

SCHOOL LEADERS RISK PROTECTOR[®]

In consideration of the premium charged, and in reliance upon the material statements made to the **Insurer** by **Application**, which forms a part of this policy, the **Insurer** and the **Insured** agree as follows:

1. INSURING AGREEMENTS

With respect to Coverages A and B, solely with respect to any **Claim** first made against an **Insured** during the **Policy Period** or any applicable **Extended Reporting Period** and reported to the **Insurer** pursuant to the terms of this policy, including, but not limited to, the terms described in Clause 7(b)(1), and subject to the other terms, conditions and limitations of this policy, this policy affords the following coverage:

COVERAGE A: LIABILITY FOR DAMAGES

The **Insurer** shall pay amounts, in excess of the applicable Retention, that an **Insured** is legally obligated to pay as **Damages** resulting from any **Claim** made against an **Insured** for any **Wrongful Act** of an **Insured**.

COVERAGE B: DEFENSE OF INSUREDS

Solely with respect to any **Claim** made against an **Insured**, in excess of the applicable Retention, for any **Wrongful Act** of an **Insured**, the following applies:

- (1) *The Insurer's Duty To Defend Insureds:* The **Insurer** shall have the right and duty to defend any **Suit** against any **Insured**, even if such **Suit** is groundless, false or fraudulent.
- (2) *The Insurer's Right To Settle Claims:* The **Insurer** shall have the right, but not the duty, to settle any **Claim** against any **Insured**, with the **School Entity's** written consent, which consent shall not be unreasonably withheld.
- (3) *Claim Expenses For Suits:* The **Insurer** shall, in excess of the applicable Retention and in addition to the **Policy Damages Limit of Liability**, pay for **Claim Expenses**; provided, however, that the applicable **Separate Limit of Liability** shall apply to **Claim Expenses** for any: (i) **IEP Hearing**, (ii) **Desegregation Suit**; (iii) **Breach of Contract Suit** and/or (iv) **Breach of Fiduciary Duty Suit**.
- (4) *Claim Expenses For Investigations:* The **Insurer** has the right, but not the duty, to investigate any **Claim** against any **Insured**. In the event the **Insurer** investigates a **Claim** or the **Insured** incurs **Claim Expenses** with the **Insurer's** prior written consent, the **Insurer** shall pay such **Claim Expenses**, in excess of the applicable Retention and in addition to the **Policy Damages Limit of Liability**.
- (5) *The School Entity's Right To Settle:* The **School Entity** may settle any **Claim** or **Suit** to which this insurance applies provided that the **School Entity** does so: (i) on behalf of all **Insureds** with prejudice; and (ii) without incurring **Claim Expenses** and/or **Damages** in excess of the Retention.
- (6) *When the Insurer's Duty To Defend Ends:*

No **Insured** may admit liability or settle any **Claim** or incur any cost or expense without the written consent of the **Insurer**. The **Insurer** shall not be obligated to pay any **Damages** or **Claim Expenses** or to undertake or continue defense of any **Claim** after an **Insured** refuses to consent to any settlement recommended by the **Insurer** and acceptable to the claimant, and the liability of the **Insurer** after such refusal shall not exceed the amount for which the **Claim** could have been settled, plus **Claim Expenses** incurred with the **Insurer's** consent up to the date of such refusal.

The **Insurer** shall not be obligated to pay any **Damages** or **Claim Expenses** or to undertake or continue defense of any **Claim** after the **Policy Damages Limit of Liability** has been exhausted by payment of **Damages** or after deposit of the applicable limit of the **Insurer's** liability in a court of competent jurisdiction, and in such case the **Insurer** shall have the right to withdraw from the further defense thereof by tendering control of said defense to the **Insured**.

2. DEFINITIONS

- (a) **Application** means each and every signed application, any attachments to such applications, other materials submitted therewith or incorporated therein and any other documents submitted in connection with the underwriting of this policy or the underwriting of any other School Leaders Errors and Omissions (or equivalent) policy issued by the **Insurer**, or any of its affiliates, of which this policy is a renewal, replacement or which it succeeds in time.
- (b) **Bodily Injury** means physical injury, sickness or disease (other than emotional distress or mental anguish), including death resulting therefrom.
- (c) **Claim** means:
- (1) a written or oral demand for money, services, non-monetary relief or injunctive relief;
 - (2) an administrative proceeding that is not defined as a **Suit**; or
 - (3) a **Suit**.
- (d) **Claim Expenses** means reasonable and necessary:
- (1) fees and disbursements charged by an attorney appointed or approved in writing by the **Insurer**;
 - (2) other fees, costs and expenses incurred in the defense of a **Suit** or the investigation of a **Claim** in accordance with Coverages B(3) and B(4),
- incurred either by the **Insurer** or by the **Insured** with the **Insurer's** written consent. **Claim Expenses** shall also include premiums for any appeal bond on a covered judgment, attachment bond, or similar bond but without any obligation to apply for or furnish any such bond, resulting from the investigation, adjustment, defense, and appeal of a **Claim** against any **Insured**; provided, however, that **Claim Expenses** shall not include **Insured's** compensation.
- (e) **Damages** means any amount that an **Insured** shall be legally required to pay because of judgments or for settlements; provided that **Damages** shall not include: (1) any amounts for which the **Insured** is not financially liable or for which there is no legal recourse against the **Insured**; (2) the cost and expenses of complying with an injunction or other form of equitable relief including, but not limited to, complying with the Americans with Disabilities Act (hereinafter referred to as "ADA") or any liability or costs incurred by any **Insured** to modify any building or property in order to make said building or property more accessible or accommodating to any disabled person; (3) the reimbursement of tuition, books, transportation expenses and other fees associated with educational activities; (4) any liability or costs incurred in connection with any educational, sensitivity, or other training program, policy or seminar relating to a **Claim** alleging discrimination or other **Employment Practices Violation**; (5) any amount that an **Insured** shall be required to pay pursuant to an **IEP Hearing** award, other than prevailing party fees; (6) employment-related benefits, stock options, perquisites, deferred compensation or any other type of compensation other than salary, wages or bonus compensation in a settlement or judgment for an **Employment Practice Violation**; or (7) matters that may be deemed uninsurable under the law pursuant to which this policy shall be construed.

