be valid for a period of two (2) years and shall become null and void upon expiration of any license granted the Contractor by the Board or upon joint request, in writing, of the undersigned Guarantors and the Contractor, with the approval of the Board, provided, however, that any and all debts and obligations for, or arising out of work in process, upon the expiration, nullification and/or cancellation of this agreement, shall be covered and the Guarantor(s) herein shall remain liable for same.

This **GUARANTY AGREEMENT** is limited to the amount of \$ _____ is executed at the request of:

(NAME AS ON LICENSE)

The contractor to which this document is applicable for the express purpose of providing additional financial security and stability to, and for, said Contractor in order that they may obtain a license to engage in contracting in the State of Tennessee, Board for Licensing Contractors.

<p><input type="checkbox"/> Corporate Guaranty</p> <p><i>Must be signed by an authorized corporate official of the following business entity:</i></p> <p>_____ Name on Corporate Financial Statement (Attached)</p> <p>_____ Name of Corporate Official</p> <p>Title: _____</p> <p>_____ *Signature of Corporate Official</p> <p><i>*As a corporate official, I am fully authorized to bind and obligate corporation to the terms and conditions of this document as stated herein.</i></p>	<p><input type="checkbox"/> Personal Guaranty</p> <p><i>Must be signed by all persons named on the attached personal financial statement:</i></p> <p>_____ Name of Personal Guarantor</p> <p>_____ Signature of Personal Guarantor</p> <p>_____ Name of Additional Personal Guarantor</p> <p>_____ Signature of Additional Personal Guarantor</p>
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NOTARIZE

Affirmed/witnessed and subscribed before me this _____ day of _____, 20_____.

(Notary Public Signature) My Commission Expires: _____

-(Notary Seal) -

LINE OF CREDIT FORMAT

TO BE WRITTEN ON BANK, SAVINGS & LOAN LETTERHEAD
(May be used to supplement Working Capital)

(DATE)

TO: **CONTRACTOR'S LICENSED NAME** (Individual, Corporation, Partnership or LLC)
Address
City, State and Zip

RE: Contractor's License ID# 000_____

Dear _____:
(Contractor's Name)

You have requested of (Name of FDIC approved Bank, Savings & Loan) to establish a line of credit which will be available to (Name as on License) for use in conducting the contracting business for which a license is being sought from the State of Tennessee Board for Licensing Contractors.

We hereby establish a line of credit for these purposes in the amount of \$(Dollar Amount), which will be maintained for a period of one (1) year from the date of license issuance, subject to no adverse change in your financial condition.

As a condition of this arrangement, it is our understanding you will inform us and the Board for Licensing Contractors of any significant change(s) in your financial condition during the term of this commitment.

We the undersigned will endeavor to notify the Board for Licensing Contractors should we become aware of any significant change(s) in financial conditions of the above named applicant.

The undersigned hereby agrees to notify the Board for Licensing Contractors should we withdraw and/or eliminate the above named applicant's credit line.

By _____
Name Title

SAMPLE LETTER -- FOR BANK USE ONLY

Instructions to Contractor

- To increase the working capital, a contractor may take this **SAMPLE** form to their bank
- The line of credit (LOC) does not increase the net worth. (DO NOT add to Financial Statement!)
- If a contractor's working capital is negative, only 50% of the LOC's value is applied to the working capital
- The LOC is for the contractor's use and may be utilized at any time by the contractor
- This **format's exact wording must be used** in order for the Board to consider accepting
- Original LOC document must be submitted; copies are not acceptable
- Name on LOC must be in the **EXACT NAME** as on the license and financial statement
- Lending institution must be a bank, savings and loan which is FDIC approved

Contractor's License Bond

Bond No. _____

KNOW ALL MEN BY THESE PRESENTS, THAT
we, _____ as Principal and

_____ a _____
Corporation, having its principal office in the City of
_____, _____ as Surety, are held and firmly
bound unto the State of Tennessee, Department of Commerce and
Insurance, Board for Licensing Contractors, Nashville, Tennessee,
hereinafter called the Obligee, in the penal sum of five hundred
thousand and no/100 (\$500,000); OR one million and no/100
(\$1,000,000) lawful money of the United States of America to be paid
to said Obligee, for which payment well and truly to be made, we
bind ourselves, our heirs, executors, administrators, successors
and assigns, jointly and severally, firmly by these presents.

WHEREAS, a license has been granted by the Obligee to the above
bounden Principal authorizing the Principal to practice
contracting.

NOW THEREFORE, The conditions of the foregoing obligation are such
that if the Principal shall comply with and be subject to the
provisions of Contractor's License Law and Rules and Regulations
Title 62, then this obligation shall be null and void; otherwise to
remain in full force and effect.

Any person bringing claim against this bond may bring action in a
proper court of law for the amount of damages they may suffer as
the result of such act or omission by the Principal constituting
breach of a construction contract or breach of a contract for the
furnishing of labor, materials or professional services to
construction undertaken by the Principal in the performance of a
construction contract, except that such action must be brought
within one (1) year after the expiration of the license period
during which the act or omission occurred.

The aggregate liability of the Surety hereunder on all claims
whatsoever shall not exceed the penal sum of this bond in any
event.

The Surety may cancel this bond at any time by filing with the Obligee ninety (90) days written notice of its desire to be relieved of liability. The Surety shall not be discharged from any liability already accrued under this bond, or which shall accrue hereunder before the expiration of the ninety (90) day period.

Signed with our hands and sealed with our seals this, the _____ day of _____, 20_____.

Witness

By: _____
(Principal)

Witness

(Surety)

By: _____
Attorney-in-Fact

(Attach Power of Attorney)