



**For Independent Contractors and Vendors of the  
Collective Liability Insurance Cooperative**

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## Risk Transfer Manual

Including Insurance Coverage Recommendations

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# Table of Contents

SECTION	PAGE
Introduction.....	1
I. Contractors Insurance Requirements.....	2
II. Vendor Insurance Requirements .....	6
III. Special Events .....	9
IV. Facilities' Use and Short-Term Rentals.....	13
V. Appendices.....	16
VI. Concepts Pertaining to School District Building Contracts .....	22
VII. Insurance Coverage Descriptions for Public Entities .....	47
VIII. CLIC-Risk Management Protocols .....	65
IX. YMCA Use Agreements.....	69
X. Sample Laptop Policy .....	71
XI. Sample School Sexual Harassment Policy .....	74

## Introduction

One important aspect of the Risk Management Process is the transfer to others of risks that are imprudent for the governmental entity to retain.

THE RISK MANAGEMENT PROCESS CONSISTS OF:

1. Identifying exposures to loss.
2. Analyzing risk management alternatives.
3. Deciding on the best apparent alternative.
4. Implementing the decision.
5. Monitoring and improving the risk management results.

One of the risk management alternatives is the proper transfer of risks which are deemed to be hazardous and best handled “outside” the School District’s coverage. We recommend that certain risks be transferred to private sector insurance carriers covering those who are doing business with the District.

This benefits your program and possibly your budget in the long run.

## I. Contractors Insurance Requirements

Three criteria can be used in establishing these requirements:

1. Hazard level of the work to be performed.
2. Dollar size of the contract.
3. Length of time of the contract.

Hazard level is the most significant. However, recognition of dollar size and length of time is sometimes necessary to assure a sufficient selection of contractors.

For purposes of establishing insurance requirements, hazard levels have been broken into three categories:

### **Low Hazard**

### **Medium Hazard**

### **High Hazard**

“**Low Hazard**” would be best illustrated by “artisan type” contractors such as carpenters, plumbers (no digging or trenching), painters, and small repair type contractors.

“**Medium Hazard**” would include roofers, plumbing with minor digging, cement contractors, grading of land, landscapers, building maintenance, cleaning contractors and brick layers.

“**High Hazard**” includes excavation, underground contractors, road contractors, erection, welding projects and all major building construction and renovation, particularly removal of contaminants or pollutants.



## MINIMUM INSURANCE GUIDELINES

The following minimum insurance guidelines are established for your individual School District's benefit and the benefit of the Collective Liability Insurance Cooperative to be evidenced by contractors:

### 1. All Contracts Under \$100,000 and Under 60 Days Duration

- A. Workers' Compensation and Employers Liability- Limit \$1,000,000
- B. General Liability (Occurrence Basis only) with the following coverage features:
  - Broad Form General Liability Endorsement or equivalent, if not in the policy proper. (See Appendix A)
  - X, C, U Coverage
  - Independent Contractors Coverage
  - Products & Completed Operations
  - Contractual Liability
  - Thirty (30) day Notice of Cancellation to the Entity. (See Appendix C)
- C. Owners, Contractors Protective Liability in the name of the district. (See Appendix D)
- D. Vehicle Liability Coverage, including Illinois Statutes of Coverages including all owned, nonowned, and hired vehicles.
  - School District named as Additional Insured on a primary/noncontributory basis. (See Appendix B)
  - Thirty days' Notice of Cancellation. (See Appendix C)
- E. Limits of Liability for Items B and C above shall not be less than \$1,000,000 per occurrence, \$3,000,000 general aggregate.
- F. Umbrella Liability Limit \$1,000,000 per occurrence/\$1,000,000 general aggregate.

Limits of Liability for Item D above shall not be less than \$1,000,000 per occurrence and/or combined single limit.

### 2. Low and Medium Hazard Up To \$1,000,000 and 180 Days Duration (except those in Items 1 above)

- A. Same as Items 1A, B, C, D and E above.
- B. In regards to Umbrella Liability, depending on the nature of the contract, a limit should be required of between \$1,000,000-\$3,000,000 per occurrence.
- C. Limits of Liability for General Liability, OCP Liability and Vehicle Liability shall be not less than \$1,000,000 per occurrence, \$3,000,000 general aggregate for Personal Injury, Bodily Injury, and Property Damage.

### 3. All High Hazard Contracts Over \$25,000 and All Contracts Over \$500,000 (except those in Items 1 and 2 above)

- A. Same as Item 1A, B, C, D and E above.
- B. Limits of Liability for General Liability, OCP Liability and Vehicle Liability shall be not less than \$1,000,000 per occurrence and/or \$3,000,000 aggregate for Personal Injury, Bodily Injury and Property Damage.
- C. On major construction contracts make an attempt to obtain evidence that coverage has been extended at a minimum of five years beyond the completion date of the project for incidents involving completed construction alleging contractor liability.
- D. Any construction project needs the AIA document reviewed by your legal counsel.
- E. Contracts should be reviewed by district's legal counsel prior to signing any contracts.

- F. In regards to Umbrella Liability, depending on the nature of the contract, a suggested minimum limit of liability of \$5,000,000 should be required.
- G. It is recommended that you involve your CLIC Risk Management personnel/RPA Service Team in the bid specification drafting process. In this way, assistance towards proper insurance requirements and specifications can be established prior to the bidding of the particular project.

#### 4. Contract Bonds

It is recommended that Contract Bonds, (Bid, Performance, Completion, Labor, Materials and Maintenance) be seriously considered, as a requirement, for all contracts over \$250,000.

- A. The bid bond should be required as part of the bid or proposal submitted to the School District on contracts for construction, alteration, maintenance, or repair of any structures. The bid bond shall be in an amount equal to five percent (5%) of the amount of the bid or proposal, and shall be executed by a Surety Company licensed and admitted to do business in the State of Illinois and acceptable to the School District.

The performance and completion bond shall secure the faithful and complete performance of the contract by the contractor.

- C. The labor and material, or payment bond shall secure payment by the contractor of all sums due subcontractors, suppliers, laborers, workers and material men.
- D. The maintenance bond shall provide security that the construction work will be maintained in good and workable condition for a period of one year after completion of the work and acceptance thereof by the School District, and that all defects in the work, whether they are latent or apparent, that shall become known to the School District, or the contractor or anyone else for a period of at least one year after the completion of the work and the acceptance thereof by the School District. Many times the maintenance bond will not be needed due to the fact that most contractors will usually include a specified warranty of work in their contracts.
- E. All Bonds shall be submitted to the School District at least fourteen (14) days prior to the commencement of work under the contract.

#### 5. Property Insurance

All contracts involving building construction, renovation, or repair should contain provisions outlining who is responsible for providing the property insurance during the construction process. **This is typically called Builders Risk coverage.**

Circumstances may dictate that the contractor provides this coverage, or that the School District retains this obligation. You need to check your construction contract to see who is responsible for Builders Risk coverage.

Wherever the coverage is placed, the following recommendations apply:

- A. The amount of coverage shall be one hundred percent (100%) of the completed value of the structure, building or addition, and the scope of coverage should be all risk and include all materials relative to the work, wherever located or in transit.

Waiver of Occupancy Clause Endorsement, which will enable the School District to occupy the facility during construction of restoration, should be secured.

- C. Provision for coverage of materials at the site, before they become an integral part of the structure, should be made.
- D. All parties who have an interest in the property should be properly named as insureds as their interests may appear.
- E. Thirty days (30) Notice of Cancellation should be secured for the benefit of the School District. (See Appendix C)
- F. Whatever requirements are placed on the General Contractor and/or Construction Manager, they should also be placed on all subcontractors working on the project.

- G. On projects over \$75,000,000, consideration should be made to do an OCIP (Owners Construction Insurance Program) policy.

## 6. Professional Services Contracts

If the contract provides for the furnishing of “professional services,” such as an architect, engineer, design firm, medical professions or similar professions, etc., Professional Liability Coverage (Errors and Omissions) should be an additional requirement that those “professional service” firms give evidence that they have coverage.

Limits of Liability that are available may vary depending on the type and size of the contract. A minimum limit of liability of \$1,000,000 per claim is recommended.

## 7. Hold Harmless Clauses

All contracts should include a strong but reasonable hold harmless clause for the benefit of the community. Sample wording is included in Appendix E. These wordings should always be reviewed by your District’s individual legal counsel to make certain that they provide the most protection to your district.

## 8. Evidence of Coverage

Proper certificates of insurance should be in your files prior to the commencing of any work. For large contracts, over \$2,000,000, it is recommended that “Certified Copies of all Policies” be an additional requirement. Also, on all large contracts, Certificates and/or Certified Copies of Policies should be reviewed by your RPA Service Team in advance of the work contemplated.

Certificates should be reviewed in the following areas:

- A. Do the coverages and limits of protection conform to the requirements?
- B. Do the policy terms (period of coverage) cover the entire length of the contract?
- C. Are all interests properly shown?
- D. See Appendix G for sample certificate of Insurance formats.

The features listed above should also be examined when reviewing certified copies of policies. In addition, particular attention should be given to exclusions contained in the policy or endorsed on to the policy.

## 9. “Claims-Made” Liability Policies

This form of coverage should not be accepted from contractors, unless no other alternatives are available. Coverage should be on an “occurrence basis,” the traditional form to which we are accustomed. Many policies for providers of professional services listed in Item Six can only be obtained on a Claims-Made basis.

## 10. Insurance Carriers

All coverages and bonds should be with insurance companies licensed and “admitted” to do business in the State of Illinois.

An additional requirement that coverage be written with carriers “acceptable to the Collective Liability Insurance Cooperative,” is also recommended. We recommend that A.M. Best Ratings of less than (A VII) be accepted only under mitigating circumstances.

Occasionally, under special conditions, coverage may be written with carriers on an “approved” but “non-admitted basis” if the Certificates state “This insurance has been placed with an insurer that is not licensed by the State of Illinois.” In case of insolvency, payment of claims may not be “guaranteed” under the state guarantee fund. Please contact your RPA Service Team for further advice.

## II. Vendor Insurance Requirements

Every CLIC School District purchases a multitude of goods and services from outside sources. It is a necessary and integral part of the operation of every governmental entity. The School District must properly protect its interest along with being a “good purchaser” for the benefit of efficient operations and fiscal responsibility.

**Similarly, as in the “Contractor Section” of this manual, shown here are suggested vendor “guidelines” for your consideration.**

We have broken down this section into three categories:

1. **Providers of Supplies**
2. **Providers of Services**
3. **Providers of Temporary Help and Personnel**

If the annual expenditure for a single Vendor is over \$25,000, perhaps you may want to increase the required insurance limits of liability for that vendor.

### A NOTE REGARDING PURCHASE ORDER FORMS

Much of the time a large number of these transactions are handled through the use of a standard “purchase order form” required by you or offered by the vendor. When is the last time you read the fine print at the bottom of or on the back side of the form involved? Sometimes these forms are not designed to accommodate the special needs of governmental entities and the wording is not properly phrased. We strongly urge you to have your district’s legal counsel review your forms or those offered by vendors, and, if necessary, make the required modifications with the proper insurance requirements and “hold harmless clauses” along with other changes that may be necessary to best suit your School District.

Exercise extreme caution before signing purchase orders that may be offered to you by vendors for signature. They, sometimes, can contain clauses that may create liabilities for you. **Please have your district legal counsel review the forms and approve them before you sign any documents.**

First, let us define three categories of vendors for better understanding.

### PROVIDERS OF SUPPLIES

These vendors are those who provide items that have **little or no “labor factor”** in their sale to the School District. Examples may be office supplies, furniture and fixtures, and materials consumed within a short period of time.

### PROVIDERS OF SERVICES

These vendors would have **a fairly high “labor factor”** in their work with the School District. Examples would include accounting firms, law firms, consultants, vending services and caterers.

### PROVIDERS OF PERSONNEL AND TEMPORARY HELP

These are firms from whom you secure contract employees on a short term or temporary basis.

The following minimum insurance requirements are established for your benefit:

1. **Supply Vendors**
  - A. Workers’ Compensation and Employers Liability.
  - B. General Liability including Products and Completed Operations and Contractual Liability; “Occurrence Basis Coverage” only.

- C. Vehicle Liability (if vendor makes calls or visits your premises), including overages applicable to Illinois Statutes.
- D. Limits of Liability for coverages A, B and C above, of at least \$1,000,000 per occurrence.
- E. Umbrella Liability \$1,000,000 per Occurrence/\$1,000,000 general aggregate.

## 2. Service Vendors

- A. Workers' Compensation and Employers Liability.
- B. General Liability with the following coverage inclusions:
  - Broad Form General Liability Endorsement, or equivalent, if not included in policy proper. (See Appendix A)
  - Personal Injury Protection.
  - **Your School District should be named as Additional Insured on a primary/noncontributory basis.** (See Appendix B)
  - Thirty (30) days' Notice of Cancellation to the Entity. (See Appendix C)
- C. Vehicle Liability, including coverages applicable to Illinois statutes including all owned, nonowned, and hired coverages.
- D. Limits of Liability for Item A above shall not be less than \$1,000,000.
- E. Limits of Liability for Item B above shall be not less than \$1,000,000 per occurrence and/or \$3,000,000 aggregate for Personal Injury, Bodily Injury and Property Damage.
- F. Limits of Liability for Item C above shall be not less than \$1,000,000 per occurrence and or combined single limit.
- G. Umbrella Liability: Depending on the Nature of the Service Contract a suggested \$5,000,000 limit should be required.

**Special Note:** Certain "Service Contracts," for example, tree trimming or removal, or demolition, even if they may appear to fall into this category, may need special attention because of the hazardous nature of the work. Call your RPA Service Team for Consultation.

## 3. Temporary Help and Personnel

- A. Workers' Compensation and Employers Liability. (See Appendix F "Alternate Employer Endorsement" which should be shown as attached to the policy)
- B. General Liability with the following coverage extensions:
  - Broad Form General Liability Endorsement or Equivalent, if not included in the policy proper, including Personal Injury Protection. (See appendix A)
  - School District named as Additional Insured. (See Appendix B)
  - Thirty (30) days' Notice of Cancellation to the Entity. (See Appendix C)
- C. Vehicle Liability coverage, including coverages applicable to Illinois statutes, including all owned, nonowned and hired vehicles.
- D. Limits of Liability for Items B and C above shall be not less than \$1,000,000 per occurrence and/or aggregate, combined single limit for Personal Injury, Bodily Injury and Property Damage.
- E. Limits of Liability for Item A above shall not be less than \$1,000,000.
- F. Because of a potential liability claim arising out of a "temporary person" being injured, collecting Workers' Compensation Benefits and then filing a "third party action" against the School District, special care should be exercised in the wording of the "hold harmless clause" used in connection with temporary help organizations. **Please refer all "Hold Harmless Clause" wording to your District's Legal Counsel for their approval.**

G. Umbrella Liability: Depending on the nature of the contract a suggested \$5,000,000 limit should be required.

**Special Note:** In “Work Type Programs” done in connection with the State or other governmental entities, special care must be taken to properly outline who is assuming the responsibility for claims.

#### 4. Professional Services Contracts

As indicated in the Contractors Section of this manual, if the services provided involve the use of professionals, so called “Errors and Omissions” coverage should be an additional requirement. This would include Architects, Consultants, C.P.A. Firms, Medical, Technology, and Legal Firms with whom your School District does business.

#### 5. Hold Harmless Clauses

Major purchases in the Vendor category should include a strong “Hold Harmless Clause.” (See Appendix E) You should have your School District’s legal counsel review and draft strong “Hold Harmless Clause” wording. Your district’s legal counsel should review and approve all legal documents before you sign any documents.