Damages also means with respect to a covered judgment:

- (1) punitive, exemplary and multiple damages (where insurable by law);
- (2) front pay and back pay;
- (3) pre-judgment interest; and
- (4) post-judgment interest that accrues after entry of judgment and before the **Insurer** has paid, offered to pay or deposited in court that covered part of the judgment within the applicable limit of liability.

- (f) **Domestic Partner** means any natural person legally recognized as a domestic or civil union partner under: (1) the provisions of any applicable federal, state, or local law; or (2) the provisions of any formal program established by the **School Entity**.
- (g) **EEOC Proceeding** means an Equal Employment Opportunity Commission (or similar state, local or foreign agency) proceeding commenced after the **Expanded Coverage First Inception Date** by the filing of a notice of charges, service of complaint or similar document of which notice has been given to an **Insured**.
- (h) **Employee** means any past, present or future employee of the **School Entity**, including any full-time, part-time, seasonal and temporary employee or volunteer of the **School Entity**. An individual who is leased to the **School Entity** and any other individual who is contracted to perform work for the **School Entity**, or who is an independent contractor for the **School Entity** shall also be an **Employee**, but only if the **School Entity** provides or is required to provide indemnification to such individual, in the same manner as that provided to the **School Entity's** employees, pursuant to a written contract signed prior to such individual's commission of a **Wrongful Act**.
- (i) **Employment Practices Violation(s)** means any actual or alleged:
- (1) wrongful dismissal, discharge or termination (either actual or constructive) of employment, including breach of an implied contract;
 - (2) harassment (including sexual harassment whether "quid pro quo," hostile work environment or otherwise);
 - (3) discrimination (including, but not limited to, discrimination based upon age, gender, race, color, national origin, religion, sexual orientation or preference, pregnancy or disability);
 - (4) **Retaliation**;
 - (5) employment-related misrepresentation(s) to an **Employee** or applicant for employment with the **School Entity**;
 - (6) wrongful failure to employ or promote;
 - (7) wrongful deprivation of career opportunity with the **School Entity**, wrongful demotion or negligent **Employee** evaluation, including the giving of negative or defamatory statements in connection with an **Employee** reference to a prospective employer;
 - (8) wrongful discipline;
 - (9) failure to grant tenure;
 - (10) failure to provide or enforce adequate or consistent policies and procedure relating to any **Employment Practices Violation**;
 - (11) employment-related libel, slander, humiliation, or defamation; or
 - (12) violation of an individual's civil rights relating to any of the above;
- but only if the **Employment Practices Violation** relates to an **Employee**, or applicant for employment with the **School Entity** whether direct, indirect, intentional or unintentional.
- (j) **Expanded Coverage** means coverage for: (1) the defense of **EEOC Proceedings, IEP Hearings** and/or arbitrations, including **Claim Expenses** resulting therefrom, and (2) **Damages** resulting from **EEOC Proceedings** and/or arbitrations.
- (k) **Expanded Coverage First Inception Date** means the date set forth in Item 6(b) of the Declarations.
- (l) **Expanded Coverage Retroactive Date** means the date set forth in Item 7 of the Declarations.
- (m) **Extended Reporting Period** means whichever **Extended Reporting Period** described in Clause 9, if any, is applicable.
- (n) **Failure(s) of Security** means:
- (1) the actual failure and inability of the security of the **School Entity's** computer system to mitigate loss from or prevent a computer attack; or

- (2) physical theft of hardware or firmware controlled by the **School Entity** (or components thereof) on which electronic data is stored, by a person other than an **Insured**, from a premises occupied and controlled by the **School Entity**.
- (o) **Fixed Works** includes audiovisual works, copies, literary works, motion pictures, phonorecords, pictorial, graphic and sculptural works, sound recordings, works of visual art, lesson plans, or course packs.
- (p) **Fungus(i)** includes, but is not limited to, any of the plants or organisms belonging to the major group Fungi, lacking chlorophyll, and including **Molds**, rusts, mildews, smuts, and mushrooms.
- (q) **IEP** means an individual education plan to address the special educational needs of a student with disabilities that is developed by the: (1) **School Entity**; and (2) parent(s) or guardian(s) of a student.
- (r) **IEP Hearing** means a due process hearing: (1) conducted by an impartial officer; (2) arranged at the request of a parent(s) or guardian(s); and (3) regarding an **IEP**.
- (s) **Insured** means: (1) the **School Entity**; (2) the Board of Education of the **School Entity** or other governing board or body of the **School Entity**, including the Board of Regents, Board of Trustees or Board of Directors; and (3) any **Individual Insured**.
- (t) **Individual Insured** means any past, present or future duly elected or appointed director, officer, trustee, trustee emeritus, executive director, department head, member of the Board of Regents, member of the Board of Education, staff, faculty, student teacher, student intern or faculty member (salaried or non-salaried) of the **School Entity**, any **Employee**, or any **Outside Entity Executive**. Coverage will automatically apply to all new persons who become **Individual Insureds** after the inception date of this policy.
- (u) **Insurer** means the insurer named in the Declarations.
- (v) **Mold(s)** includes, but is not limited to, any superficial growth produced on damp or decaying organic matter or on living organisms, and **Fungi** that produce **Molds**.
- (w) **Named School Entity** means the school, school district, college, university, or other academic entity stated in Item 1 of the Declarations.
- (x) **Non-Employment Discrimination** means any actual or alleged harassment or unlawful discrimination, as described in subparagraphs 2(i)(2) and 2(i)(3) of the Definition of **Employment Practices Violation**, or the violation of the civil rights of a person relating to such harassment or discrimination, when such acts are alleged to be committed against anyone other than an **Individual Insured** or applicant for employment with the **School Entity**, including, but not limited to, students and parents.
- (y) **Outside Entity Executive** means any director, trustee, trustee emeritus or governor (or equivalent position) of the **School Entity**, who is or was acting at the specific request or direction of the **School Entity** as a director, trustee, trustee emeritus or governor (or equivalent position) in an **Outside Entity**. It is understood and agreed that, in the event of a disagreement between the **School Entity** and an individual as to whether such individual was acting "at the specific request or direction of the **School Entity**," this policy shall abide by the determination of the **School Entity** on this issue and such determination shall be made by written notice to the **Insurer** within ninety (90) days after the **Claim** is first reported to the **Insurer** pursuant to the terms of the policy. In the event no determination is made within such period, this policy shall apply as if the **School Entity** determined that such **Individual Insured** was not acting at the **School Entity's** specific request or direction.
- (z) **Outside Entity** means any non-profit corporation, community chest, fund or foundation that is not included in the Definition of **School Entity** and that is exempt from federal income tax as an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended.
- (aa) **Policy Damages Limit of Liability** means the aggregate limit of liability for **Damages** set forth as such in Item 3(a) of the Declarations.

