**OUTLINE OF STANDARD GAI PROVISIONS**

**I. Basic provisions of the Short form GAI[[1]](#footnote-1)**

A. Indemnity clause: indemnification of surety against all loss, expense, and fees incurred by reason of issuing the bond, failure of principal to comply with GAI, or to enforce the GAI

B. Duty to defend clause: if the principal and indemnitors do not want the surety to pay a demand or claim, then, upon demand by the surety, the indemnitors and principal must defend the surety in litigation and posts collateral to cover the claim or demand plus interest, and fees and costs for defending same.

C. Right to settle clause: Surety retains the right to investigate and settle claims against the bond, even over objection of the principal and indemnitors, provided notice of the claim and opportunity to comment is provided to the principal and indemnitors.

D. Evidence of payment clause: a sworn, itemized statement of payments made by the surety is prima facie proof of the fact and amount of the indemnitors’ liability. Plus, surety is entitled to reimbursement for disbursements made in good faith under the belief it was liable or that such disbursements were necessary and prudent.

E. Attorney’s fees and costs: the surety is entitled to recover its attorney’s fees and costs of its investigation, as well as the cost of defense of suit by the obligee or claimants, as well as in any litigation between the principal, indemnitors, and the surety.

F. Collateral Deposit clause: surety has the right to demand the indemnitors deposit collateral for payment of possible liability or loss, which collateral the surety can use to pay claims, and return the unused balance to the principal

G. Assignment of Funds, etc. clause: this assigns to the surety all of the principal’s rights in contract funds, and all of the principal’s rights any supplies, tools, equipment and materials, all rights in subcontracts related to the bonded project, and all claims and actions against any one associated with the project. Also, GAI is a Financing Statement and provides a security interest under the UCC, in all equipment, material, and sums due in connection with any contract.

H. Right to information clause: this gives the surety to right to financial info and records about the principal and indemnitors and their projects.

I. Power of attorney clause: the surety is irrevocably appointed as attorney in fact for the principal and indemnitors to exercise all rights given by the GAI and to sign checks and documents on behalf of the principal and indemnitors that the surety deems necessary to those rights.

J. Payment of premiums: Indemnitors will pay all premiums when due.

K Trust: all equipment, material and subcontracts shall be subject to a trust in favor of the Obligee and surety, to be used for the bonded contract.

L. Defaults: the following shall be considered acts of default under the GAI:

1. Failure to perform work timely or pay bills when due
2. Declaration of default by Obligee
3. Loss sustained by surety
4. Establishment of a reserve by surety in good faith

M. Right to complete: Surety has the right to complete the bonded contract, as it deems appropriate and is given all of the principal’s rights in the bonded contract, materials and equipment.

N. Right to use funds paid by owner: Surety may offset its losses with funds received from obligee in performance of the contract.

O. Right to decline to issue new bonds.

**II. Model Agreement of Indemnity Long Form as of 1995[[2]](#footnote-2)**

A. Indemnity clause: Essentially the same provision as in the short form GAI.

B. Duty to defend clause: Essentially the same provision as in the short form GAI,

C. Right to settle clause: Essentially the same provision as in the short form GAI, assuming the surety acts in good faith.

D. Evidence of payment clause: Essentially the same provision as in the short form GAI, plus, surety is entitled to reimbursement for disbursements made in good faith under the belief it was liable or that such disbursements were necessary and prudent.

F. Collateral Deposit clause: Essentially the same provision as in the short form GAI, plus, failure to provide collateral on demand entitles the surety to injunctive relief and specific performance.

G. Assignment of Funds, etc.: Essentially the same provision as in the short form GAI. Also, GAI is a Financing Statement and provides a security interest under the UCC, in all equipment, material, and sums due in connection with any contract. Plus surety has the right to sell any assigned assets at public or private sale.

H. Right to information clause: Essentially the same provision as in the short form GAI. Plus, any bank, creditor, obligee or claimant is authorized to provide info about indemnitors to surety.

I. Power of attorney clause: Essentially the same provision as in the short form GAI.

J. Payment of premiums: Essentially the same provision as in the short form GAI.

L. Defaults: Essentially the same list of defaults as in the short form GAI, plus death by or change of control of the principal or any indemnitor,

M. Right to complete: Essentially the same provision as in the short form GAI. Plus, the surety has the immediate right to use principals supplies, tools, etc. in performance of contract.

O. Right to decline to issue new bonds. Essentially the same provision as in the short form GAI

P. Loans: Surety may loan funds to principal, which if unpaid, constitute an indemnifiable loss under the GAI.

Q. Trust Funds: All funds due under any bonded contract are trust funds for the benefit of those claimants entitled to payment by the principal, whose claims to the fund may be asserted by the Surety upon payment to such claimants. The trust funds are to be deposited in a bank trust account, payable only upon joint checks signed by the surety and principal

R. Discharge from suretyship: on demand, indemnitors will procure the discharge of the surety under the bond.

S. Protection of co-sureties: all co sureties are protected by this GAI.

T. Waivers of:

1. Homestead
2. Right to jury trial
3. Service of process

1. As published in the 2002 ABA, Fidelity and Surety Law Committee’s THE SURETY’S INDEMNITY AGREEMENT. [↑](#footnote-ref-1)
2. As published in 2002 Fidelity and Surety Law Committee’s THE SURETY’S INDEMNITY AGREEMENT. [↑](#footnote-ref-2)