#### 6. Certificates of Insurance

Proper and current Certificates of Insurance should be maintained and on file for all vendors doing business with your School District. (See Appendix G)

#### 7. Insurance Carriers

All coverages should be with carriers licensed and admitted to do business in the State of Illinois. They should not have an A.M. Best’s Rating of less than A VII.

**As an additional requirement, coverages should be placed with insurance carriers that are commonly “acceptable” to the School Districts.**

#### 8. Cyber Liability/Identity Theft Coverage

Any vendors that will store Personal Identifiable Information on their systems/software or any vendors performing work on district technology systems should provide Cyber Liability coverage. Below is a recommended requirement that will apply to most vendors meeting the above criteria, however in cases of larger vendors storing a large amount of data please consult a member of the Gallagher CLIC Team to determine if higher limits are needed.

*Cyber Liability/Identity Theft insurance with limits of Two Million Dollars (\$2,000,000) per claim and in the aggregate including defense costs.*

*The Cyber Liability policy must also name the District, its Board, Board members, employees, agents, and successors as an additional insured and provide an exemption for additional insureds in the “Insured vs Insured” exclusion.*

#### 9. Sexual Misconduct Coverage

Any vendors on premises when students are present should confirm their General Liability includes coverage for Sexual Misconduct coverage or provide evidence of a Sexual Misconduct policy providing a limit of at least \$1,000,000 per claim.



### III. Special Events

Many School Districts have facilities or conduct special events throughout the year.

These events, whether sponsored by your School District or outside organizations, create potential liabilities and hazards that must be controlled and managed. This section of the manual deals with suggested methods and recommended guidelines for such events.

**Note:** All events should require a written agreement drafted by your legal counsel relating thereto, containing a hold harmless clause that protects your School District. (See Appendix E)

#### DISTRICT SPONSORSHIP VERSUS PRIVATE SPONSORSHIP

From our viewpoint, it is usually better to secure private and/or nonprofit organization sponsorship, versus having the School District directly sponsor such events.

Although there may be isolated exceptions, by doing so, it normally will reduce your potential liabilities and claims arising out of such events.

Organizations such as the Chamber of Commerce, Fraternal Societies, and other Civic Groups can act as sponsors, secure volunteers, and conduct an excellent event for the benefit of the entire community. In many instances, they are already doing so, and if not, are willing to take on the task to promote their respective organizations. We encourage this for the benefit of all concerned.

By using this approach, the “**risk transfer**” mechanisms are, in most instances, easier to implement, and with the cooperation of the group, can be more easily accomplished.

What follows is a “**guide**” for the establishment of insurance requirements for such events, sponsored by the School District or an outside group.

Again, events have been categorized into “hazard groups” for risk transfer purposes. They are as follows:

**Low Hazard**

**Medium Hazard**

**High Hazard**

**Special Hazards**

In defining the terms used above, we offer the following typical examples:

#### LOW HAZARD

No Physical Activity by Participants and No Severe Exposure to Spectators, such as: Indoor or Outdoor Meetings, Auctions and Social Gatherings (no alcoholic drinks).

**Note:** Section IV will deal with Facilities Use and Rentals which will further address some of these categories.

## MEDIUM HAZARD

Limited Physical Activity by Participants and Negligible Severe Exposure to Spectators, such as: Dances, Animal Shows, Political Rallies, Flea Markets, Picnics, Parades, Team or Individual Sporting Events and “Family Type” Concerts.

Crowd Size of Events – Under 5,000

## HIGH HAZARD

Major Participation by Participants and/or moderate to severe exposure to Spectators, such as: Team or Individual Sporting Events (nonprofessional), circuses and carnivals with rides, parades with floats, and marathons or similar races.

Or Any Event With Crowd Size of Over 5,000 But Fewer Than 10,000.

## SPECIAL HAZARDS

**Any Events of the “Special Hazard” Nature Should Be Reviewed and Thoroughly Planned With Input from Your RPA Service Team and Your School District Legal Counsel.**

The Following Coverage Guidelines Are Submitted To Be Evidenced To The School District Prior To The Event.

### 1. Low Hazard

Specific Coverages for most events in this category, while desirable, are not absolutely necessary. If a private, and/or nonprofit group is sponsoring the event, a minimum of **\$500,000 per occurrence and/or aggregate Limit of Liability for Personal Injury, Bodily Injury and Property Damage is recommended.**

### 2. Moderate Hazard

- A. Workers’ Compensation and Employers Liability – Minimum Limit \$1,000,000.
- B. General Liability (Occurrence Basis Only), with the following coverage inclusions:
  - Broad Form General Liability. (See Appendix A)
  - Independent Contractor Coverage.
  - Contractual Liability.
  - Products and Completed Operations.
  - School District named as Additional Insured. (See Appendix B)
- C. Vehicle Liability Coverage, including Illinois State Statutes, including all owned, nonowned, and hired vehicles.
- D. Limits of Liability for Items B and C above shall not be less than \$1,000,000 per occurrence, \$3,000,000 aggregate, for Personal Injury, Bodily Injury and Property Damage.
- E. Umbrella Liability: Depending on the event a minimum limit of liability of \$1,000,000 – \$3,000,000 should be required.

### 3. High Hazard

- A. Same as A, B, C, D and E in Item 2 above.
- B. Limits of Liability for Item B in item 2 above shall be not less than \$1,000,000 per occurrence, \$3,000,000 aggregate for Personal Injury, Bodily Injury and Property Damage.
- C. Limit of Liability for Item C in Item 2 above shall not be less than \$1,000,000 per occurrence.

#### 4. Special Hazards

Because of the very unique circumstances involved in any of these categories of events, it is impossible to set an overall guideline.

Such factors as crowd size, potential hazards, availability and cost of insurance coverages, must be taken into consideration prior to the decision. As previously indicated, active involvement by:

**RPA Service Team,**

**Your Risk Manager,**

**Loss Control Personnel,**

**Your Legal Counsel,**

Will permit these events to be handled in the best possible way.

**Note:** This page will address just some of the factors involved in:

### SERVING OF ALCOHOLIC BEVERAGES

The serving of alcoholic beverages on School District Premises or functions sponsored or approved by the School District must be strictly controlled and monitored.

The potential liabilities that can exist, or be manifested could severely and adversely impact your School District.

The following basics are outlined for your information:

1. Any function, where alcoholic beverages are served, and money, **in any form**, changes hands, requires the issuance of a Liquor License. There need not be a specific charge for the beer, wine or liquor. For instance, if a retirement party is being held, and everyone contributes, say \$15.00 for the event, and beer, wine or liquor is served, this requires a license. To repeat, **any funds changing hands for the function, a license is required. If you can transfer the exposure to a club or restaurant, their Liquor Liability coverage would apply.**
2. It is strongly recommended that the license NOT be secured by the School District. The sponsor of the event should secure the license. If you can move the event to a banquet hall, country club or restaurant, you are transferring the risk. Those venues would be responsible for the liquor liability coverage.
3. The licensee should be required to secure Liquor Liability and General Liability Coverage in his name for all such events. The School District should be named as an Additional Insured on a primary/noncontributory basis on the General Liability and on the Liquor Liability (See Appendix B) policies.

The type of event, size of crowd, and other factors, such as availability and cost of private sector insurance coverages, will dictate the Limit of Liability to be required.

Minimum Limits of Liability should be \$1,000,000 for the smallest of events.

6. Contact your RPA Service Team well in advance, so that there is adequate time to determine and assist if necessary, in the securing of proper coverage.
7. A small bit of advice – We are not trying to be prudish, but, normally, the serving of alcoholic beverages is not essential to the success of any event, especially if sponsored by the School District. Closely analyze the benefit derived versus the exposure assumed.

## IV. Facilities' Use and Short-Term Rentals

The use of School District Facilities by outside groups may involve busses, meeting rooms, halls, bus facilities or other buildings owned by the School District. This section deals solely with SHORT TERM Rentals of from one day to two weeks.

For Risk Transfer purposes, again, we have categorized uses into three groups:

### **Use and Rental by Individuals**

### **Use and Rental by Nonprofit/Charitable Groups**

### **Use and Rental by Commercial (For Profit) Groups**

**Note:** All facilities' use agreements should require a written agreement relating thereto, containing a hold harmless clause that protects the School District (See Appendix E). Your legal counsel must be involved in negotiating the agreement.

Defining these groups by example would include:

**Use and Rental by Individuals**, for such events as basketball leagues, weddings, etc.

**Use and Rental by Nonprofit/Charitable Groups** would include civic groups, such as Chamber of Commerce, Service Clubs, Churches and similar groups.

**Commercial Rental** would include Flea Markets, Craft Shows, Business Displays, Business Seminars, Parties and Receptions.

For the use of facilities by the following types of groups, coverages are recommended as indicated:

#### **1. Individuals**

Evidence that the individual has "personal liability" coverage in force in a minimum amount of \$250,000 is recommended. This will normally take the form of a "Homeowners Policy, Condo or Tenants Policy," where the liability coverage is included along with other coverages for the individual.

A photostat or other type copy of the policy should be kept with your rental agreement as evidence of coverage.

See the Section on Liquor Liability (Page 18), if applicable.

#### **2. Nonprofit/Charitable Groups**

General Liability Coverage with a minimum Limit of Liability of \$1,000,000 per occurrence and/or aggregate for Personal Injury, Bodily Injury and Property Damage, including Products and Completed Operations and Contractual Liability.

The School District should be named as "Additional Insured on a primary/noncontributory basis," (See Appendix B), Certificates of Insurance should be in your files prior to the event.

Requests for Certificates of Insurance for Workers' Compensation should also be made, although not all groups may have coverage in force.

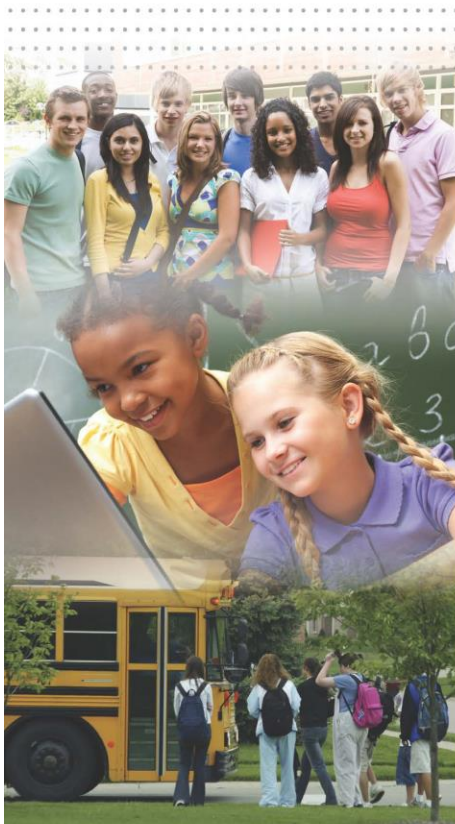
See the Section of Liquor Liability (Page 18), if applicable.

### 3. Commercial (For Profit) Groups

- A. Workers' Compensation and Employers Liability.
- B. General Liability (Occurrence Basis Only) with the following coverage inclusions:
  - Broad Form General Liability Endorsement, including Personal Injury or Equivalent, if not included in the policy proper. (See Appendix A).
  - Independent contractor Coverage.
  - Contractual Liability.
  - Products and Completed Operations.
  - District named as "Additional Insured on a primary/noncontributory basis." (See Appendix B)
- C. Vehicle Liability Coverage, including Illinois statutes and Coverages including all owned, nonowned and hired vehicles.
- D. Limits of Liability for Item 3 B above shall not be less than \$1,000,000 per occurrence, \$3,000,000 aggregate, for Personal Injury, Bodily Injury and Property Damage.
- E. Limit of Liability for Item 3 C above shall not be less than \$1,000,000 per occurrences.
- F. See "Certificates of Insurance," (Appendix G).
- G. See Liquor Liability Section (Page 18), if applicable.
- H. Umbrella Liability: A minimum limit of liability of \$1,000,000 per occurrence/\$1,000,000 general aggregate should be required. Please discuss with your RPA Service Team.



In association with



## Collective Liability Insurance Cooperative

### Recommendations for dealing with School-Affiliated and Outside Groups

As a public school district, both school affiliated and outside groups are constantly seeking access to district-owned facilities. This handout is meant to serve as a guide for handling this risk exposure.

#### Examples of Affiliated Groups

- » PTOs
- » Athletic boosters
- » Student foundations
- » Post graduation events
- » Parents as volunteers

#### Examples of Outside Groups

- » Men's basketball leagues
- » 4-H clubs
- » Church groups
- » Scout groups
- » YMCAs or other outside agencies
- » Contractors/Vendors

#### Affiliated Groups are covered by the CLIC Program for:

- » General Liability

#### Affiliated Groups are NOT covered by the CLIC Program for:

- » Crime if their organization's monies do not flow through the school's business office and is not part of the district audit.

These coverages can be purchased by the individual groups on an as-needed basis.

#### » Education foundations specifically need their own Directors and Officers Liability coverage

**Outside Groups** are NOT covered by the CLIC Program. It is suggested that one of the following forms of Contractual Risk Transfer methods be used before allowing these types of groups on your campus:

- » Certificates of Insurance (see below for hazard categories)
- » Indemnity agreements
- » Hold harmless agreements
- » Waivers and release forms
- » Facility use agreements

When requesting Certificates of Insurance, the below categories can be used to help you determine the appropriate coverage amounts outside groups should carry. In all cases, it is always recommended that the certificate **name the school district as an "additional insured on a primary/noncontributory basis."**

**PLEASE NOTE:** These are merely suggested insurance limits. Each project is different and if you are in doubt, **you should contact the CLIC Team for advice.**

HAZARD	JOB CONTRACT	TYPES OF GROUPS	SUGGESTED INSURANCE LIMITS
Low	\$0-\$25,000	Basketball leagues, 4-H clubs, churches, scouting, snow plowing, landscaping, artisan contractor repair work	General Liability: \$1,000,000 per Occurrence \$2,000,000 Aggregate Automobile: \$1,000,000 per Occurrence Workers Comp: \$1,000,000/\$1,000,000/\$1,000,000 Umbrella: 1,000,000
Medium	\$25,000 - \$1,000,000	General contracting, project work (roof/windows), service provider (cleaning)	General Liability: \$1,000,000 per Occurrence \$2,000,000 Aggregate Automobile: \$1,000,000 per Occurrence Workers Comp: \$1,000,000/\$1,000,000/\$1,000,000 Umbrella: \$2,000,000
High	\$1,000,000 +	Building construction, excavation, renovation, environmental-related work	General Liability: \$1,000,000 per Occurrence \$2,000,000 Aggregate Automobile: \$1,000,000 per Occurrence Workers Comp: \$1,000,000/\$1,000,000v/\$1,000,000 Umbrella: \$5,000,000 +

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## V. Appendices

### APPENDIX A

#### **Broad Form General Liability Endorsement**

Some General Liability policies provide only basic protection for BODILY INJURY and Property DAMAGE. In certain instances, this basic coverage may not be sufficient for potential claims. The Broad Form General Liability Endorsement is a convenient method of upgrading the standard Comprehensive General Liability Form previously issued by the Insurance Service Office, a statistical and policy making organization subscribed to by most insurers.

1. Blanket Contractual Liability.
2. Personal Injury and Advertising Liability: (libel, slander, false arrest, wrongful eviction, etc.)
3. Premises Medical Payments.
4. Host Liquor Liability.
5. Fire Legal Liability (Real Property) – damage to property in policyholder's care custody and control.
6. Broad Form Property Damage.
7. Incidental Medical Malpractice.
8. Nonowned Watercraft Coverage.
9. Limited Worldwide Coverage.
10. Additional Persons Insured.
11. Extended Bodily Injury (intentional acts to protect life or property).
12. Automatic Coverage – New locations.