- (bb) **Policy First Inception Date** means the date set forth in Item 6(a) of the Declarations.
- (cc) **Policy Period** means the period from the effective date of this policy to the expiration date or earlier cancellation date of this policy.
- (dd) **Pollutants** means, but is not limited to, any solid, liquid, gaseous, biological, radiological or thermal irritant or contaminant, including smoke, vapor, asbestos, dust, fibers, **Mold, Spores, Fungi**, germs, lead, soot, fumes, acids, alkalis, chemicals and Waste. "Waste" includes, but is not limited to, materials to be recycled, reconditioned or reclaimed.
- (ee) **Private Information** means any confidential or personally identifiable information.
- (ff) **Property Damage** means damage to, or destruction of tangible or intangible property, including the loss of use thereof, or the loss of use of tangible or intangible property which has not been damaged or destroyed.
- (gg) **Retaliation** means a retaliatory act of an **Insured** alleged to be in response to any of the following activities: (1) the disclosure or threat of disclosure by an **Employee** to a superior or to any governmental agency of any act by an **Insured** which is alleged to be a violation of any federal, state, local or foreign law, common or statutory, or any rule or regulation promulgated thereunder; (2) the actual or attempted exercise by an **Employee** of any right that such **Employee** has under law, including rights under worker's compensation laws, the Family and Medical Leave Act, the ADA or any other law relating to employee rights; (3) the filing of any claim under the Federal False Claims Act or any other federal, state, local or foreign "whistle-blower" law; or (4) **Employee** strikes.
- (hh) **Related Wrongful Act** means a **Wrongful Act** which is the same, related or continuous, or **Wrongful Act** which arises from a common nucleus of facts. **Claims** can allege **Related Wrongful Acts** regardless of whether such **Claims** involve the same or different claimants, **Insureds** or legal causes of action.
- (ii) **School Entity** means: (1) the **Named School Entity**; and (2) any **Subsidiary** thereof.
- (jj) **Separate Limit of Liability** means any limit of liability set forth in Item 3(b) of the Declarations.
- (kk) **Spore(s)** means any dormant or reproductive body produced by or arising or emanating out of any **Fungus(i), Mold(s)**, mildew, plants, organisms or microorganisms.
- (ll) **Subsidiary** means:
- (1) any organization of which, on or before the inception date of the **Policy Period**, the **Named School Entity** owns more than fifty percent (50%) of the voting interest, either directly, or indirectly through one or more of its **Subsidiaries**, or has, on or before the inception of the **Policy Period**, the right to elect or appoint more than fifty percent (50%) of the voting directors, or trustees, either directly or indirectly through one or more of its **Subsidiaries**;
 - (2) automatically any not-for-profit organization which becomes a **Subsidiary** during the **Policy Period** and of which the book value of such entity's assets determined in accordance with Generally Accepted Accounting Principles ("GAAP") totals less than 30% of the similarly calculated assets of the **Named School Entity** as of the inception date of the **Policy Period**; or
 - (3) any for-profit organization which becomes a **Subsidiary** during the **Policy Period** and of which the book value of such entity's assets determined in accordance with "GAAP" totals less than 20% of the similarly calculated assets of the **Named School Entity** as of the inception date of the **Policy Period**.

With regard to subparagraphs (2) and (3) above, the **Named School Entity** shall provide the **Insurer** with full particulars of the **Subsidiary** before the end of the **Policy Period**.

Any organization which becomes a **Subsidiary** during the **Policy Period**, but which exceeds the asset limitations stated in subparagraphs (2) or (3) above, shall be provided coverage under this policy, but only upon the condition that within 90 days after the date of its becoming a **Subsidiary**, the **Named School Entity** shall have provided the **Insurer** with full particulars of the new **Subsidiary** and agreed to any additional premium or amendment of the provisions of this policy required by the **Insurer** relating to such new **Subsidiary**. Further, the coverage as shall be afforded to the new **Subsidiary** is conditioned upon the **Named School Entity** paying when due any additional premium required by the **Insurer** relating to such new **Subsidiary**.

An organization becomes a **Subsidiary** when the **Named School Entity** owns more than fifty percent (50%) of the voting interest, either directly, or indirectly through one or more of its **Subsidiaries**, or has, on or before the inception date of the **Policy Period**, the right to elect or appoint more than fifty percent (50%) of the voting directors, or trustees, either directly or indirectly through one or more of its **Subsidiaries**.

In all events, such coverage as is afforded under this policy with respect to a **Claim** made against any **Subsidiary**, or any **Individual Insured** of a **Subsidiary**, shall only apply for **Wrongful Acts** committed or allegedly committed after the effective time that such **Subsidiary** became a **Subsidiary** and prior to the time that such **Subsidiary** ceased to be a **Subsidiary**.

(mm) **Suit** means:

- (1) a civil proceeding for monetary, non-monetary or injunctive relief that is commenced by service of a complaint or similar pleading;
- (2) an arbitration proceeding in which **Damages** are alleged and to which an **Insured** must submit or does submit with the **Insurer's** prior written consent;
- (3) an **EEOC Proceeding**; or
- (4) an **IEP Hearing**.

In no event shall "**Suit**" include any labor or grievance proceeding which is subject to a collective bargaining agreement.

(nn) **Vicarious liability** means liability attributed to the **School Entity** for any actual or alleged breach of duty, neglect, error, misstatement, misleading statement, omission, **Employment Practices Violation** or **Non-Employment Discrimination** by any independent contractor or leased employee that is not an **Individual Insured**.

(oo) **Wrongful Act** means:

- (1) with respect to **Individual Insureds**, other than **Outside Entity Executives**, any actual or alleged breach of duty, neglect, error, misstatement, misleading statement, omission, **Employment Practices Violation** or **Non-Employment Discrimination** by such **Insureds** in his or her respective capacities as such, or any matter claimed against such **Individual Insured** solely by reason of his or her status as any of the capacities listed in the Definition of **Individual Insured** of the **School Entity**;
- (2) with respect to the **School Entity**, the Board of Education of the **School Entity**, or other governing board or body of the **School Entity**, including the Board of Regents, Board of Trustees or Board of Directors, (i) any actual or alleged breach of duty, neglect, error, misstatement, misleading statement, omission, **Employment Practices Violation** or **Non-Employment Discrimination** by or on behalf of the **School Entity**, the Board of Education of the **School Entity**, or other governing board or body of the **School Entity** in the performance of duties; or (ii) any **Vicarious Liability**; and

- (3) with respect to **Outside Entity Executives**, any actual or alleged breach of duty, neglect, error, misstatement, misleading statement, or omission, in his or her capacity as such or any matter claimed against such **Outside Entity Executive** solely by reason of his or her status as such;

provided, however, that:

- (1) **Wrongful Act** shall not mean and this policy shall not cover any actual or alleged breach of duty, neglect, error, or omission that results in: (a) a **Failure of Security** or (b) wrongful disclosure of **Private Information**; and
- (2) with respect to any **EEOC Proceeding**, **IEP Hearing** or arbitration made against an **Insured** that has not progressed into a **Suit** as defined in paragraph 2(mm)(1), **Wrongful Act** shall not mean any actual or alleged breach of duty, neglect, error, misstatement, misleading statement, omission, **Employment Practices Violation** or **Non-Employment Discrimination** committed, omitted or occurring prior to the **Expanded Coverage Retroactive Date**.

3. SPOUSAL, DOMESTIC PARTNER AND LEGAL REPRESENTATIVE COVERAGE EXTENSION

Subject otherwise to the terms hereof, the policy shall cover **Claims** made against the estates, heirs, or legal representatives of deceased **Individual Insureds**, and the legal representatives of **Individual Insureds** in the event of an **Individual Insured's** incompetency, insolvency or bankruptcy, who were **Individual Insureds** at the time the **Wrongful Acts** upon which such **Claims** are based were committed.

Subject otherwise to the terms hereof, this policy shall cover **Claims** made against the lawful spouse or **Domestic Partner** of an **Individual Insured** for all **Claims** arising solely out of his or her status as the spouse or **Domestic Partner** of an **Individual Insured**, including a **Claim** that seeks damages recoverable from marital community property, property jointly held by the **Individual Insured** and the spouse or **Domestic Partner**, or property transferred from the **Individual Insured** to the spouse or **Domestic Partner**; provided, however, that this extension shall not afford coverage for any **Claim** for any **Wrongful Act** of the spouse or **Domestic Partner**, but shall apply only to **Claims** arising out of the **Wrongful Acts** of an **Individual Insured**, subject to the policy's terms, conditions and exclusions.

4. EXCLUSIONS

This policy does not cover any **Claim**:

- (a) alleging, arising out of or resulting, directly or indirectly, from any (1) dishonest, fraudulent, criminal or malicious act or omission, or (2) intentional or knowing violation of the law, or (3) profit, remuneration or pecuniary advantage to which an **Insured** was not legally entitled (the foregoing referenced in sub-paragraphs 4(a)(1), 4(a)(2) and 4(a)(3) shall be referred to as "**Excluded Conduct**"); provided, however, that: (i) the **Insurer** will defend a **Suit** alleging both (1) any of the **Excluded Conduct** and (2) **Wrongful Act(s)** not otherwise excluded until there is a judgment against or final adjudication against any **Insured** with respect to the **Excluded Conduct**, at which time the **Insured** must defend the **Suit** at its own expense and shall reimburse the **Insurer** for **Claim Expenses**; provided, however, that the **Insurer** will not defend such **Suits** if they allege any **Excluded Conduct** that has been the subject of any criminal proceeding in which an **Insured** has been found guilty, or pleaded nolo contendere or no contest;

For the purpose of determining the applicability of the foregoing exclusion 4(a), the **Wrongful Act** of an **Individual Insured** shall not be imputed to any other **Individual Insured** and only facts pertaining to and knowledge possessed by any past, present or future trustees, officers, or directors of the **School Entity**, or members of the Board of Regents or Board of Education of the **School Entity**, shall be imputed to the **School Entity**;

- (b) alleging, arising out of or resulting, directly or indirectly, from (1) false arrest, detention or imprisonment, (2) libel, slander or defamation of character, (3) assault or battery, (4) malicious