The ISO Commercial General Liability policy being used by a number of insurers contain many of the coverages listed above. However, the Comprehensive General Liability policy and similar forms are in use by some insurers, thereby making a check for broad form general liability coverage particularly important. Asterisked items above are often more important than non-asterisked items in the context of contractors operation. They are often available separately.

## APPENDIX B

**Additional Insured Endorsement**

When it is recommended that your School District be named as an **“Additional Insured on a primary/ noncontributory basis,”** the following wording should be sought:

“It is understood and agreed that the following shall be Additional Insured on a primary/ noncontributory basis: the **(Name of the School District)**, and including all elected and appointed officials, all employees and volunteers, all boards, and their board members.

This coverage shall be primary to the Additional Insured, and not contributing with any other insurance or similar protection available to the Additional Insured, whether said other available coverage be primary, contributing or excess.”

The second paragraph may be somewhat more difficult to obtain from some insurance companies and the individual School District may need to use its judgment based upon hazard levels.

## APPENDIX C

**Notice of Cancellation, Reduction or Change**

Where it is recommended that Notice of Cancellation be given and sent to the School District, the following wording should be used:

“It is understood and agreed that thirty (30) Days Advance Written Notice of Cancellation, Reduction, and/or Material Change in coverage will be mailed to:”

(Name of Specific Person)

(Name of School District)

(Address)

(City, State, Zip)

## APPENDIX D

**Owners, Contractors, Protective Liability**

In this manual, it is recommended under certain circumstances, that Owner/Contractors Protective Liability Coverage be required from Contractors with whom you are doing business, listing your School District as the Named insured. While this coverage is already built into some basic General Liability Forms to which you might be named as an Additional Insured, coverage may not be adequate due to one or more of the following:

1. Aggregate limit applicable to most general liability policies, may have been reduced by claims from the contractor on other jobs.
2. Total policy limit available per occurrence being split between the School District's interest and the contractor's interest.
3. Excess liability limits in umbrella policy not adequate to compensate for 1 and 2.

## APPENDIX E

### Hold Harmless Agreements

There are many types of “Hold Harmless Clauses.” Shown below is a brief, simple format that could be used in small short term contracts.

“To the fullest extent permitted by law, the \_\_\_\_\_ agrees to defend, pay in behalf of, and hold harmless the \_\_\_\_\_, its elected and appointed officials, employees and volunteers and others working in behalf of the \_\_\_\_\_; against any and all claims, demands, suits, loss, including all costs connected therewith, for any damages which may be asserted, claimed or recovered against from the \_\_\_\_\_, its elected and appointed officials, employees, volunteers and others working in behalf of the \_\_\_\_\_, by reason of personal injury, including bodily injury and death; and/or property damage, including loss of use thereof, which arises out of or is in any way connected or associated with this contract.”

**We urge you to submit any forms that you may be using to your District’s legal counsel, for review and their approval.** On any large projects, please submit your proposed wording prior to commitment, so that your Legal Counsel may assist your School District in being protected to the fullest possible extent.

**Please take the time, and have your legal counsel review all current and proposed forms in use, that may have (or as importantly may not have) “Hold Harmless Clauses” contained therein. Many of the older formats may not be valid now, because of recent court interpretations since they were originally written.**

It cannot be overemphasized how important these clauses can become to you in the event of a claim or suit.

A small amount of time spent now could result in a substantial savings to your School District later.

## APPENDIX F

### Alternate Employer Endorsement

This endorsement applies only with respect to bodily injury, sickness, disease or death to your employees while in the course of special or temporary employment by the alternate employer in the state named in the schedule. Part One (Workers’ Compensation Insurance) and Part Two (Employers Liability Insurance) will apply as though the alternate employer is insured.

Under Part One (Workers’ Compensation Insurance), we will reimburse the alternate employer for the benefits required by the Workers’ Compensation law if we are not permitted to pay benefits directly to the persons entitled to them.

The insurance afforded by this endorsement is not intended to satisfy the alternate employer’s duty to secure its obligation under the Workers’ Compensation law. We will not file evidence of this insurance on behalf of the alternate employer with any governmental agency.

We will not ask any other insurer of the alternate employer to share with us a loss covered by this endorsement.

Premium will be charged for your employees while in the course of special or temporary employment by the alternate employer.

Part Four (your duties if injury occurs) applies to you and the alternate employer. The alternate employer will recognize our right to defend under Parts One and Two and our right to inspect under Part Six.

Alternate Employer                      Address                      State

(Your School District should be listed here)

## APPENDIX G

**Certificate of Insurance**

The following page shows a typical “ACORD” Certificate of Insurance form. This can be used as a sample of what your District should expect to receive from those with whom you are doing business.

This is merely a “guide.” On any complex, medium or large sized projects, again, we urge you to forward the Certificates to your RPA Service Team for their review and approval.

Underlying and key to proper Certificates is designing the contract properly in advance. If this is done, then you will avoid to the fullest extent conflicts in the interpretation of required coverages, terms and conditions later on.





# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
00/00/0000

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> ABC Insurance Agency 123 Main Street Anywhere, IL, USA	<b>CONTACT NAME:</b> Agent Name and Contact Information <b>PHONE</b> (A/C, No, Ext): <b>FAX</b> (A/C, No): <b>E-MAIL ADDRESS:</b>  <b>INSURER(S) AFFORDING COVERAGE</b> INSURER A : CNA Insurance Company INSURER B : INSURER C : INSURER D : INSURER E : INSURER F :	<b>NAIC #</b>
<b>INSURED</b> DEF Construction Company 456 Main Street Anywhere, IL, USA		

COVERAGES		CERTIFICATE NUMBER: 1141890619		REVISION NUMBER:		
<p>THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATION MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.</p>						
INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSD WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC <input type="checkbox"/> OTHER:		00-00-00	00-00-0000	00-00-0000	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 500,000 MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 3,000,000 PRODUCTS - COMP/OP AGG \$ 3,000,000 \$
A	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS ONLY		00-00-00	00-00-0000	00-00-0000	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$		00-00-00	00-00-0000	00-00-0000	EACH OCCURRENCE \$ 1,000,000 AGGREGATE \$ 1,000,000 \$
A	<input checked="" type="checkbox"/> WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/ MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N/A	00-00-00	00-00-0000	00-00-0000	PER STATUTE OTH-ER E.L. EACH ACCIDENT \$ 500,000 E.L. DISEASE - EA EMPLOYEE \$ 500,000 E.L. DISEASE - POLICY LIMIT \$ 500,000
A	PROFESSIONAL LIABILITY		00-00-00	00-00-0000	00-00-0000	1,000,000 EACH CLAIM
DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required) SCHOOL DISTRICT 999 IS NAMED AS AN ADDITIONAL INSURED ON A PRIMARY/NON-CONTRIBUTORY BASIS AS THEIR INTERESTS MAY APPEAR EXCEPT FOR WORKERS' COMPENSATION. NOTICE OF CANCELLATION/MATERIAL CHANGE, IF APPLICABLE SHOULD BE ATTACHED TO CERTIFICATE OF INSURANCE OR OTHERWISE EVIDENCED AS IN EFFECT UNDER THE POLICIES LISTED.						

<b>CERTIFICATE HOLDER</b>  SCHOOL DISTRICT 999 789 MAIN STREET ANYWHERE, ILLINOIS	<b>CANCELLATION</b>  SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  <b>AUTHORIZED REPRESENTATIVE</b> YOUR INSURANCE AGENT SIGNATURE
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ACORD 25 (2016/03)

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## VI. Concepts Pertaining to School District Building Contracts

### **COLLECTIVE LIABILITY INSURANCE COOPERATIVE (CLIC)**

### **CONCEPTS PERTAINING TO SCHOOL DISTRICT BUILDING CONTRACTS**

**REVISED NOVEMBER, 2021**

**PREPARED BY:**

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## SECTION VI

### Concepts Pertaining to School District Building Contracts

#### Introduction

The purpose of this section is to address, generally, certain risks associated with the indemnity, insurance, arbitration and waiver of subrogation provisions found in the typical American Institute of Architects Standard Form Agreement between Owner and Architect/Construction Manager/Contractor (“AIA Agreement”), which are often presented to school boards when they are considering contracts for new construction, additions or major renovations. School districts should note that construction law continues to evolve. What may have worked for a school district in a past year may no longer be of similar benefit in a subsequent year. As a benefit of its membership, CLIC members are permitted and encouraged to have their construction agreements reviewed by CLIC’s General Counsel for suggestions on how to better protect themselves from construction claims. However, specific legal advice should also be sought from school district counsel with sufficient experience in insurance coverage and construction law matters prior to executing any major construction contract.

Once your district has decided to proceed with a construction project, one of the first decisions to address is the business structure for the design and construction of the project. The school district may want a design/build, a general contractor, a construction manager or other form of contract. The risk/benefit of each form of contract is subject to many factors and will not be addressed in this section. The following discussion assumes that your project will proceed using a typical AIA Agreement, and will incorporate a complex and lengthy document entitled “AIA A201-2017 Edition, General Conditions of the Contract for Construction” (hereinafter “General Conditions”), and AIA A101-2017 Exhibit A – Insurance and Bonds (hereinafter “Exhibit A”).<sup>1</sup>

#### 1. INDEMNITY

The critical indemnity provisions are found in Article 3 (Contractor), Sections 3.18.1 and 3.18.2 of the General Conditions. The concept of indemnity is to shift the cost of a loss, lawsuit, etc. from one party to another. A loss generally includes both the costs to defend against a claim and the payment of funds to resolve a claim by settlement or judgment. Typical examples of defense costs are attorneys’ fees, court costs, depositions, expert witness fees, etc.

Under Section 3.18, the Contractor promises to indemnify the Owner and others for claims which arise out of the scope of the Contractor’s Work and are caused by the “negligent acts or omissions of the Contractor” or any of its subcontractors. While a school district may take some comfort in this provision, as a general rule, a school district is seldom sued only for the Contractor’s negligence. More often than not, a school district will be sued for its own

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<sup>1</sup> The AIA General Conditions have been revised several times over the years. Until recently, most Owners and Contractors were using the 2007 edition. The 2017 edition became effective Nov. 1, 2018. There are significant differences between each edition, so it is important to understand which edition will be applicable to your construction agreement.



alleged negligence. Section 3.18 will not fully protect a school district if sued for its own negligent conduct. Moreover, under Illinois law, any construction indemnity agreement that requires a Contractor to indemnify a school district for its own alleged negligence is void as against public policy. However, school districts are free to request insurance coverage from Contractors to cover other risks associated with a construction project. This is discussed more fully in the [Insurance](#) section below.

The standard indemnity language found in Section 3.18 of the General Conditions is often supplemented with additional language to provide a school district with significantly more protection. Some suggestions for supplementing the scope of indemnity in a construction contract are as follows:

#### § 3.18 INDEMNIFICATION

§ 3.18.1 To the fullest extent permitted by law, the Contractor waives any right of contribution against and shall indemnify, **defend**<sup>2</sup> and hold harmless the Owner, Owner's Representative, the Architect, and each of their board members, agents, consultants and employees from and against all claims, damages, losses and expenses (including but not limited to personal injury, property damage (real and personal) and loss of use of property), including but not limited to attorneys' fees, court costs and expert witness fees arising out of, relating to, resulting from or in connection with (1) any act or omission of Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder, or (2) any breach of the Contract Documents. Such obligations shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity or contribution which would otherwise exist as to any party or person described in the Contract Documents.

§ 3.18.2 In any and all claims by an employee of Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification and defense obligations in the Contract Documents shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Contractor or any Subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts. Contractor and every Subcontractor agree to assume the entire liability for all personal injury claims suffered by their own employees allegedly injured on the Project and waive any limitation of liability defense based on workers' compensation acts, or interpretations thereof, against claims by Owner for indemnification or contribution, and further agree to indemnify **and defend** Owner and its board members, agents and employees and consultants (Indemnitees) from and against all such claims, damages, losses and expenses, including reasonable attorneys' fees, that the Indemnitees may sustain as a result of such claims, except to the extent that Illinois law prohibits indemnity for the Indemnitee's own negligence, and further agree to pay any contribution appropriate for Contractor's and Subcontractors' own negligence. Contractor shall ensure that this provision is inserted in every contract between Contractor and Subcontractors. If such provision is not contained within a Subcontractor contract, or if a

<sup>2</sup> The term "defend" does not appear in the standard version of 3.18 and should be added at a minimum as defense costs often exceed the indemnity costs in litigated matters.

Subcontractor's insurance does not cover or is insufficient to pay such claims, Contractor shall assume all Subcontractor liability for such indemnification **defense** of or contribution to Owner.

§ 3.18.3 "Claims, damages, losses and expenses" as these words are used in the Contract Documents shall be construed to include, but not be limited to (1) injury or damage consequent upon the failure of or use or misuse by Contractor, its Subcontractors, agents, servants or employees, of any hoist, rigging, blocking, scaffolding, or any and all other kinds of items of equipment, whether or not the same be owned, furnished or loaned by Owner; (2) all attorneys' fees, court costs, expert witness fees and costs incurred in defense of the claim or in bringing an action to enforce the provisions of this Indemnity or any other indemnity contained in the Contract Documents; and (3) all costs, expenses, lost time, opportunity cost, etc. incurred by the party being indemnified or its employees, agents or consultants.

§ 3.18.4 Contractor's indemnity obligations shall, but not by way of limitation, specifically include all claims and judgments which may be made against the Indemnities under federal or state law or the law of other governmental bodies having jurisdiction, and further, against claims and judgments arising from violation of public ordinances and requirements of governing authorities due to Contractor's or Contractor's employees' method of execution of the Work.

§ 3.18.5 To the extent prohibited by the Construction Contract Indemnification for Negligence Act, 740 ILCS 3511, the indemnification obligations of Contractor under the Contract Documents shall not extend to the liability of Owner, any Owner's Representative, or the Architect, or their agents, consultants or employees, arising out of their own negligence.

§ 3.18.6 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

## 2. INSURANCE

### a. General Liability

The general insurance provisions are contained in Article 11 of the General Conditions and now supplemented with more detail in Exhibit A<sup>3</sup>. The Illinois cases that construed the AIA insurance procurement clauses teach that: (1) insurance obligation clauses are generally enforceable; (2) a failure to procure the specific coverage stated in the AIA agreement enables the parties to sue each other for breach of contract; (3) the scope of the insurance procurement clause will be given its plain ordinary meaning; and (4) even if the Contractor procures the required insurance, the Contractor's insurance policy may not provide the necessary coverage for a school district because of defenses such as late notice, cancellation, exhaustion of limits, and other applicable exclusions or limitations.

<sup>3</sup> In the past, Article 11 of AIA A201-2007 with regard to insurance was usually supplemented with additional terms and conditions specific to the particular project and set forth in Supplemental Conditions.

The following are the standard AIA insurance procurement clauses with related comments:

#### General Conditions

§ 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

**§ 11.1.4 COMMENT - This new provision requires the Contractor to promptly notify the Owner that its insurance may be cancelled or may expire. You should immediately contact the CLIC Administrator to determine a plan of action in the event you receive this type of notice.**

**§ 11.2.2 COMMENT - This provision is now broader and addresses the Owner's property insurance requirements which are spelled out in AIA A101-2017-Exhibit A. In the past, this was limited to the Owner's liability insurance. Now, in the event the Owner fails to procure or maintain the required insurance, the Owner waives any rights it may have to recover from others if the loss could have been covered by the Owner's insurance.**

In addition, where the Owner fails to notify the Contractor that it does not have the contractually required insurance, and a loss occurs, the Owner is obligated to reimburse the Contractor for all related costs and damages. Thus, it is imperative that before the project begins, you verify in writing that your District has in place the required insurance coverage, or that the Contractor has agreed to accept something less or different than the standard insurance requirements. A failure to do so could be a very costly mistake and could place your District in a potential uninsured position.