- (c) alleging, arising out of or resulting, directly or indirectly, from (1) **Bodily Injury** (2) **Property Damage**, or (3) any allegation relating to the foregoing exclusions in subparagraphs (1) and (2) that an **Insured** negligently employed, investigated, supervised or retained a person, or based on an alleged practice, custom or policy and including, without limitation, any allegation that the violation of a civil right caused or resulted from such **Damages** or **Claim**;
- (d) alleging, arising out of or resulting, directly or indirectly, from alleged (1) sexual molestation or (2) sexual abuse including any alleged direct sexual activity or (3) any allegation relating to the foregoing exclusions in subparagraphs (1) and (2) that an **Insured** negligently employed, investigated, supervised or retained a person, or based on an alleged practice, custom or policy and including, without limitation, any allegation that the violation of a civil right caused or resulted from such **Damages** or **Claim**;
- (e) alleging, arising out of or resulting, directly or indirectly, from the failure to effect or maintain any insurance or bond, which shall include, but not be limited to, insurance provided by self-insurance arrangements, pools, self-insurance trusts, captive insurance companies, retention groups, reciprocal exchanges or any other plan or agreement of risk transfer or assumption (the foregoing shall be referred to as "**Failure to Maintain Insurance**"); provided, however, the **Insurer** will defend a **Suit** alleging **Failure to Maintain Insurance** until there is a judgment against, final adjudication against, adverse finding of fact against, or adverse admission by, any **Insured**, with respect to the **Failure to Maintain Insurance**;
- (f) alleging, arising out of or resulting, directly or indirectly, from any misappropriation of trade secret or infringement of patent, copyright, trademark, trade dress or any other intellectual property right;
- (g) alleging, arising out of or resulting, directly or indirectly, from (1) the publication, in a digital or digitized format, of **Fixed Works**; or (2) infringement upon any actual or alleged right to control: (i) the creation of compilations of any **Fixed Work**; or (ii) publication of component parts of **Fixed Work**, including individual compositions from an album or compact disk or a combination of compositions consisting of some, but not all, of the original **Fixed Work**;
- (h) alleging, arising out of or resulting, directly or indirectly, from:
- (1) the actual, alleged or threatened discharge, dispersal, release or escape of **Pollutants**; or
 - (2) any direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**;
- (i) alleging, arising out of or resulting, directly or indirectly, from a breach of fiduciary duty, responsibility or obligation in connection with any employee benefit or pension plan, or to any amount due under any fringe benefit or retirement program (the foregoing shall be referred to as "**Breach of Fiduciary Duty**"); provided, however, the **Insurer** will defend a **Suit** alleging both: (1) a **Breach of Fiduciary Duty**; and (2) **Wrongful Act(s)** not otherwise excluded until one of the following occurs: (i) there is a judgment against, final adjudication against, adverse finding of fact against, or adverse admission by, any **Insured**, with respect to the **Breach of Fiduciary Duty**; or (ii) **Claim Expenses** up to the amount stated in Item 3(b)(4) of the Declarations ("**Breach of Fiduciary Duty Limit of Liability**"), at which time the **Insureds** must defend the **Suit** at their own expense;
- (j) brought by, or on behalf of:

- (1) one **Insured** against another **Insured**;
- (2) any entity that is owned, managed or operated, directly or indirectly, in whole or in part, by the **School Entity**; or
- (3) any parent company, subsidiary, director, officer, partner, trustee, successor or assignee of the **School Entity**, or anyone affiliated with the **School Entity** through common majority ownership or control;

provided, however, this exclusion shall not apply to any **Claim**: (1) alleging an **Employment Practices Violation** brought by or on behalf of any **Individual Insured**; or (2) brought by an **Individual Insured** in the form of a cross-claim or third-party claim for contribution or indemnity which is part of, and results directly from a **Claim** that is covered by this policy;

- (k) alleging, arising out of or resulting, directly or indirectly, from the failure to integrate or desegregate the student enrollment or participation in any **School Entity** (the foregoing shall be referred to as "**Desegregation**"); provided, however, the **Insurer** will defend a **Suit** alleging both: (1) **Desegregation**; and (2) **Wrongful Act(s)** not otherwise excluded until one of the following occurs: (i) there is a judgment against, final adjudication against, adverse finding of fact against, or adverse admission by, any **Insured**, with respect to the **Desegregation**; or (ii) **Claim Expenses** up to the amount stated in Item 3(b)(2) of the Declarations ("**Desegregation Limit of Liability**"), at which time the **Insureds** must defend the **Suit** at their own expense;
- (l) alleging, arising out of or resulting, directly or indirectly, from any liability or obligation under any express contract or agreement or out of any breach of contract; provided, however: (1) this exclusion does not apply to: (i) any liability or obligation an **Insured** would have in the absence of such contract or agreement; or (ii) **Claim Expenses** for express, written employment contracts; and (2) the **Insurer** will defend a **Suit** alleging breach of contract until one of the following occurs: (i) there is a judgment against, final adjudication against, adverse finding of fact against, or adverse admission by, any **Insured**, with respect to the breach of contract or (ii) **Claim Expenses** up to the amount stated in Item 3(b)(3) of the Declarations ("**Breach of Contract Limit of Liability**"), at which time the **Insured** must defend the **Suit** at its own expense;
- (m) alleging, arising out of or resulting, directly or indirectly, from, as of the **Policy First Inception Date**, any pending or prior: (1) **Claim**, demand, **Suit**, arbitration, mediation or litigation; or (2) administrative, bankruptcy or regulatory proceeding or investigation, of which any **Insured** had notice, or alleging or derived from the same or essentially the same facts as alleged in such pending or prior **Claim**, demand, **Suit**, arbitration, mediation or litigation or administrative, bankruptcy or regulatory proceeding or investigation;
- (n) alleging, arising out of or resulting, directly or indirectly, from the facts alleged, or to the same **Wrongful Act** or **Related Wrongful Act** alleged or contained, in any **Claim** which has been reported, or in any circumstances of which notice has been given under any policy of which this policy is a renewal or replacement or which it may succeed in time;
- (o) alleging, arising out of or resulting, directly or indirectly, from any **Wrongful Act**, circumstance or event committed, omitted or occurring prior to the **Policy First Inception Date**, if on or before the **Policy First Inception Date** any **Insured** knew or could have reasonably foreseen that such **Wrongful Act**, circumstance or event could lead to a **Claim**;
- (p) for any **Wrongful Act** arising out of an **Individual Insured** serving as an **Outside Entity Executive**, if such **Claim** is brought by the **Outside Entity** or by any director, officer, trustee, trustee emeritus or governor thereof;
- (q) alleging, arising out of or resulting, directly or indirectly, from any:
 - (1) purchase, sale, offer of or solicitation of an offer to purchase or sell securities, or violation of any securities law, including provisions of the Securities Act of 1933, or the Securities Exchange Act of 1934, as amended;