**§ 11.2.3 COMMENT - The reciprocal to 11.1.4, but applicable to the Owner. If the Owner fails to notify the Contractor about any cancellation or termination of its property insurance, the Owner once again waives any and all rights against others to the extent the loss would have been covered by the Owner's property insurance.**

**§ 11.3 COMMENT - This replaces old Section 11.3.7 and addresses waiver of subrogation which is discussed more fully in Section 3 Waiver of Subrogation, Infra, p.16. This now requires that applicable insurance policies purchased by any party may not prohibit the waiver of subrogation.**

**§ 11.3.2 COMMENT - This is a completely new provision and seeks to extend the Owner's waiver of subrogation to any Owner policy of insurance providing coverage to property adjacent to the Project. Under no circumstances should your District agree to these terms when negotiating your next construction contract. A typical Builder's Risk Policy (see discussion on Section A.2.3.1) would not provide coverage to adjacent property as it only covers the new work or a new structure.**

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**§ 11.4 COMMENT - This replaced 11.3.3, but has the same essential impact. We recommend that this section be deleted from construction contracts because your District could suffer a substantial loss of use due to a fire or due to defective construction forcing your District to obtain temporary facilities, additional labor expense, as well as additional transportation costs that would be waived under this current language. [See also 15.1.7.1 – Mutual Waiver of Claims for Consequential Damages.]**

#### Exhibit A

**§ A.3.1.3 Additional Insured Obligations** To the fullest extent permitted by law, the Contractor shall cause the commercial general liability coverage to include (1) the Owner, the Architect, and the Architect's consultants as additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the Owner's general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04, and, with respect to the Architect and the Architect's consultants, CG 20 32 07 04.

**§ A.3.2.1 Contractor's Required Insurance Coverage** The Contractor shall purchase and maintain the following types of limits of insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below: *(If the Contractor is required to maintain insurance for a duration other than the expiration of the period for correction of Work, state the duration.)*

Exhibit A typically does not set forth the insurance limits that may be needed for a project. This is an area left to the contracting parties to decide on a project-by-project basis.<sup>4</sup> Thus, Exhibit A will need to be supplemented by the school district during the contract negotiation process to dictate to the Contractor or other construction professional the school district's specific insurance needs for the project at hand. The following are suggested minimum limits:

**§ A.3.2.2.1** Commercial General Liability, including Premises-Operations; Independent Contractors' Protective; Products and Completed Operations; Broad Form Property Damage;

<sup>4</sup> The CLIC administrator prefers that Contractors provide a **minimum** of \$1M in CGL coverage for a single occurrence, \$3M aggregate, and a **minimum** of \$5M in umbrella/excess coverage on a school construction project. School districts should always consult with their own counsel and the CLIC administrator to determine if these **minimums** are adequate for the anticipated construction project.

(a) Each Occurrence:	\$1,000,000
General Aggregate:	\$3,000,000

§ A.3.2.5 Worker's Compensation: Statutory

§ A.3.2.6 Employer's Liability:	\$1,000,000 per Accident
	\$1,000,000 Disease, Policy Limit
	\$1,000,000 Disease, Each Employee

(b) Products and Completed

Operations;

Each Occurrence: \$1,000,000

General Aggregate: \$3,000,000

(c) Personal Injury and Advertising

Each Occurrence: \$1,000,000

General Aggregate: \$3,000,000

\* Property Damage Liability Insurance shall provide S, C, and X coverage

\* Broad Form Property Damage Coverage shall include Products and Completed Operations.

\* Products and Completed Operations coverage to be maintained for two (2) years after final payment.

§ A.3.2.2.1.2 Personal Injury Liability; with Employment Exclusion deleted:

Aggregate: \$1,000,000

§ A.3.2.2.1.5 Contractual Liability covering the Contractor's obligations under Section 3.18, and any other indemnification obligation of the Contractor contained in the Contract Documents.

§ A.3.2.3 Business Auto Liability (including owned, non-owned, and hired vehicles)

Each Occurrence:

\$1,000,000

Add: Umbrella/Excess Liability: \$5,000,000 over primary insurance<sup>5</sup>

## b. Certificates of Insurance

Most school district business managers are well familiar with insurance certificates which are often exchanged in connection with facility usage, transportation contracts and other school related matters. Article A.3 sets forth the following on insurance certificates for construction projects:

§ A.3.1.1 The Contractor shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article A.3 at the following times: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner's written request. An additional certificate evidencing continuation of commercial liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the periods required by Section A.3.2.1 and Section A.3.3.1. The certificates will show the Owner as an

<sup>5</sup> Exhibit A does not currently include a specific line item for Excess/Umbrella coverage which is a necessity on any construction project because of potential for large claims.

additional insured on the Contractor's Commercial General Liability and excess or umbrella liability policy or policies.

Most certificates of insurance issued by insurance brokers or agents also contain the following capitalized language:

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND OFFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

A certificate of insurance does not provide insurance coverage. It is simply a representation that a party has likely obtained insurance coverages in certain amounts. Most courts conclude that a certificate holder cannot reasonably rely on the certificate alone to establish insurance coverage. It should be noted that some certificates include a disclaimer that additional insured status is dependent on the policy being endorsed with the appropriate endorsement and that the certificate is not a guarantee that the endorsement was added. That is why it is always important to verify that the coverages and limits required by the contract (including the quality of the insurance carrier) are the same as those listed in the certificate.<sup>6</sup>

To verify true insurance coverage, and for reasons discussed more fully in the section below on Additional Insured Status, CLIC recommends that school districts consider including the following additional language in their construction contracts:

Prior to commencement of the Work, the Contractor shall secure the insurance, and provide evidence of the coverage required under Article A.3 and upon Owner's request, provide a copy of the applicable insurance policies. The copies of the insurance policies shall contain all applicable conditions, definitions, exclusions and endorsements as well as declaration pages. Examining a complete copy of the insurance policy is the only way to confirm that proper coverage is in place and that the school district has met all applicable requirements for coverage. School districts should at the very least consider securing a copy of the declarations page which will list all the endorsements to the policy issued to the Contractor.

### c. Additional Insured Status

In order to be "covered" by a Contractor's liability insurance policy in the event of a loss, a school district must be named as an additional insured ("AI") on the Contractor's policy. An AI generally stands in the same shoes as the primary insured, with some exceptions. Article A.3 of Exhibit A contains the following standard language addressing this concept:

<sup>6</sup> There have been documented instances where contractors falsified insurance certificates for construction projects and the fraud was not discovered until after a construction claim was filed. This type of fraud places the full risk of loss on the project owner and not the liable party.



§ A.3.1.3 To the fullest extent permitted by law, the Contractor shall cause the commercial general liability coverage to include (1) the Owner, the Architect, and the Architect's consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the Owner's general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04, and, with respect to the Architect and the Architect's consultants, CG 20 32 07 04.

Courts tend to give literal interpretation to contract language. Construction contracts are treated no differently. If you did not mention it in your contract, the law assumes you meant to exclude it or you must have decided it was not important to your contract. As you can see from the language of A.3.1.3 above, it is somewhat narrow as to who qualifies as an AI, and it also appears to mandate that status only for the CGL coverage. CLIC suggests that A.3.1.3 be modified as follows to eliminate ambiguity and provide school districts with better protection:

- (i) Name the school district as an AI on any umbrella/excess coverages;
- (ii) Expand the definition of AIs to include the school district's board members, agents, employees, representatives and consultants.

These changes will not only provide a school district with broader coverage, but will also provide the school district with higher limits of overall coverage in the event of a substantial liability claim.

It should be noted that insurance carriers continue to define and limit the extent of coverage that will be extended to an AI in the event of a claim. Thus, it is important for a school district to understand these limits of coverage at the negotiation stage of a project—not when the claim has already arisen. The limitations are generally found in the policy endorsements, which spell out when a school district will or will not qualify for coverage as an AI.

Although the AI endorsements will vary from carrier to carrier, the following language is fairly typical:<sup>7</sup>

[SAMPLE]

- A. Section II – Who is an insured is amended to include as an additional insured any person or organization when you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured on your policy.

<sup>7</sup> An Illinois court recently ruled that a general contractor was not an AI on a subcontractor's CGL policy because a condition of the policy endorsement—that the general contractor must be a party to a direct contract with the subcontractor—was not met. The court concluded that the endorsement was clear and unambiguous such that coverage was properly excluded.

Such person or organization is an additional insured only with respect to liability caused, in whole or in part, by “your work” performed for that insured and included in the “product-completed operations” hazard.

The coverage afforded to the additional insured is solely limited to liability specifically resulting from the conduct of the named insured, which may be imputed to the additional insured. (*emphasis added*)

- B. This endorsement provides no coverage to the additional insured for liability caused, in whole or in part, out of the claimed negligence of the additional insured, other than which may be imputed to the additional insured by virtue of the conduct of the named insured. (*emphasis added*)
- C. With respect to the insurance afforded these additional insureds, the following additional exclusion applies:

This insurance does not apply to:

1. “Bodily injury”, “property damage” or “personal and advertising injury” caused, in whole or in part, by the rendering of, or the failure to render, any professional architectural, engineering, or surveying services, including:
  - a. The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, held orders, change orders, or drawings and specifications, and
  - b. Willful misconduct of, or for defects in design furnished by, the additional insured or its “employees”. (*emphasis added*)

As a condition of coverage, the additional insured shall be obligated to tender the defense and indemnity of every claim or suit to all other insurers [including the school district’s insurer] that may provide coverage to the additional insured, whether contingent, excess or primary.

Note that the endorsement language above does not provide coverage for damages caused directly by the school district, but rather only those caused by the Contractor’s work that are imputed to the school district. Many plaintiffs’ lawyers are wise to these limitations and will allege a school district’s conduct, in part, caused claimed damages in an effort to trigger as much insurance coverage as possible for a loss.

In addition, school districts enjoy many immunities for negligent conduct and more limited immunities for willful and wanton conduct. As noted in subparagraph b. of the sample endorsement above, the Contractor’s policy would provide no coverage if a school district were sued for willful and wanton conduct. Where possible, this limitation on coverage should be removed from your Contractor’s CGL and express/umbrella insurance policies.

The CLIC policy contains its own AI endorsement which is similar in some respects to the sample above, but it also contains some important limitations as it relates to construction projects:

090345.000016 4843-6036-4541.2

**SECTION II - WHO IS AN INSURED** is amended to include as an additional insured any person or organization with whom you have agreed in writing in a contract, agreement or permit that such person or organization be added as an additional insured on your policy. Such person or organization is an additional insured only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by:

1. Your ongoing operations performed for that person or organization, "your product," or premises owned or used by you; but this provision does not include any architects, engineers, or surveyors with respect to any injury or damage arising out of the rendering or failure to render any professional services by or for you, including: (emphasis added)
  - a. The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
  - b. Supervisory, inspection, architectural or engineering activities. (emphasis added)
2. Your maintenance, operation or use of equipment, other than aircraft, "auto" or watercraft, leased to you by such person or organization. A person or organization's status as an additional insured under this endorsement ends when their contract or agreement with you for such leased equipment ends. With respect to the insurance afforded to these additional insureds, this insurance does not apply to any "occurrence" which takes place after the equipment lease expires.
3. "Bodily injury" or "property damage" arising out of "your product" which are distributed or sold in the regular course of that person's organization's business, but the insurance afforded that person or organization does not apply to:
  - a. "Bodily injury" or "property damage" for which that person or organization is obligated to pay damages by reason of the assumption of liability in a contract or agreement; but this exclusion does not apply to liability for damages that person or organization would have in the absence of the contract or agreement;
  - b. Any express warranty unauthorized by you;
  - c. Any physical or chemical change in the product made intentionally by the person or organization;
  - d. Repackaging, unless unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;
  - e. Any failure to make such inspections, adjustments, tests or servicing as that person or organization has agreed to make or normally undertakes to make in the usual course of business in connection with the sale of the product; or
  - f. Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part of ingredient of any other thing or

090345.000016 4843-6036-4541.2



substance by or for that person or organization does not apply to any insured person or organization, from who you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.

This coverage shall be excess with respect to the person or organization included as an insured by its provisions; any other insurance that person or organization has shall be primary with respect to this insurance, unless this coverage is required to be primary and contributory in the contract, agreement or permit referred to above.

The provisions of this coverage Extension do not apply unless the written contract or agreement has been executed (executed means signed by the named insured and additional insured) or permit issued prior to the “bodily injury” or “property damage”.

Just as it is important to understand where your school district stands as an AI on another’s insurance policy, it is equally important to know what your school district is agreeing to provide if it accepts contractual responsibility to name a Contractor or other construction professional as an additional insured on its own policies.

Generally speaking, being named as an AI on other insurance policies continues to be beneficial to school districts and to CLIC, in general, but it will often lead to coverage disputes between carriers, something that is beyond the scope of this manual.

It should also be noted that there are various forms of additional insured endorsements designed to narrow the scope of the additional insured coverage extended to entities such as CLIC who pay no premium for the coverage afforded them under the named insured’s policy. These endorsements may limit the definition of an additional insured to apply only when there would be coverage if the claim was made against the named insured. Another variation is the endorsement that applies only when the liability arises solely out of the work of the named insured. This latter endorsement may not inhibit the duty to defend (unless the complaint only alleges negligence of the school district) but would apply to limit or eliminate any indemnity if the liability was not solely based on the named insured’s work or conduct. As such, school districts should consider whether they will require a copy of the actual additional insured endorsement before work commences.

#### **d. Primary and Non-Contributory**

The party purchasing a policy of insurance is considered to be the primary insured. When a school district purchases insurance through CLIC, it is considered to be a primary party on that policy. A party’s status on an insurance policy will often times affect how the proceeds of an insurance policy will be distributed in the event of a claim. For example, if a Contractor and a school district each had a liability policy of insurance that provided coverage for the same loss, the policies would likely be deemed “mutually repugnant” and each would be exhausted at the same rate. If the Contractor’s policy paid \$500,000 to settle or defend the claim, the school district policy would also pay the same amount toward the claim. This can be an unfair result when the school district did nothing to cause the claim.

090345.000016 4843-6036-4541.2



Fortunately, the AIA added language to Exhibit A to address this issue. The standard contract language that requires the Contractors the CGL insurance coverage to be “primary and non-contributory” to the school district’s own CGL insurance policy.<sup>8</sup> See A.3.1.3

Assuming the Contractor procures insurance in accordance with this provision, the Contractor’s policy limits would be exhausted first before the school district’s policy would be required to contribute to a claim.<sup>9</sup>

This issue may be avoided, however, if the school district elects to make a “target tender.” A “target” or “selective” tender is one by which the insured, in this case the additional insured school district, deselects its own coverage and directs that only the insurer providing additional insured coverage is to respond to the loss. The target tender neutralizes the other insurer’s right to contribution and eliminates the need to consider other insurance clauses.

### e. Property Insurance

Under Article A.2.3 of Exhibit A, a school district is required to purchase “all risk”, also known as “builders risk”, insurance which protects the school district, and to some extent others, from certain risks during the construction process. This form of insurance policy essentially protects the new construction while in progress. Once the work is complete, this insurance ends and the school district’s standard property/casualty insurance coverage takes over.

Section A.2.3.1 sets forth below the typical requirements for the Owner’s “all risk” insurance:

§ A.2.3.1 Unless this obligation is placed on the Contractor pursuant to Section A.3.3.2.1, the Owner shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, property insurance written on a builder’s risk “all-risks” completed value or equivalent policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The Owner’s property insurance coverage shall be no less than the amount of the initial contract Sum, plus the value of subsequent Modifications and labor performed and materials or equipment supplied by others. The property insurance shall be maintained until Substantial completion and thereafter as provided in Section A.2.3.1.3, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, Contractor, Subcontractors, and Sub-subcontractors in the Project as insureds. This insurance shall include the interests of mortgagees as loss payees.