- (2) violation of the Organized Crime Control Act of 1970 (commonly known as "Racketeer Influenced And Corrupt Organizations Act" or "RICO"), as amended;
 - (3) antitrust violations, restraint of trade, or unfair competition, or violations of the Sherman Act, the Clayton Act or the Robinson-Patman Act, as amended;
 - (4) regulation promulgated under the foregoing laws; or
 - (5) any federal, state, local or foreign laws (a) similar to the foregoing laws (including "Blue Sky" laws) or (b) regulating the same or similar conduct or services, whether such law is statutory, regulatory or common law;
- (r) alleging, arising out of or resulting, directly or indirectly, from, as of the **Expanded Coverage First Inception Date**, any pending or prior: (1) **EEOC Proceeding, IEP Hearing** or arbitration, of which any **Insured** had notice, or alleging or derived from the same or essentially the same facts as alleged in such pending or prior **EEOC Proceeding, IEP Hearing** or arbitration; provided, however, that this exclusion shall not apply to a pending or prior **EEOC Proceeding, IEP Hearing** or arbitration that progresses to a **Suit** as defined in 2(mm)(1) and is reported to the **Insurer** as required in Clause 7;
- (s) alleging, arising out of or resulting, directly or indirectly, from any obligation pursuant to any workers' compensation, disability benefits, unemployment compensation, unemployment insurance, retirement benefits, social security benefits or similar law; provided, however, this exclusion shall not apply to a **Claim for Retaliation**; or
- (t) alleging, arising out of or resulting, directly or indirectly, from violation(s) of any of the responsibilities, obligations or duties imposed by the Fair Labor Standards Act (except the Equal Pay Act), the National Labor Relations Act, the Worker Adjustment and Retraining Notification Act, the Consolidated Omnibus Budget Reconciliation Act, the Occupational Safety and Health Act, any rules or regulations of the foregoing promulgated thereunder and amendments thereto or any similar federal, state, local or foreign statutory law or common law.

It is acknowledged that **claims** for violation(s) of any of the responsibilities, obligations or duties imposed by "similar federal, state, local or foreign statutory law or common law," as such quoted language is used in the immediately-preceding paragraph, include, without limitation, any and all **claims** which in whole or in part allege, arise out of, are based upon, are attributable to, or are in any way related to any of the circumstances described in any of the following:

- (1) the refusal, failure or inability of any **Insured(s)** to pay wages or overtime pay (or amounts representing such wages or overtime pay) for services rendered or time spent in connection with work related activities (as opposed to tort-based back pay or front pay damages for torts other than conversion);
- (2) improper deductions from pay taken by any **Insured(s)** from any **Employee(s)** or purported employee(s); or
- (3) failure to provide or enforce legally required meal or rest break periods.

Notwithstanding the foregoing, this exclusion shall not apply to the extent that a **Claim** is for **Retaliation**.

5. POLICY DAMAGES LIMIT OF LIABILITY; SEPARATE LIMIT OF LIABILITY

The **Insurer's** total liability for all **Damages**, in the aggregate, regardless of the number of persons, occurrences, **Claims** or entities covered by this policy, or claimants or **Claims** brought against any **Insured**, shall not exceed the **Policy Damages Limit of Liability**.

Claims Expenses do not reduce the **Policy Damages Limit of Liability**. Each **Separate Limit of Liability** shall be in addition to, and not part of, the **Policy Damages Limit of Liability** or any other **Separate Limit of Liability**.

The **Insurer's** total liability for **Claim Expenses** arising from any and all **IEP Hearings** shall not exceed the **IEP Hearing Limit of Liability**.

The **Insurer's** total liability for **Claim Expenses** arising from any and all **Desegregation** shall not exceed the **Desegregation Limit of Liability**.

The **Insurer's** total liability for **Claim Expenses** arising from any and all **Breach of Contract** shall not exceed the **Breach of Contract Limit of Liability**.

The **Insurer's** total liability for **Claim Expenses** arising from any and all **Breach of Fiduciary Duty** shall not exceed the **Breach of Fiduciary Duty Limit of Liability**.

The inclusion herein of more than one **Insured** shall not increase the **Policy Damages Limit of Liability** or the applicable **Separate Limit of Liability** (if any) of the **Insurer**. Further, a **Claim** that is made subsequent to the **Policy Period** or **Extended Reporting Period** (if applicable), which pursuant to Clause 7(b) is considered made during the **Policy Period** or **Extended Reporting Period**, shall also be subject to the **Policy Damages Limit of Liability** and applicable **Separate Limit of Liability** (if any).

If additional **Claims** are subsequently made which arise out of the same **Wrongful Act** or **Related Wrongful Act(s)**, then all such **Claims**, whenever made, shall be considered first made within the **Policy Period** or the **Extended Reporting Period** in which the earliest **Claim** arising out of such **Wrongful Act** or **Related Wrongful Act(s)** was first made and reported to the **Insurer**, and all such **Claims** shall be subject to one such **Policy Damages Limit of Liability**.

6. RETENTION

Subject to the **Policy Damages Limit of Liability**, exclusions and other terms of this policy, the **Insurer** shall only be liable for those **Damages** and **Claim Expenses** that are in excess of the Retention amounts stated in Item 4 of the Declarations.

In the event a **Claim**, other than a **Claim** that is made as an **IEP Hearing** and progresses to a **Suit** as defined in paragraph 2(mm)(1), triggers more than one Retention amount, then, as to that **Claim**, the highest of such Retention amounts shall be deemed the Retention amount applicable to **Claim Expenses** and/or **Damages** arising from such **Claim**.

In the event a **Claim** is made as an **IEP Hearing** and progresses to a **Suit** as defined in paragraph 2(mm)(1), then, as to that **Claim** the greater of either the **IEP Hearing Retention**, as stated in Item 4(c) of the Declarations or the **Wrongful Act Retention**, as stated in Item 4(a) of the Declarations, shall be deemed the Retention amount applicable to **Claim Expenses** and/or **Damages** arising from such **Claim**.

The Retention shall apply to each **Wrongful Act** or **Related Wrongful Acts** and shall be borne by the **School Entity** and remain uninsured. The **Insurer** may direct the **School Entity** to make partial or full payment of the Retention to others.

7. NOTICE / CLAIM REPORTING PROVISIONS

(a) Notice hereunder shall be given in writing to the addressee and at the address identified in Item 8 of the Declarations. Notice shall include and reference this policy number as indicated in the Declarations. If mailed, the date of mailing shall constitute the date that such notice was given and proof of mailing shall be sufficient proof of notice. If mailed, the date of mailing shall constitute the date that such notice was given and proof of mailing shall be sufficient proof of notice.

(b) For all coverage under this policy:

(1) before coverage will apply, notice in writing of a **Claim** made against an **Insured** must be given to the **Insurer** as soon as practicable either:

(a) during the **Policy Period** or any applicable **Extended Reporting Period**; or

- (b) within thirty (30) days after the end of the **Policy Period**, as long as such **Claim** is reported no later than thirty (30) days after the **Claim** was first made against an **Insured** provided that renewal or replacement coverage for the next succeeding **policy period** has been purchased from the **Insurer** (the "**Post Policy Reporting Period**");
- (2) if notice pursuant to Subparagraph 7(b)(1) above has been given to the **Insurer**, then any **Claim** which is subsequently made against an **Insured** and reported to the **Insurer** alleging, arising out of, based upon or attributable to the facts alleged in the **Claim** for which such notice has been given, or alleging any **Wrongful Act** which is the same as or a **Related Wrongful Act** to that alleged in the **Claim** of which such notice has been given, shall be considered related to the first **Claim** and made at the time such notice was given; and
- (3) if during the **Policy Period** or during an applicable **Extended Reporting Period** an **Insured** shall become aware of any circumstances which may reasonably be expected to give rise to a **Claim** being made against an **Insured** for a **Wrongful Act** that occurs prior to the end of the **Policy Period**, and, during the **Policy Period** or any applicable **Extended Reporting Period** written notice is given to the **Insurer** of (i) such circumstances, (ii) the **Wrongful Act** allegations that are anticipated, and (iii) the reasons for anticipating such a **Claim**, with full particulars as to dates, persons and entities involved, then any **Claim** that is subsequently made against an **Insured** arising out of such **Wrongful Act**, or the same **Wrongful Act** or **Related Wrongful Acts**, shall be treated as a **Claim** made against such **Insured** and reported to the **Insurer** at the time such notice of such circumstances was given.

8. WHAT INSURED MUST DO IN THE EVENT OF A CLAIM

- (a) In addition to providing notice as required in this policy, the **Insured** must also:
- (1) send the **Insurer** copies of all demands, suit papers, other legal documents and invoices for **Claim Expenses** received by such **Insured**, as soon as practicable;
 - (2) immediately record the specifics of any **Claim** and the date such **Insured** first received such **Claim**;
 - (3) upon the **Insurer's** request, furnish to the **Insurer** any and all documentation within the possession of the **Insured**; and
 - (4) give to the **Insurer**, and to any counsel the **Insurer** selects to represent an **Insured** in connection with a **Claim**, full cooperation and such information as the **Insurer** or the counsel may require, including, but not limited to, assisting the **Insurer** or the counsel in: (i) any investigation of a **Claim**, or other matter relating to the coverage afforded under this policy (including submission to an examination by the **Insurer** or the **Insurer's** designee, under oath if required by the **Insurer**); (ii) making settlements; (iii) enforcing any legal rights any **Insured** or the **Insurer** may have against any person or entity who may be liable to an **Insured**; (iv) attending depositions, hearings and trials; (v) securing and giving evidence, and obtaining the attendance of witnesses; and (vi) any inspection or survey conducted by the **Insurer**.

9. EXTENDED REPORTING PERIOD

- (a) *Automatic Extended Reporting Period*: If the **Insurer** or the **Named School Entity** shall cancel or refuse to renew this policy and the **Named School Entity** does not obtain replacement coverage as of the effective date of such cancellation or non-renewal, the **Named School Entity** shall have the right to a period of sixty (60) days following the effective date of such cancellation or non-renewal (the "**Automatic Extended Reporting Period**") in which to give written notice to the **Insurer** of any **Claim** made against the **Insured** during said sixty (60) day period for any **Wrongful Act** committed before the end of the **Policy Period**. This **Automatic Extended Reporting Period** shall immediately expire upon the purchase of replacement coverage by the **School Entity**.
- (b) *Optional Extended Reporting Period*: If the **Insurer** or the **Named School Entity** shall cancel or refuse to renew this policy, the **Named School Entity** shall have the right to a period of up to three (3) years following the effective date of such cancellation or nonrenewal (an "**Extended Reporting Period**"), upon payment of an additional premium amount:

- (1) for a one (1) year **Extended Reporting Period**, up to one hundred percent (100%) of the annualized policy premium,
- (2) for a two (2) year **Extended Reporting Period**, up to one hundred and fifty percent (150%) of the annualized policy premium, or
- (3) for a three (3) year **Extended Reporting Period**, up to two hundred percent (200%) of the annualized policy premium,

in which to give written notice to the **Insurer** of any **Claim** made against the **Insured** during said **Extended Reporting Period** and solely with respect to a **Wrongful Act** committed prior to the end of the **Policy Period** and otherwise covered by this policy. This right shall terminate, however, unless written notice of such election together with the additional premium due is received by the **Insurer** within thirty (30) days after the effective date of cancellation or non-renewal. This clause and the rights contained herein shall not apply to any cancellation resulting from non-payment of premium. If the **Named School Entity** exercises its right to purchase an **Extended Reporting Period**, that period incepts at the end of the **Policy Period** and there shall be no **Automatic Extended Reporting Period**.

As used herein, the term "annualized policy premium" means the premium set forth in Item 5 of the Declarations plus any additional premium charged in connection with any additional coverage added by endorsement.

10. CANCELLATION CLAUSE

This policy may be cancelled by the **Named School Entity** by surrender of this policy or by giving written notice to the **Insurer** stating when thereafter such cancellation shall be effective. This policy may also be cancelled by the **Insurer** by delivering to the **Named School Entity** or by mailing to the **Named School Entity** by registered, certified, or other first class mail, at the address shown in Item 1 of the Declarations, written notice stating when, not less than thirty (30) days thereafter, the cancellation shall be effective. However, if the **Insurer** cancels this policy because the **Named School Entity** has failed to pay a premium when due by mailing written notice of cancellation to the **Named School Entity** by registered, certified, or other first class mail, at the address shown in Item 1 of the Declarations, written notice stating when, not less than ten (10) days thereafter, the cancellation shall be effective. The mailing of such notice as aforesaid shall be sufficient proof of notice and this policy shall terminate at the date and hour specified in such notice.