<sup>8</sup> By requiring the Contractor to include this language in its contracts with Subcontractors, the Subcontractor policies should also be exhausted before any school district CGL policy would be required to contribute toward a claim. The school district’s insurance in a sense becomes excess coverage for the claim.

<sup>9</sup> Although the legal effect of a Certificates of Insurance is limited, it remains advisable for school districts to request that the Certificates provided by Contractors spell out who is an AI under the policies, and also that the Contractor policies will be considered primary and non-contributory to the school district’s own insurance.

**§ A.2.3.1 COMMENT -** The District will need to establish that the Builder’s Risk policy it obtained for the project meets the contract requirements, or that the Contractor has accepted the policy that the District purchased for the project. It should be noted that all Builder’s Risk policies are not the same and some may have exclusions that are in conflict with the contract requirements. [See § A.2.3.1.1.] The District should have its insurance broker confirm in writing that its policies conform to the contractual requirements.

**§ A.2.3.1.1 Causes of Loss.** The insurance required by this Section A.2.3.1 shall provide coverage for direct physical loss or damage, and shall not exclude the risks of fire, explosion, theft, vandalism, malicious mischief, collapse, earthquake, flood, or windstorm. The Insurance shall also provide coverage for ensuing loss or resulting damage from error, omission, or deficiency in construction methods, design, specifications, workmanship, or materials. Sub-limits, if any, are as follows:

**§ A.2.3.1.2 Specific Required Coverages.** The insurance required by this Section A.2.3.1 shall provide coverage for loss or damage to falsework and other temporary structures, and to building systems from testing and startup. The insurance shall also cover debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and reasonable compensation for the Architect’s and Contractor’s services and expenses required as a result of such insured loss, including claim preparation expenses. Sub-limits, if any, are as follows:

*(Indicate below the cause of loss and any applicable sub-limit.)*

Cause of Loss	Sub-Limit

**§ A.2.3.1.1 and § A.2.3.1.2 COMMENT –** These new provisions greatly expand the Owner’s property insurance requirements by requiring coverage for losses or damages “from error, omission, or deficiency in construction methods, design, specifications, workmanship, or materials.” Most existing property insurance for Owners would not provide coverage for these types of risks. This language is intended to protect the Contractor and Architect from defective construction claims. This becomes particularly troublesome if the Owner waives subrogation [see comments to 11.3 above] and because the Owner is obligated to protect the Contractor in the event these causes of loss are not covered by the Owner’s policy. [See comments to 11.2.2]. Thus, the District should strike this language from the final agreement.

It is important for CLIC members to provide notice to the CLIC administrator as soon as possible of upcoming construction projects, including information about the size and scope of the project, so that the proper builder’s risk policy and coverage may be secured. It will also assist the CLIC administrator in providing guidance on what insurance coverages and amounts the Contractor/ Subcontractor should be providing on the project.

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As a general rule, builder's risk policies generally cover fortuitous events. They do not cover defective construction, nor do they cover architectural or engineering errors and omissions.

It is important to note that the CLIC-provided builder's risk insurance has certain limitations and is not designed to protect interests beyond those of the school district. Unless modified the builder's risk policy the school district is required to purchase must provide coverage to others beyond the school district. Thus, a school district relying on the CLIC builder's risk coverage should consider making the following changes:

(i) Modify the language from Section A.2.3.1:

This insurance shall include only the interests of the Owner.

(ii) Add to Section A.2.3.1, the following:

The insurance furnished by the Owner is not intended and will not cover tools, equipment, and materials of the Contractor. The Contractor shall bear the entire risk of loss with respect to the tools, equipment, and materials whether rented or leased, belonging to him. The Owner's insurance will cover products, materials, and equipment whether incorporated into the building or to be incorporated into the work. The Contractor shall make its own arrangements for any insurance it may require on such construction equipment and materials and equipment.

The Contractor shall at the Contractor's own expense provide insurance coverage for materials stored off the site after written approval of the Owner at the value established in the approval, and also for portions of the Work in transit until such materials are permanently attached to the Work.

(iii) Add to Section A.2.3.1 the following:

Notwithstanding any other provision in any Contract Document, the Owner, at its own option, may satisfy its obligation to purchase any insurance required of the Owner through its membership in a self-insured risk pool. The rights of the Owner as a member of a governmental self-insurance pool are intended to and shall constitute full satisfaction for any insurance required to be maintained by the Owner for the Work.

In the past, disputes have arisen on construction projects as to where builder's risk coverage ends and where the standard property insurance coverage begins. Most carriers have taken the position that builder's risk covers only the new construction work and does not provide coverage to any existing or adjacent structures damaged because of the new work. To correct this potential gap and eliminate disputes, the AIA now seeks to have the Owner purchase additional builder's risk coverage for adjoining structures. See Exhibit A – A.2.3.3. When read together with A.2.3.1.1, the Owner is assuming additional risk and it is imperative that they understand the importance of either obtaining this additional coverage through a separate policy, or that they delete these requirements from the final contract. To avoid triggering the school district's own property insurance, the school district should consider including the following language:

090345.000016 4843-6036-4541.2



The maintaining of such insurance as outlined in Section A.2.3.3 shall in no way constitute a waiver of the Contractor's legal liability for damage to any adjoining buildings or existing buildings or their contents or the Work and property of others on the site beyond the limits of insurance thus maintained. The Contractor shall hold the Owner free and harmless from any injury and damage resulting from the negligent or faulty performance of the contract by the Contractor or its Subcontractors or others under its control or direction.

### 3. BONDING

A construction surety bond is a contractual agreement among three parties: (1) the principal [typically the contractor]; (2) the obligee [in the context of this publication, the school district]; and, (3) the surety. Contrary to a relatively common misconception, it does not function exactly like insurance; the bond is based on a contractual arrangement between the principal and the surety, part of which is an agreement by the principal to indemnify the surety for claims made under the bond. The principal pays the surety a premium to obtain the surety's guarantee of contractual performance and payment obligations under the construction contract for the benefit of the obligee.

Section A.3.4 of Exhibit A requires Contractors to provide payment and performance bonds from a company authorized to issue them in the jurisdiction where the Project is located. It dictates the use of AIA Document A312, Payment Bond and Performance Bond, or provisions identical to it. The A312 form is a good starting point, however, school district construction (provided it meets the statutory threshold of "costing over \$50,000") will be subject to the Public Construction Bond Act, 30 ILCS 550/1 et seq. (the "Bond Act"). The Bond Act's primary purpose is to preserve subcontractors' and material suppliers' claims for payment on public projects. Another important function is its requirement of completion and performance, which benefit the public body letting the contract.

The Illinois Supreme Court has held that the Bond Act incorporates completion and payment provisions in all surety bonds for public construction in Illinois even if the bonds themselves do not include such provisions. Regardless of the actual language in a bond obtained pursuant to the Bond Act, all such bonds contain both completion and payment provisions as a matter of law (even if contrary terms are contained in the bond form). One appellate court went so far as to identify the applicable statutory language:

The principal and sureties on this bond agree that all the undertakings, covenants, terms, conditions and agreements of the contract entered into between the principal [the Contractor] and the State or any political subdivision thereof [here, the school district] will be performed and fulfilled and to pay all persons, firms and corporations having contracts with the principal or with subcontractors, all just claims due them under the provisions of such contracts for labor performed or materials furnished in the performance of the contract on account of which this bond is given, when such claims are not satisfied out of the contract price of the contract on account of which this bond is given, after final settlement between the officer, board, commission or agent of the State or of any political subdivision thereof and the principal has been made. 330 ILCS 550/1.

Given that this is the case, it is good practice to identify the Bond Act in Section A.3.4 of Exhibit A and to modify the bond form itself, A312, to meet the Bond Act's requirements. The

surety issuing the bond will not be surprised by this and a contractor that has experience constructing improvements for public bodies should not be either.

Under the Bond Act the government body must require its contractor to obtain bonding. It does not, however, dictate the penal sum. The Bond Act does not require the bond to be in the full amount of the contract – the amount is within the discretion of the government body. Typically, if a public body fails to procure a bond from a contractor, neither the public body nor its officials will be liable under a theory of ordinary negligence to an unpaid subcontractor. However, it is possible that if the failure to procure the bond was a direct act of a public official rather than that of a subordinate or agent and the act was willful and wanton, there could be liability. The same analysis could apply if the public body fails to require a bond in an amount sufficient to pay potential claims.

While exposure under a general negligence theory is minimal, unpaid subcontractors can assert contract claims under a third-party beneficiary theory against a public body that failed to comply with the Bond Act. Courts have held that subcontractors are beneficiaries of the Bond Act and can state a cause of action for breach of the implied contract terms in contracts between public bodies and contractors requiring compliance with the Bond Act. Proving entitlement to contract damages under a third-party beneficiary theory is not easy, but, it is good practice to comply with the Bond Act and require contractors to obtain a compliant statutory bond.

#### **4. WAIVER OF SUBROGATION**

Subrogation is the right of an insurance carrier (or a self-insured cooperative) to recover from another for a loss sustained by its insured. In essence, the insurance carrier tries to make itself whole for the loss. The right to subrogation is recognized in Illinois, but parties are free to and often waive this right by contract without really understanding the significance of their actions.

Article 11 of the General Conditions contains several sections that touch on the issue of subrogation, and the waiver of subrogation claims. The primary clause is found in Section 11.3.1 which states as follows:

§ 11.3.1 The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

§ 11.3.2 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.

Although the language above suggests that the waiver is limited “to the extent covered by property insurance,” in reality, CLIC members’ losses will always be covered by their existing property insurance given the high limits that CLIC maintains. Thus, CLIC members will almost always be precluded from pursuing a subrogation claim against a party responsible for the loss if they choose to waive subrogation.<sup>10</sup>

The waiver of subrogation clause is arguably designed for the protection of all parties in the event of a covered loss. It is the functional equivalent of non-fault insurance. It avoids litigation over who owes coverage for the loss. Without a careful review of the risks and benefits associated with this clause, a school district might inadvertently contract away its own rights and/or CLIC’s right to sue a party responsible for defective construction and any resulting loss. [See Exhibit A, A.2.3.1, A.2.3.1.1, A.2.3.1.2].

Waiver of subrogation is primarily a protection for the Architect, Construction Manager, Contractor and Subcontractors, and rarely is of any benefit to the school district. Studies do not support the theory that waiver of subrogation claims decreases overall construction costs. The principal reason is that each of these parties already has insurance applicable to the performance of its work and it will not realize any significant reduction in premiums by obtaining this concession in a construction contract from an Owner. One could also argue that waiving subrogation actually discourages safety on a construction project and increases the likelihood of claims, leading to increased future insurance costs for school districts.

In order to protect themselves and CLIC better, and to preserve the right to pursue responsible parties, CLIC members should consider making the following changes to the General Conditions as it relates to the issue of subrogation:

- (i) Delete Section 11.3.1 in its entirety;
- (ii) Delete Section 11.3.2 in its entirety;
- (iii) Consider adding the following:

Notwithstanding any other provision in any Contract Document, the Owner shall not, in any manner, be deemed or intended to have waived any right of subrogation which either it, or its insurance carrier or any self-insured risk pool of which it is a member, may have against the Architect,

<sup>10</sup> When your district waives subrogation, your district is also giving up its right to a defense, indemnity and hold harmless from other responsible parties as spelled out in 3.18 of the General Conditions. [See discussion on 3.18 and 11.3.1].



Contractor or Subcontractor of any tier, or any of their employees, agents, consultants, officers and directors.<sup>11</sup>

Although it is strongly recommended that school districts always preserve their subrogation rights against others, it is perfectly acceptable for a school district to request that Architects, Contractors, Construction Managers, Subcontractors and other construction professionals unilaterally waive their subrogation rights against a school district since inevitably any claim arising out of the construction work will most likely be attributable to their conduct and not that of the school district.

## 5. DISPUTE RESOLUTION

Under Article 15 of the General Conditions, all claims and disputes between a Contractor and an Owner are to be resolved first by mediation and if unsuccessful, by arbitration. Section 15.1.

### a. Selection of Arbitrators

The American Arbitration Association (“AAA”) has promulgated the Construction Industry Arbitration Rules which govern construction claims over \$500,000. In construction claims over \$500,000, each party selects a “party arbitrator” and the party arbitrators select a “neutral” arbitrator. Thus, at a minimum, three (3) arbitrators will ultimately decide the dispute. The cost of arbitration may very well render a “win” empiric at best. For example, if three arbitrators are selected and each charges \$4,000 per day for an arbitration hearing, that amounts to \$12,000 per day of arbitration, \$6,000 per party, not including your District or CLIC’s legal fees and other related expenses. If a school district prefers arbitration over litigation, the school district should consider limiting the number of arbitrators to one (1) for any claim less than \$1,000,000 when preparing its construction contract. See Section 15.4.1.

### b. Joinder of Parties

School districts choosing arbitration for dispute resolution should also consider the joinder of parties to the arbitration. In the case of a claim for construction defects, the school district may be required to litigate against the design professional in one forum and arbitrate against the Contractor and each Subcontractor in another forum. Multiple forums drive up the overall costs of litigation and may result in inconsistent results. If a school district chooses arbitration, it is recommended that all contracts be modified to allow for liberal joinder in any arbitration of all necessary parties. A suggested clause is as follows:

No Limitation on Consolidation or Joinder. Arbitration arising out of or relating to the Contract or performance of the Contract may include, by consolidation or

<sup>11</sup> If it becomes necessary for the CLIC member to give in on some aspect of subrogation, then we recommend that school districts only waive subrogation where the value of the new work exceeds \$5M, and only in those situations where it becomes necessary for the school district to purchase a separate builder’s risk policy. Make sure to check with the pool administrator in advance on this requirement.



joinder, the Architect, the Architect's employees or consultants and all other persons or entities necessary to a full and complete determination of the issues.<sup>12</sup>

### c. The Arbitration Process

Another consideration for school districts is the actual process to be followed during arbitration. Unless the contract specifies otherwise, the AAA Construction Industry Arbitration Rules will apply.<sup>13</sup> See Section 15.4.1. For example, the school district may want to limit the number of witnesses to be deposed, the number of experts to be called by either side and the length of the arbitration. Thus, the school district has an opportunity to better control its costs and expenses through a well-thought-out arbitration plan. Arbitration generally results in a more expedited resolution of the dispute where traditional litigation may take years to resolve. A suggested clause for consideration is as follows:

In the event that the parties select arbitration for binding dispute resolution, the procedure which shall be followed by all parties is as follows: (1) the parties shall exchange all documents and physical evidence relating to the dispute; (2) the parties shall exchange a list of witnesses who will testify at the hearing; (3) the parties shall exchange a pre-hearing brief 14 days before the first day of the scheduled hearing; (4) the hearing shall be heard and scheduled on consecutive days unless otherwise agreed to; (5) the hearing shall be heard by one arbitrator unless the amount in dispute exceeds \$1,000,000, and in such case, the parties agree that the dispute shall be heard by three arbitrators; (6) the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs associated with the arbitration, including but not limited to the cost of filing the arbitration; and (7) the arbitrator(s) shall write a written opinion setting forth their findings of fact and conclusions of law.

The above arbitration clause can be modified to allow for any level of discovery or any other procedures or limitations that the school district may require as part of the dispute resolution process.

## 6. OTHER CONDITIONS

### a. Site Security

While it may be argued that Article 10 of the General Conditions should address site security, these specific terms are absent from the General Conditions. Site Security is often overlooked or given very little consideration during a major project. Construction fences offer little or no protection from thieves or weekend vandals.

Given the escalation in the price paid for scrap metal, and in particular copper and steel, there have been a number of incidents reported recently where thieves stole construction

<sup>12</sup> Section 15.4.4.1 makes the joinder/consolidation of other arbitrations subject to the determination of an appointed arbitrator with AAA. It would appear that substantial cost would be involved in seeking joinder/consolidation through this lengthy process. Section 15.4.4.2 requires other parties to be joined must consent in writing. Thus, it is imperative that consistent language permitting joinder and consolidation be included in every contract between the construction professionals on your project.

<sup>13</sup> The Construction Industry Arbitration Rules can be found at [www.adr.org/aaa/faces/rules/searchrules](http://www.adr.org/aaa/faces/rules/searchrules).

materials from job sites substantially impacting not only the cost to complete the work, but delaying the completion of the project. School district projects are particularly vulnerable after hours, weekends and on holidays when thieves tend to attack in earnest.

In addition, several years ago student vandals broke into a CLIC member school building under construction and started a fire resulting in substantial damage to the new building and adjoining structures. This resulted in a claim that exceeded \$750,000 and substantially delayed completion of the new school building.

CLIC believes it is extremely important that any contract for a project that may leave a school building vulnerable after hours or on weekends have strong language dealing with the scope and level of site security, that any security companies provide adequate levels of insurance to protect the school district in the event of a theft, vandalism, or property damage, that the security company name the school district as an additional insured under its policy, that its policy be primary and non-contributory, and, if possible, have the security company agree to defend and indemnify the school district against any loss associated with their failure to provide adequate security on the job site. Furthermore, additional construction costs due to a delay from these types of losses may not be covered by the school district's existing property insurance coverage with CLIC, and may be excluded under the General Conditions. [See Section 15.1.7.1 Mutual Waiver of Consequential Damages and 11.4 Loss of Use Waiver]. The District should make it clear in the contract documents who will be responsible for the added costs associated with this type of delay.

#### **b. Weather Protection**

In the event any of the work involves roof penetrations, gutter removal or where the roof and existing buildings may be open to the elements during the Project, CLIC suggests that school districts consider including language in their contract that requires existing buildings to be maintained in "weather tight" conditions and to protect buildings from water infiltration due to improper drainage throughout the construction period. In addition, the Contractor or others involved in the Project should be required to repair any damage caused by a failure to keep the existing buildings in a weather tight condition. CLIC experienced some significant weather related claims and flooding in the past few years during summer construction projects (gutters removed on a roofing project that flooded a building) that could have been avoided if the Contractor had been more proactive in addressing these concerns during the project.

#### **c. Sump Pumps**

It is suggested that Contractors and Subcontractors be aware of their obligations to keep the sump pumps up and running at all times during the construction process. We have seen in other construction projects (during the Summer) where the sump pumps were either unplugged or disconnected, there was a substantial rain and the school building suffered substantial water damage, which the Contractor attempted to blame on the school district, and then later requested

090345.000016 4843-6036-4541.2

that CLIC provide insurance coverage for the property damage claim. Thus, it is advisable to include language in the contract pointing out this responsibility.<sup>14</sup>

#### **d. Safety**

Some of the Contractor's contractual duties for safety are set forth in Article 10. These can be summarized as follows:

- (i) 10.1 – safety programs;
- (ii) 10.2.1 – safety precautions;
- (iii) 10.2.2 – safety notices;
- (iv) 10.2.3 – safety barriers/warnings;
- (v) 10.2.4 – safety of hazardous materials.

There is no such thing as too much safety on a construction project. Many accidents occur because some construction employees do not speak up about a dangerous condition, some ignore dangers because of time constraints, and some simply believe others will address the danger. This cavalier behavior often results in serious consequences.

In order to better manage the risks of construction, school districts should make certain that the following terms remain in or are included in their contract:

§ 10.2.6 The contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.7.1 The Contractor, prior to commencing the work, shall submit to the Architect, in writing, a statement certifying that it is familiar with the Manual of Accident Prevention in Construction by the Associated General Contractors of America, current edition, and further that the Contractor will maintain at the Project a copy of said publication and will strictly enforce the applicable requirements of same. Contractor will also state the name of the Contractor's Safety Engineer who will also be responsible for enforcing all Safety Requirements.

§ 10.2.7.2 The Contractor and any Subcontractors shall at all times maintain safe ingress and egress to all areas of the site where Work is being performed."

#### **e. Criminal History Records**

<sup>14</sup> This type of loss should be covered if your District agrees to purchase separate builder's risk coverage for adjoining structures. Exhibit A, A.2.3.3.



School districts are well familiar with their statutory obligation to conduct fingerprint based criminal history checks on their employees. See 105 ILCS 5/10-21.9. The same requirements are applicable to “all employees of persons or firms holding contracts with any school district including, but not limited to, food service workers, school bus drivers and other transportation employees, who have direct, daily contact with the pupils of any school in such district.” 105 ILCS 5/10-21.9(f).

The AIA General Conditions are silent as to the responsibility for conducting these types of criminal background checks. School districts should consider including contract language that places responsibility on the Contractor, and those working for the Contractor, to conduct these checks given the sheer number of construction personnel involved, and the movement of construction personnel on and off a construction site. The Contractor is in the best position to know who and when someone is working on site. A sample clause for consideration is as follows:

The Contractor understands and acknowledges that its Work, in whole or in part, will be performed on public school property where there may be direct, daily contact with school students. The Contractor further understands and acknowledges that the State of Illinois requires that all employees of vendors, licensees, contractors or others having direct, daily contact with students are subject to a criminal history records check, may not have criminal convictions as enumerated in 105 ILCS 5/10-21.9(a), (c), and may not be listed on the Statewide Sex Offender Database or other similar registry. 105 ILCS 5/10-21.9(f). Prior to allowing any of its employees to perform Work on school property, the Contractor agrees to the following:

- (i) The Contractor agrees to provide evidence that each employee, agent, contractor or other person performing Work on school property under the Contract Documents was subjected to a thorough criminal history records check and Statewide Sex Offender Database check in conformity with 105 ILCS 5/10-21.9; to provide evidence that said persons are not listed on said database and said persons have no criminal convictions for the offenses listed under 105 ILCS 5/10-21.9;
- (ii) The Contractor agrees to provide the Owner, upon request, a copy of the criminal history records and database checks conducted on each such person performing Work on school property under this agreement;
- (iii) The Contractor agrees that it will not knowingly allow any employee to perform Work on public school property without having first performed a criminal records history and database check on said employee;
- (iv) The Contractor agrees it will not knowingly permit an employee with criminal convictions for offenses listed under 105 ILCS 5/10-21.9 to perform Work on public school property;
- (v) In the event the Contractor plans to subcontract with or use the services of another person or firm that may have direct, daily contact with students on school property, in order to fulfill its obligations under the Contract Documents, then in that event Contractor will require all such persons or firms to comply with the provisions of this section and 105 ILCS 5/10-21.9;

090345.000016 4843-6036-4541.2

- (vi) In the event the Contractor fails to comply with the provisions of this section and/or 105 ILCS 5/10-21.9, and as a result a suit or claim is instituted the Owner for harm caused by an employee or agent of the Contractor, or a suit or claim is instituted against the Owner for harm caused by an employee or agent of a subcontractor to the Contractor, then in that event the Contractor agrees to full indemnification of the Owner as defined in Section 3.18 of the Contract Documents;
- (vii) In the event the Contractor is unable to conduct the requested criminal records and database checks, the Contractor agrees to immediately notify the Owner in writing. In the event the Owner conducts said checks, the Contractor agrees to reimburse the Owner for the costs associated with said checks.

While the risk is relatively low that a convicted sex offender will be working on a school construction project that allows for direct, daily contact with school children, many schools now run year round day care and summer school increasing the potential for this type of contact. Placing responsibility on Contractors to perform these background checks does not give school districts a pass on performing their own background checks, but a school district will be in a much better position to defend against such a claim if it took reasonable steps to demand these checks and assurances from all construction personnel before the work begins. Moreover, school districts will be in a much better position to demand protection against such claims as well as indemnity from other contractors who may have failed to fulfill their contractual obligations.

#### **f. Prevailing Wages**

A school district in most instances has a statutory obligation to pay prevailing wages in connection with a construction project. 820 ILCS 130/1. The failure to pay prevailing wages is an area of increasing litigation by disgruntled employees.<sup>15</sup> The penalties for non-compliance include: a pay differential; attorney's fees and costs; an under payment award; and punitive damages.

The AIA General Conditions are silent on this issue. Thus, it is important for a school district to include language on this statutory duty, and to seek indemnification from Contractors and Subcontractors who fail to fulfill this duty. Some suggested language for consideration is as follows;

The Contractor acknowledges that it is familiar with the Illinois Prevailing Act, 820 ILCS 130/1, *et. seq.*, ("the Act"), and agrees to fully comply with all terms and procedures of the Act, including record keeping, during its performance under the Contract Documents.

The Contractor agrees to provide notice to all Subcontractors performing the Work of their obligation to fully comply with the Illinois Prevailing Wage Act, 820 ILCS 130/1, *et. seq.*, during their respective performance under the Contract Documents.

<sup>15</sup> The statute of limitations on claims by the Illinois Department of Labor is 5 years. The statute of limitations on an employee claim is 3 years. Information on current prevailing wage rates can be found at [www.state.il.us/agency/idol/rates.HTM](http://www.state.il.us/agency/idol/rates.HTM).



The Contractor and any of its Subcontractors shall pay, not less than the prevailing wages, as established, to all laborers, workmen, and the mechanics in the performance of the Work under the Contract Documents pursuant to Illinois Prevailing Wage Act, 820 ILCS 130/1, *et. seq.*

In the event the Contractors or any Subcontractors fail to comply with the provisions of this Section and/or 820 ILCS 130/1, *et. seq.*, and as a result a suit or claim is instituted by any individual, entity or agency against the Owner for an alleged violation, then in that event the Contractor agrees to fully indemnify, defend and hold harmless the Owner as defined in Section 3.18 of the Contract Documents.

Upon 2 business days' notice the Contractor and each Subcontractor shall make available to the Owner for inspection the records identified in the Prevailing Wage Act.

### **Conclusion**

The foregoing suggested changes are not an exhaustive list, but are intended to point out certain significant AIA contract terms that a school district should evaluate and consider changes to during the construction contract preparation phase. The foregoing is meant for discussion purposes only and is not intended to provide specific legal advice. A school district is strongly encouraged to consult with its own legal counsel before incorporating the changes discussed above and before executing any construction contract.

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090345.000016 4843-6036-4541.2

## VII. Insurance Coverage Descriptions for Public Entities

### PROPERTY AND INLAND MARINE

#### **Accounts Receivable**

Insurance against the loss that occurs when an insured is unable to collect outstanding accounts because of damage to or destruction of the accounts receivable records by a peril covered in the policy.

#### **Aggregate Limit**

This is a term for the total dollar limit which a liability insurance carrier will pay during a policy term as a result of covered liability claims. The aggregate limit imposes a coverage ceiling in addition to that imposed by any “per occurrence” or “per person” limits contained in the policy.

#### **Actual Cash Value**

Property valuation based on the cost of reproduction new, less the accrued depreciation as of the time of the loss. Commonly abbreviated ACV.

#### **Agreed Amount**

This is a term for an endorsement used to override any coinsurance penalty in the event of a covered loss. It is normally written for a period of one year. It applies to the coverages provided on the Building, Personal Property, and Business Interruption/Income forms.

#### **All Risk Insurance**

This is a term that is used to indicate when the perils of insurance are for all types of direct physical loss unless otherwise specifically excluded. It is the broadest type of coverage available. Most insurance contracts presently do not contain the word “all” due to the broad interpretation of that term by the court system. The substitute terminology is that the policy will cover the “risks of direct physical loss unless otherwise excluded.” The All Risk form is also referred to as Special Form Coverage.

#### **Appraisal**

An evaluation of property made to ascertain either the appropriate amount of insurance to be written or the amount of loss to be paid.

#### **Appurtenant Structures**

Buildings on the same premises as the main building; insured under a Property Insurance policy.

#### **Arbitration Clause**

The provision in a Property Insurance contract which states that if the insurer and insured cannot agree on an appropriate claim settlement, each will appoint an appraiser, and these will select a neutral umpire. A decision by any two of the three prescribes a settlement and binds both parties to it.

#### **Blanket Insurance**

A form of Property Insurance that covers, in a single contract, either multiple types of property at a single location or one or more types of property at multiple locations.

#### **Builders Risk Coverage Form**

A commercial property coverage form specifically designed for buildings in the course of construction. Typically, the owner of the project secures this policy.

**Building Ordinance**

Coverage protecting you against loss due to enforcement of existing building or zoning laws that result in additional costs to rebuild or demolish an insured building.

**Business Income Coverage Form**

A commercial property form providing coverage for “indirect losses” resulting from property damage, such as loss of business income and extra expenses incurred. It has replaced earlier Business Interruption and Extra Expense forms.

**Business Interruption Coverage**

Insurance which indemnifies the insured from loss due to the shutdown of a business operation due to an insured property loss. It pays profits and continuing expenses, such as rents, mortgage payments, utilities and management salaries. Ordinary payroll can be included or excluded.

**Care, Custody and Control**

Property left in the care, custody or control of the insured, which the insured is legally liable to protect from any damage.

**Coinurance Clause**

A condition in many property insurance policies which obligates an insured to either purchase a dollar amount of coverage at least to a specified percentage (typically 80%, 90% or 100%) of the value of the property insured or, if this obligation is not met, to participate in the payment of any loss to the extent that the obligation is not met.

**Concurrent Causation**

A term referring to two or more perils acting concurrently (at the same time or in sequence) to cause a loss.

**Consequential Loss (or Damage)**

An indirect loss arising out of the policyholder’s inability to use the property over a period of time, as opposed to a direct loss that happens almost instantaneously. Business Interruption, Extra Expense, Rents Insurance, and Leasehold Interest are the most common coverages included under the category of Consequential Loss coverages. (2) A loss not directly caused by a peril insured against, such as a spoilage of frozen foods caused by fire damage to the refrigeration equipment.

**Contingent Business Interruption Insurance**

Coverage for the loss of earnings of an insured because of a loss to another business which is one of the insured’s major suppliers or customers.

**Cost of Reproduction – New**

Value of the property is determined in accordance with local market prices current at the date of the appraisal for labor, material, overhead and profit; and represents cost to replace new the property in like kind. It does not include any allowance for overtime, premiums, or bonuses.

**Debris Removal Clause**

A provision that may be included in a Property policy contract to provide the insured with indemnification for expenditures incurred in the removal of debris produced by the occurrence of an insured peril.

**Demolition Costs**

Covers the cost of demolition incurred when demolishing undamaged property, often necessitated by building ordinances requiring that structures must be demolished after a certain degree of damage has been sustained.

**Depreciation**

A property valuation factor which recognizes observed condition with proper consideration for usage, age, maintenance, and care, and with such regard for functional and economic factors as are determined relevant.

**Difference-In-Conditions (DIC) Coverage**

A property insurance policy which supplements a named peril policy to provide all risk coverage. Flood and earthquake coverage may or may not be included in this policy.

**Direct Loss (or Damage)**

A loss which is a direct consequence of a particular peril. Fire damage to a refrigerator would be a direct loss. Spoiling of food in the refrigerator as a result of the fire damage would be an indirect loss.

**Electronic Data Processing Equipment & Media**

Coverage provided for computer equipment, data system information, storage, media and operating expenses incurred after a covered loss. Coverage may also include mechanical breakdown.

**Expediting Expenses**

Expenses incurred in order to hasten repair or replacement of equipment or other property. Typical costs include overtime pay differentials, air freight and manufacturers surcharges for pre-empting their customer order filling schedule.

**Extra Expense**

Provides reimbursement to the insured for the extra expenses reasonably incurred to continue the operation of a business when the described property has been damaged by a peril covered by the contract. This insurance is normally used by businesses where continuity of operation, regardless of cost, is a necessity as, for example, any business that would permanently lose customers if there were any suspension of operations.