If this policy shall be cancelled by the **Named School Entity**, the **Insurer** shall retain the customary short rate proportion of the premium hereon. If this policy shall be cancelled by the **Insurer**, the **Insurer** shall retain the pro rata proportion of the premium hereon. Payment or tender of any unearned premium by the **Insurer** shall not be a condition precedent to the effectiveness of cancellation, but such payment shall be made as soon as practicable.

If the period of limitation relating to the giving of notice is prohibited or made void by any law controlling the construction thereof, such period shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.

11. REIMBURSEMENT OF THE INSURER

If the **Insurer** has paid any **Damages** in excess of the **Policy Damages Limit of Liability** or **Damages** and/or **Claim Expenses** in excess of any applicable **Separate Limit of Liability** or within the applicable Retention, the **School Entity** shall be liable to the **Insurer** for any and all such amounts and, upon demand, shall pay such amounts to the **Insurer**.

12. SUBROGATION

In the event of any payment under this policy, the **Insurer** shall be subrogated to the **Insured's** rights of recovery therefore against any person or organization, and the **Insured** shall execute and deliver all

instruments and papers and do whatever else is necessary to secure such rights for the **Insurer**. The **Insured** shall do nothing to prejudice such rights. Any amount recovered in excess of the **Insurer's** total payment shall be restored to the **Insured**, less the cost to the **Insurer** of recovery.

13. OTHER INSURANCE

Such insurance as is provided under this policy shall apply only as excess over any other valid and collectible insurance, self insurance, or indemnification or any similar agreement, whether such other insurance or agreement is stated to be primary, pro rata, contributory, excess, contingent or otherwise.

In the event of a **Claim** against an **Insured** arising out of his or her service as an **Outside Entity Executive**, or a **Claim** against an **Insured** for the **Insured's** liability with respect to a leased **Employee** as described in the Definition of "**Employee**," coverage as is afforded by this policy shall be specifically excess of indemnification provided by such **Outside Entity** or such leasing company and any insurance provided to such **Outside Entity** or such leasing company.

Further, in the event other insurance is provided to an **Outside Entity** or leasing company referenced in the above paragraph by the **Insurer** or any member company of Chartis Inc. (Chartis) (or would be provided but for the application of the Retention amount, exhaustion of the **Policy Damages Limit of Liability** or failure to submit a notice of a **Claim**) then the **Insurer's** maximum aggregate **Policy Damages Limit of Liability** for all Losses combined in connection with a **Claim** covered, in part or in whole, by this policy and such other insurance policy issued by Chartis, shall not exceed the greater of the **Policy Damages Limit of Liability** or any applicable **Separate Limit of Liability** of this policy or the limit of liability of such other Chartis insurance policy.

14. NOTICE AND AUTHORITY

By the acceptance of this policy, the **Named School Entity** agrees to act on behalf of all **Insureds** with respect to the giving of notice of **Claim**, the giving or receiving of notice of cancellation or non renewal, the payment of premiums and the receiving of any premiums that may become due under this policy. All **Insureds** agree that the **Named School Entity** shall act on their behalf.

15. ACTION AGAINST THE INSURER

No action shall lie against the **Insurer** unless, as a condition precedent thereto, the **Insured** shall have fully complied with all the terms of this policy, nor until the amount of the obligation of the **Insured** to pay shall have been finally determined either by judgment against the **Insured** after actual trial or by written agreement of the **Insured**, the claimant and the **Insurer**.

Any **Insured** or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this policy to the extent of the insurance afforded by this policy. No **Insured** shall have any right under this policy to join the **Insurer** as a party to any action against other **Insureds** or the **School Entity** to determine the **Insureds'** liability, nor shall the **Insurer** be impleaded by the **Insureds** or the **School Entity** or their legal representatives. Bankruptcy or insolvency of the **Insured** or the estate of the **Insured** shall not relieve the **Insurer** of any obligation hereunder.

16. POLICY TERRITORY

Unless prohibited by law, this policy applies to **Wrongful Acts** committed anywhere in the world provided the **Claim** is made in the United States of America, its territories or possessions, or Canada.

17. ALTERNATIVE DISPUTE RESOLUTION PROCESS

It is hereby understood and agreed that all disputes or differences which may arise under or in connection with this policy, whether arising before or after termination of this policy, including any determination of the amount of **Damages** and **Claim Expenses**, must first be submitted to the non-binding mediation process as set forth in this Clause.

The non-binding mediation will be administered by any mediation facility to which the **Insurer** and the **Named School Entity** mutually agree, in which all implicated **Insureds** and **Insurer** shall try in good faith to settle the dispute by mediation in accordance with the American Arbitration Association's ("AAA") then-prevailing Commercial Mediation Rules. The parties shall mutually agree on the selection of a mediator. The mediator shall have knowledge of the legal, corporate management, or insurance issues relevant to the matters in dispute. The mediator shall also give due consideration to the general principles of the law of the state indicated in Item 1 of the Declarations as the mailing address for the **Named School Entity** in the construction or interpretation of the provisions of this policy. In the event that such non-binding mediation does not result in a settlement of the subject dispute or difference:

- (a) either party shall have the right to commence a judicial proceeding; or
- (b) either party shall have the right, with all other parties consent, to commence an arbitration proceeding with the AAA that will be submitted to an arbitration panel of three (3) arbitrators as follows: (i) the **Insured** shall select one (1) arbitrator; (ii) the **Insurer** shall select one (1) arbitrator; and (iii) said arbitrators shall mutually agree upon the selection of the third arbitrator. The arbitration shall be conducted in accordance with the AAA's then prevailing Commercial Arbitration Rules;

provided, however, that no such judicial or arbitration proceeding shall be commenced until at least ninety (90) days after the date the non-binding mediation shall be deemed concluded or terminated. Each party shall share equally the expenses of the non-binding mediation.

The non-binding mediation may be commenced in New York, New York; Atlanta, Georgia; Chicago, Illinois; Denver, Colorado; or in the state indicated in Item 1 of the Declarations as the mailing address for the **Named School Entity**. The **Named School Entity** shall act on behalf of each and every **Insured** in connection with any non-binding mediation under this Clause, the selection of arbitration or judicial proceeding and/or the selection of mediators or arbitrators.

18. HEADINGS

The descriptions in the headings of this policy are solely for convenience, and form no part of the terms and conditions of coverage.