**Fine Arts**

Covers fine arts, such as antiques, leaded glass or other types of artwork.

**Fire Protection Class**

The grading of fire protection, determined by the Grading Schedule of Cities and Towns, for a given area.

**Floater**

A number of different policies used to cover certain types of property which may be excluded under the normal conditions of the building/contents policy or otherwise not covered, such as equipment which frequently leaves the insured premises. The coverage "floats" with the property wherever it goes.

**Flood**

Covers surface waters, waves, tide or tidal water and the rising (including the overflowing or breaking of boundaries) of lakes, ponds, reservoirs, harbors, streams and similar bodies of water, spray from any of the foregoing, and water which backs up through sewers or drains.

**Improvements and Betterments**

Changes made by a tenant to the real property for which the tenant has a financial interest. If such building improvements were destroyed in a loss and only personal property were covered under a property insurance policy, the insured would not be reimbursed for the improvement loss.

**Increased Cost of Construction & Ordinance Deficiency**

Covers the additional cost of reconstructing a damaged, or destroyed, building where ordinance requires rebuilding with more expensive materials, services, or techniques.

**Indirect Loss (or Damage)**

Loss resulting from a peril but not caused directly and immediately by that peril. For example: Loss of property due to fire is a direct loss, while the loss of rental income as the result of the fire would be an indirect loss.

**Leasehold Coverage**

This coverage responds when the insured is required to continue rent payments even though the leased building is wholly or partially untenable as the result of a covered peril. It also covers the additional cost of a new lease for a limited amount of time if the old lease must be cancelled.

**Loss Fund**

The amount of money the carrier requires that the cooperative is responsible to pay claims in any one policy term.

**Liberalization Clause**

A clause in Property Insurance contracts which provides that if policy or endorsement forms are broadened by legislation or ruling from rating authorities and no additional premium is required, then all existing similar policies will be construed to include the broadened coverage.

**Loss Fund Policy Aggregate**

The amount of annual loss dollars retained by the Pool which are individually limited by the Self-Insured Retention. Losses greater than the SIR are paid by the excess insurance. (Example: the Pool had a single occurrence loss of \$200,000, \$50,000 SIR is paid out of the pool's Loss Fund and \$150,000 is paid by the excess carrier).

**Loss Payable Clause**

A provision in Property Insurance contracts that authorizes payment to persons other than the insured to the extent that they have an insurable interest in the property. This clause may be used when there is a lien on the property being insured, and it protects the lender.

**Maintenance Deductible**

A per occurrence deductible paid by the member for all Property, Time Element, Inland Marine, Crime and Auto Physical Damage losses before application of either the Pool's Self-Insured Retention or after depletion of its Loss Fund policy aggregate. There is no maintenance deductible applied to General Liability or Automobile Liability losses.

**Miscellaneous Property**

Examples of this could be mobile equipment (see definition), audio-visual equipment, musical instruments and fine arts (see definition).

**Mobile Equipment**

Coverage provided for land vehicles, including machinery and apparatus attached thereto, whether or not self-propelled and (1) not subject to motor vehicle registration, or (2) used exclusively on the insured's premises, or (3) designed principally for use of public roads, or (4) designed or maintained for the sole purpose of providing mobility for permanently attached equipment such as cranes, loaders, pumps, generators, or welding equipment.



**Named Perils**

Property insurance which will only pay for losses when they are caused by a peril specifically named on the policy.

**National Flood Insurance Program (NFIP)**

Federal program providing flood insurance for fixed property.

**Newly Acquired Properties**

Coverage is automatically extended to the named insured for newly-acquired properties over which the named Ensured-maintains ownership or majority interest. Remodeling, alterations and new construction are also covered.

**Outdoor Signs**

Insures freestanding outdoor signs normally excluded from property insurance policies.

**Personal Property**

Any property of an insured other than real property.

**Personal Property of Others**

Property, other than real property, which is not owned by an insured.

**Property Insurance**

Insures your interest in described property you own or for which you are responsible. May include buildings, leasehold improvements, personal property and glass. Coverage may be extended to include fencing, bleachers, flagpoles and any other property you own. Property must be listed on a schedule at renewal time or a property appraisal must be submitted. Property policies require insurable interest.

**Real Property**

Buildings and any permanently affixed parts of buildings.

**Rental Insurance Coverage**

Insurance of the fair rental value of the portion of the building which the insured occupies, the rents that can reasonably be expected from unrented portions of the building and rents from portions of the building which are actually occupied at the time of loss.

**Replacement Cost**

This is a term for the cost to repair or replace damaged property with material of like kind and quality without depreciation. Under most contracts, the insured must repair or replace in order to be paid under the contract.

**Self-Insured Retention (SIR)**

The maximum amount of dollars retained by the Pool in the Loss Fund per covered occurrence or loss.

**Stated Value**

An agreed upon value that will be paid off if an object is totally destroyed in a covered loss.

**Subrogation**

This is a term for a clause in Property and Liability policies giving the insurer the insureds right of action against a negligent third party for which they have paid a claim. The insurance company is substituted for the insured's rights against the other party.

**Time Element**

The generic term applied to any consequential loss that occurs as a result of direct property loss. Included in this category are: Business interruption, rental insurance, leasehold insurance, extra expense, service interruption, and tuition and fees.

**Transit Coverage**

Insurance which applies while covered property is being moved from one place to another.

**Tuition and Fees Coverage**

Insurance which indemnifies you for the loss of income normally obtained from tuition and other student payments, which is not received because of a covered property loss. Coverage for continuing payroll can be added to this form.

**Unoccupied**

Refers to property which may be furnished or have furnishings in it, but is not occupied or being actively used.

**Vacant**

A term used in Property insurance to describe a building that has nothing in it. This goes one step beyond the description of unoccupied.

**Valuable Papers**

Covers physical loss or damage to valuable papers and records of the insured. It includes practically all types of printed documents or records, except money.

**Valuation Clause**

The property policy provision used to determine how much will be paid by the insurer for different types of property in the event of loss.

**Waiting Period**

A time deductible as opposed to a dollar amount deductible applicable to consequential losses arising out of a property loss. There is no time element coverage until the specified number of hours has passed, e.g., 12 hours. After that, all covered costs are paid. Usually only used in Boiler & Machinery policies.

**BOILER & MACHINERY****Ammonia Contamination**

Covers contamination of district property by ammonia as a result of an accident to an object.

**Boiler and Machinery Insurance**

Insurance against the sudden and accidental breakdown of boilers, machinery, and electrical equipment.

**Business Interruption**

Pays for a loss of earnings when operations are curtailed or suspended because of a property loss.

**Consequential Damage/Spoilage**

Covers a loss not directly caused by a peril insured against, such as spoilage of frozen foods caused by fire damage to refrigeration equipment.

**Expediting Expenses**

Covers expenses insured in order to speed up repair or replacement so as to reduce the amount of loss by a peril covered in a policy.

**Extra Expense**

Covers extraordinary expenses caused by accidents involving insured equipment.

**Property Damage**

Insures damages to scheduled boiler and machinery equipment, damage to buildings and contents caused by insured accidents and expediting expenses incurred to recover after a loss. Necessary because standard property policies exclude explosion of steam boilers, mechanical breakdown and artificially generated current when no fire ensures.

**Service Interruption Coverage**

Indemnification for the time element loss due to a lack of incoming electricity, gas, water or steam. Loss must be caused by a normally insured peril and it must occur to the equipment of the utility or supplier. Used in Boiler & Machinery coverage.

**Water Damage**

Covers certain specified causes of water damage, i.e., damage caused by water leakage, overflow of heating or air-conditioning systems, or plumbing.

**CRIME****Blanket Crime Policy**

A policy which provides coverage for employee dishonesty, loss of money and securities inside and outside the premises, depositor's forgery, loss of money orders, and counterfeit paper currency.

**Burglary**

Breaking and entering into the premises of another with felonious intent, leaving visible signs of forcible entry or exit.

**Commercial Blanket Bond (Employee Dishonesty)**

This insures against loss resulting from the dishonest acts of your employees. Regarding any employee benefit plans you might have, coverage is necessary to comply with certain provisions of the Employee Retirement Security Act (ERISA). To recover your loss, you must know who took the property and under what circumstances. You must prove the loss was caused by an employee and be willing to prosecute. Losses that can only be demonstrated by inventory accounting calculations are not insured.

**Computer Fraud**

Fraudulent theft or transfer of money, securities or other property resulting from the use of any computerized equipment or systems. Today it is ransomware demands.

**Credit Card Forgery**

This protects the insured against losses caused by forgery in the use of credit cards or the alteration of them or of any other written instruments.

### Depositors Forgery & Alteration

Insured against loss caused by forgery or alteration of outgoing checks or financial instruments. Does not cover loss sustained because of acceptance of forged checks written by others.

### Employee Dishonesty

Any dishonest act of an employee which may contribute to a loss for the employer.

### Money & Securities

Covers theft, disappearance & destruction of money or securities on your premises or in the custody of a messenger.

Loss Inside Premises: Virtual all-risk protection for money and securities on premises including safe burglary, robbery, theft, destruction and disappearance.

Loss Outside Premises: Same broad protection for money and securities while off premises.

### Money Orders & Counterfeit Papers

Insures against loss by any post office, express money order or counterfeit currency an insured accepts in good faith or in exchange for services not paid upon presentation.

### Robbery

The felonious taking, either by force or fear of force, of the personal property of another.

### Theft

The act of stealing. It includes such acts as larceny, burglary, and robbery.

## GENERAL LIABILITY

### Advertising Liability

Covers injury arising out of libel or slander, violation of the right to privacy, misappropriation of advertising ideas, or infringement of copyright, title or slogan committed in the course of advertising goods, product, or services.

### Basic Extended Reporting Period

An automatic “tail” for reporting claims after expiration of a “claims-made” liability policy. It is provided without charge and consists of two parts; a mini-tail covers claims made within 60 days after the end of the policy; a midi-tail covers claims made within five years after the end of the policy period arising out of occurrences reported not later than 60 days after the end of the policy. Under the policy it will outline the additional premium/terms for these by year.

### Bodily Injury Liability (BI)

A legal liability that may arise as a result of the injury or death of another person.

### Broad Form Property Damage Liability Coverage

Extends coverage by limiting the policy exclusions pertaining to the property of others under the care, custody, or control of the insured and the exclusion pertaining to the work performed by, or on behalf of, the insured.

### Casualty Insurance

That type of insurance that is primarily concerned with the legal liability for losses caused by injury to persons or damage to the property of others.



**Claims-Made Coverage**

A policy providing liability coverage only if a written claim is made during the policy period or any applicable extended reporting period. For example, a claim made in the current year could be charged against the current policy even if the injury or loss occurred many years in the past. If the policy has a retroactive date, an occurrence prior to that date is not covered.

**Combined Single Limit**

A single limit of protection for both Bodily Injury and/or Property Damage, contrasted with split limits, where specific limits apply to Bodily Injury and Property Damage separately.

**Contingent Liability**

A liability imposed because of accidents caused by persons other than employees for whose acts an individual, partnership or corporation may be responsible. For example, an insured who hires an independent contractor can in some cases be held liable for his negligence.

**Contractual Liability Coverage**

Contractual Liability coverage is provided for bodily injury and property damage arising out of liability assumed under an oral or written contract.

**Corporal Punishment**

School employees may become liable for bodily injury resulting from the administration of corporal punishment.

**Employee Benefit Liability**

You may be held liable for an error or omission in the administration of an employee benefit program, i.e., failure to advise employees of benefit programs, or omitting an employee from being covered under any given program.

**Employees as Additional Insureds**

Coverage is extended to all employees as additional insureds. Your employees are protected while they are working for you within the scope of their duties.

**ERISA Liability**

Liability imposed by law upon officers or other employees operating in a fiduciary capacity for the proper handling of pension funds and other employee benefits. It is excluded from most General Liability policies.

**Errors & Omissions Insurance**

A form of insurance that indemnifies the insured for any loss sustained because of an error or oversight on the insured's part.

**Fire Legal Liability**

Protection against liability incurred when an insured's negligent actions result in the destruction of property which is in the insured's care, custody or control.

**General Liability**

Insurance carrier pays the sums that the insured becomes legally obligated to pay as damages because of bodily injury, property damage, personal injury or advertising injury.

### Hold Harmless Agreement

A contractual arrangement whereby one party assumes the liability inherent in a situation, thereby relieving the other party of responsibility. Such agreements are typically found in contracts like leases, sidetrack agreements, and easements. For example, a typical lease may provide that the lessee must “hold harmless” the lessor for any liability from accidents arising out of the premises. The effect of such an agreement is that the lessee must provide a defense for the lessor, and if any judgment is rendered against the lessor, the lessee would have to pay.

### Host Liquor Law Liability Coverage

This is liability for bodily injury or physical damage arising out of the serving or distribution of alcoholic beverages, and caused by a person, or persons, to which these beverages were served or distributed. The insured is not in the business of selling liquor.

### Incidental Medical Malpractice Liability Coverage and Nurses Professional Liability

Coverage is provided for an insured who is not engaged in the health care business but whose employees- are involved in the rendering of certain types of medical professional services. For instance, a school has a nurse on staff for the treatment of students with school-related injuries.

### Independent Contractors

Protects you from loss due to liability arising from operations of subcontractors who perform work for you under your direction.

### Limit of Liability

The maximum amount for which an insurer is liable as set forth in the contract.

### Limited Worldwide Liability Coverage

Policy territory definition is amended to cover liability arising out of the activities of the insured and its employees while temporarily outside the United States of America, its territories or possessions of Canada, provided the original suit for damages is brought within the United States of America, its territories or possessions of Canada.

### Occurrence

In liability coverage, an accident, including continuous or repeated exposure to conditions, which results in bodily injury or property damage neither expected, nor intended from the standpoint of the insured.

### Occurrence Coverage

A policy form providing liability coverage for injury or damage that occurs during the policy period, regardless of when the claim is actually made. For example, a claim made in the current policy year could be charged against a prior policy period, or may not be covered, if it arises from an occurrence prior to the effective date. Contrast with Claims-Made Coverage.

### Personal Injury

Injury other than bodily injury arising out of false arrest or detention, malicious prosecution, wrongful entry or eviction, libel or slander, or violation : of a person’s right to privacy committed other than in the course of advertising, publishing, broadcasting or telecasting.

### Premises Medical Payments Coverage

This coverage is available regardless of negligence for an injury sustained on your premises.

### Premises Operations

Covers liability arising out of the existence, operation, and maintenance of the insured’s premises.

**Products/Completed Operations**

Coverage provided for liability for bodily injury and property damage arising out of products sold, manufactured, handled, or distributed, or operations which are complete.

**Property Damage Liability Insurance**

Protection against liability for damage to the property of another, including loss of the use of the property, as distinguished from liability for bodily injury to another. In the majority of cases it is written along with Bodily Injury Liability protection.

**Retroactive Date**

Date on a “claims made” liability policy which triggers the beginning period of insurance coverage. A retroactive date is not required. If one is shown on the policy, any claim made during the policy period will not be covered if the loss occurred before the retroactive date.

**Supplementary Payments**

A provision in most liability policies under which the insurer agrees to pay defense costs, premiums on various bonds, interest accruing after a judgment, and other reasonable expenses in addition to the limit of liability.

**Tail**

This term has been used to describe the exposure that exists after expiration of a policy and the coverage that may be purchased to cover that exposure. On “occurrence” forms, a claims tail may extend for years after policy expiration, and the losses may be covered. On “claims made” forms, tail coverage may be purchased to extend the period for reporting covered claims beyond the policy period.

**Umbrella Liability/Excess Liability Policy**

A coverage basically affording high limit coverage in excess of the limits of the primary policies as well as additional liability coverages. These additional coverages are usually subject to a substantial self-insured retention. The term “umbrella” is derived from the fact that it is a separate policy over and above any other basic Liability policies the insured may have such as general liability, automobile, employer’s liability, school board legal liability or public official’s liability.

**Wrongful Acts**

In school board legal liability policies or public officials liability policies, any actual or alleged error, misstatements, misleading statements, acts, omissions or neglect or breach of duty by the insured(s) in the discharge of their duties.

**AUTOMOBILE****Automobile Medical Payments**

Will pay emergency medical expenses for passengers of your vehicle, or for you and/or your family while pedestrians. Benefits are payable without regard to legal liability.

**Bodily Injury**

A legal liability that may arise out of the injury or death of another person.

**Collision**

Covers loss to the insured’s own vehicle caused by its collision with another vehicle or object or its upset, but not covering bodily injury or property damage liability out of the collision

**Comprehensive**

Covers loss or damage to the insured's own vehicle from perils other than collision. (i.e., fire, theft, hail, vandalism, etc.) Car telephones and mobile radios are not insured unless specifically declared and listed on the policy.

**Garage Liability**

Insurance which covers the legal liability for claims of bodily injury and property damage arising out of the care, custody and control on all nonowned vehicles in your possession.

**Hired Auto**

Autos the insured leases, hire, rents, or borrows, but not autos owned by employees or members of their households.

**Limit of Liability**

The maximum amount for which an insurer is liable as set forth in the contract.

**Motor Vehicle Record (MVR)**

The record of an automobile driver's accidents and/or traffic violations.

**Nonowned Auto**

These are autos not owned, leased, hired, rented or borrowed which are used in connection with your business. This coverage includes autos owned by your employees, or partners, or members of their households, but only while used in your business.

**Occurrence**

In liability coverage, an accident, including continuous or repeated exposure to conditions, which results in bodily injury or property damage neither expected nor intended from the standpoint of the insured.

**Owned Automobiles**

Coverage provided for liability arising out of the ownership, maintenance or use of owned automobiles.

**Physical Damage**

A term indicating damage from such perils as collision, comprehensive, fire and theft or any damage to the vehicle itself.

**Uninsured/Underinsured Motorists**

A coverage in an Automobile Insurance policy under which the insurer will-pay damages up to specified limits for bodily injury damages. If the limits of liability under the liable motorist's policy are exhausted and he cannot pay the full amount he is liable for, that is Underinsured Motorists coverage.

**WORKERS' COMPENSATION AND EMPLOYERS LIABILITY**

This is a term of insurance which covers payments to an employee or other covered person of Workers' Compensation Benefits as required by state law for accidents or occupational disease arising out of or in the connection with the worker's employment.

**Average Weekly Wage**

A term generally used in Workers' Compensation laws. It is the basis for determining weekly benefits under Workers' Compensation laws.



**Employers Liability Coverage**

Coverage B on a standard Workers' Compensation policy. It provides coverage against common law liability of an employer for injuries to employees as distinguished from liability imposed by Workers' Compensation law. Employer's liability applies in situations where a worker does not come under these laws (WC).

**Occupational Disease**

Sickness or disease arising out of or in the course of employment. State compensation laws provide coverage for this type of loss.

**Occupational Hazard**

A condition in an occupation that increases the peril of accident, sickness, or death.

**Payroll Audit**

An examination of an insured's payroll record by a representative of the insurer to determine the final premium due on a policy for the latest policy year.

**Permanent Partial Disability**

A condition where the injured party's earning capacity is impaired for life, but he is able to work at reduced efficiency.

**Permanent Total Disability**

A condition where the injured party is not able to work at any gainful employment for the remaining lifetime.

**Temporary Partial Disability**

A condition where an injured party's capacity is impaired for a time, but he is able to continue working at reduced efficiency and is expected to fully recover.

**Temporary Total Disability**

A condition where an injured party is unable to work at all while he is recovering from injury, but he is expected to recover.

**GENERAL DEFINITIONS****Act of God**

An event arising of natural causes with no human intervention which could not have been prevented by reasonable care or foresight. Examples are floods, lightning and earthquakes.

**Accident**

An unplanned event, unexpected and undesigned, which occurs suddenly and at a definite place.

**Accident Frequency**

The rate of the occurrence of accidents, often expressed in terms of the number of accidents over a period of time. It is one method used for measuring the effectiveness of loss prevention services.

**Accident Severity**

A measure of the severity or seriousness of losses, rather than the number of losses. It is measured in terms of time lost from work rather than the number of individual accidents. It is another way of measuring the effectiveness of loss prevention services.

**Additional Insureds**

Entity, other than the named insured who is protected under the terms of the insurance contract.

**Admitted Company**

An insurance company authorized and licensed to do business in a given state.

**Binder**

A preliminary agreement by an insurer or agent with authority from an insurer to bind coverage on its behalf, to provide specified coverage for a specified period of time or until a formal insurance policy can be issued and delivered to the insured. Initial documentation that the insurer is providing coverage.

**Certificate of Insurance**

A form which verifies that a policy has been written and states the coverage in general, often used as proof of insurance in loan transactions and for other legal requirements. It provides information only and confers no rights to the certificate holder. The certificate does not amend, extend or alter the coverage afforded by the policies shown on the certificate.

**Claims Reserve**

Amounts set aside to meet costs of claims incurred but not yet finally settled. An example might be a Workers' Compensation case where benefits are payable for several years. At any given point in time, the reserve would be the funds kept based on the estimate of what the claim will cost when finally settled.

**Combined Single Limit**

A single limit of protection for both bodily injury and property damage.

**Countersignature**

The signature of a licensed agent or representative on a policy.

**Deductible**

The amount that is subtracted from the final loss amount before the insurance company pays, thus the amount borne by the insured. This reduces the insurer's cost by not requiring that they adjust small claims and may encourage the insured to be more loss conscientious. When used for legal liability coverages, the insurance company usually pays the total amount of the loss and then requires the insured to reimburse the deductible amount.

**Endorsement**

A written or printed form attached to the policy which alters provisions of the contract.

**Estimated Premium**

A provisional premium which is adjusted at the end of the year. For example, in Workers' Compensation Insurance an estimated premium is based on estimated payrolls for the coming.

**Fiduciary**

A person who holds the funds or property of another in a position of trust.

**First Party insurance**

Insurance which applies to coverage for the insured's own property or-person.

**Following Form**

A term for a property or liability form written exactly under the same terms and primary insurance on the same property or exposures.

**Gross Premium**

The net premium plus operating expenses, commissions and other expenses.

**Guaranty Funds**

Funds created by state law from contributions by insurance companies operating in the state which are used to make good any unpaid claims or otherwise to make money available to insolvent companies. Each state which has a fund has a different plan.

**Hazard**

A specific situation that increases the probability of the occurrence of loss arising from a peril, or that may influence the extent of the loss. For example, accident, sickness, fire, flood, liability, burglary, and explosion are perils. Slippery floors, unsanitary conditions, shingled roofs, congested traffic, unguarded premises, and uninspected boilers are hazards.

**Incurred but Not Reported**

This refers to losses which have occurred during a policy period, but have not yet been reported to the insurer as of the date under consideration. For instance, insurance company statements prepared after the end of the calendar year would have to include an estimate of losses that occurred during that year but have not yet been reported.

**Incurred Losses**

The losses occurring within a fixed period, whether or not adjusted or paid during the same period. As an example, in Workers' Compensation claims losses occur during a given policy period, but benefits may continue to be paid for many years. The estimated value of the total claim would be an "incurred loss" for the policy period during which the loss occurred.

**Indemnify**

To restore the victim of a loss to the same position as before the loss occurred.

**Indemnity**

Restoration to the victim of a loss by payment, repair or replacement.

**Insurable Interest**

Any interest a person has in a possible subject of insurance, such as a car or home, of such a nature that a certain happening might use him financial loss.

**Loss Control**

Any combination of actions taken to reduce the frequency or severity of losses. Installing locks, burglar or fire alarms and sprinkler systems are loss control techniques.

**Loss Expectancy**

An underwriter's estimate of the probable maximum loss to be suffered on an exposure being considered, with attention given to the expected level of loss prevention activities on the part of the insured.

**Loss Frequency**

The number of times a loss occurs over a specific period of time.

**Loss Payee**

The party to whom money or insurance proceeds is to be paid in the event of loss, such as the lien holder on an automobile or the mortgagee on real property.

**Loss Ratio**

The losses divided by the paid premiums.

**Loss Reserve**

The estimated liability for unpaid insurance claims or losses that have occurred as of a given evaluation date. Usually includes losses incurred but not reported (IBNR), losses due but not yet paid, and amount not yet due. As to individual claims, the loss reserve is the estimate of what will ultimately be paid out on the case.

**Loss Severity**

The amount of a loss expressed in financial terms.

**Manuscript Policy**

A policy written to include specific coverages or conditions not provided in a standard policy.

**Minimum Premium**

The smallest amount of premium for which an insurer will issue coverage under a given policy.

**Named Insureds**

Any person, firm or corporation, or any member thereof, specifically designated by name as the insured in a policy. Can be extended to include employees, volunteers, directors and officers.

**Negligence**

Failure to use that degree of care which an ordinary person of reasonable prudence would use under the given or similar circumstances. A person may be negligent by acts of omission or commission or both.

**Notice of Loss**

Notice to an insurer that a loss has occurred. Notice of loss is a condition of most policies, and it is frequently required within a given time and in a particular manner.

**Occurrence**

An event that results in an insured loss. In some lines of insurance, such as Liability, it is distinguished from accident in that the loss does not have to be sudden and fortuitous and can result from continuous or repeated exposure which results in bodily injury or property damage neither expected nor intended by the insured.

**Other Insurance Clause**

Condition in most policies which states how a loss under its policy would be settled if another policy also applies to the loss. Policies are written -either on an excess basis, or on a contributing basis. If the latter is the case, it is extremely important that all terms and conditions be the same.

**Paid Losses**

The amount actually paid in losses during a specified period of time, not including estimates of amounts that will be paid in the future for losses that occurred then.



**Primary Coverage**

Insurance coverage which covers from the first dollar, perhaps after a deductible, as distinguished from excess coverage which pays only after some primary coverage has been exhausted.

**Proof of Loss**

A formal statement made by a policy owner to an insurer regarding a loss. It is intended to give information to the insurer to enable it to determine the extent of its liability.

**Reserve**

An amount representing actual or potential liabilities kept by an insurer to cover debts to policyholders. Note that a reserve is usually a liability and not an extra fund.

**Risk Management**

Management of the pure risks to which an insured might be subject. It involves analyzing all exposures to the possibility of loss and determining how to handle these exposures through such practices as avoiding the risk, reducing the risk, retaining the risk, or transferring the risk, usually by insurance.

**Settlement**

Usually, a policy benefit or claim payment. It connotes an agreement between both parties to the policy contract as to the amount and method of payment.

**Self-Insured Retention (SIR)**

A dollar amount specified in a liability insurance policy that must be paid by the Insured before the insurance policy will respond to a loss.

**Shock Loss**

A catastrophic loss so large that it has a material effect on the underwriting results of a company. Under self-insurance, any individual loss that is excess of the self-insured retention.

**State Fund**

A fund set up by a state government to finance a mandatory insurance system, such as Workers' Compensation or nonoccupational disability benefits. Such a fund may be monopolistic, i.e., purchasers of the type of insurance required must place it in the state fund; or it may be competitive, i.e., an alternative to private insurance if the purchaser desires to use it.

**Stop Loss**

Any provision in a policy designed to cut off an insurer's losses at a given point. In effect, a stop loss agreement guarantees the loss ratio of the insurer.

**Sublimit**

Any limit of insurance which exists within another limit. For example, special classes of property may be subject to a specified dollar limit per occurrence, even though the policy has a higher overall limit.

**Surplus Lines**

A risk or a part of a risk for which there is no market available through the original broker or agent in its jurisdiction. Therefore, it is placed with nonadmitted insurers on an unregulated basis, in accordance with the surplus or excess lines provisions of the state law.

**Third-Party Insurance**

A term for liability insurance. Liability always involves a third party, the one who has suffered a loss, in addition to the insurer and the insured.

**Total Loss**

A loss of sufficient size so that it can be said there is nothing left of value. The complete destruction of the property. The term is also used to mean a loss requiring the maximum amount a policy will pay.

**Ultimate Net Loss**

The total sum that the insured or any company as its insurer, or both, become legally obligated to pay either through adjudication or compromise, including among others, legal, medical, and investigative costs.

**Vicarious Liability**

Legal liability of one party for the acts of someone else due to a pre-existing relationship.

**Warranty**

A statement made by the insured on the application. Its truthfulness becomes a condition of the policy. If determined to be false, the policy can be voided.

## VIII. CLIC-Risk Management Protocols

### RECOMMENDED PROCEDURES FOR THE MEMBERS OF CLIC WHEN AN INCIDENT WHICH MAY REASONABLY RESULT IN A CLAIM OCCURS

#### 1. Participation by CLIC Member

A representative of each CLIC Member is expected to attend the CLIC annual and mid-year meetings. This is necessary because specific information regarding claims, claims handling procedures, investigations, reporting forms, and other information relevant to risk management is often presented to the membership at these meetings. In addition, each Member is expected and requested to comply with the following:

- A. Actively participate in the CLIC Loss Control programs for the worker's compensation and property/casualty programs.
- B. Evaluate each incident and determine whether it is likely to result in a liability claim or litigation and use the proper reporting form provided by the TPA.
- C. Provide prompt access by the TPA and/or selected counsel to records, facilities, and information to the fullest extent permitted consistent with Illinois law.
- D. Fully cooperate with the TPA *and* legal counsel in the investigation and defense of claims and litigation brought against the CLIC Member District.
- E. Promptly respond to inquiries of the TPA and legal counsel for information, documentation, records, and discovery compliance in litigation.
- F. Review, be familiar with and comply with the suggested recommendations set forth in the CLIC Risk Transfer Manual.

School officials will often be the first person to perform an investigation surrounding an incident. Depending upon who performs the investigation, the documents generated such as, investigation reports, accident reports, statements, etc. may not all be privileged. That is, under certain circumstances, a court could order production of a particular document generated during the investigation to counsel for the plaintiff or a co-defendant. Production of these documents could seriously impact the defense of the case. Many times a school district's procedures include a statement finding fault or what can be done to correct the incident. While helpful in some respects, the school district's desire to find a defect, fault or cause for the incident, often creates more problems than are solved and should be handled independent of the incident/accident report.

With the foregoing in mind, each CLIC member should assign an administrator to become familiar with the following, and that administrator should conduct all investigations. When conducting an investigation, school officials should keep the following in mind:

- A. A member of the “control group” must create the document for a confidentiality privilege to exist. The “control group” generally consists of the top management personnel (e.g., superintendent, business manager or principal) who make decisions, act with substantial discretion in the school district and can take independent action without reference to the Board or other individuals. Additionally, employees of the decision-makers and upon whose opinions and advice the decision-makers rely, may be considered to be within the control group (e.g., vice principal or dean) as long as they are directed to perform the investigation by the decision-maker. This would not include office staff, custodial staff, etc. Note, however, that decisions from those in the second tier must actually form the basis for the decisions of the decision-maker. That is, the principal must rely upon the dean’s opinions or recommendations for the dean to qualify as a second tier control group member.
- B. Any documents created by those in the “control group” cannot be disseminated to anyone outside the control group (except as may be reported to the Board or one higher in the chain of authority). Thus, if a superintendent creates a document summarizing the incident, she/he cannot disseminate it to a teacher or support staff member. The superintendent may disseminate the document only to those in the control group on a need-to-know basis. This would include the principal, vice/assistant principal, nurse, etc.
- C. Alternatively, documents will be privileged if school district personnel assigned to investigate an incident were acting as investigators or agents of and at the request of defense counsel, the TPA or the school district’s insurance carrier. Hence, before undertaking any investigation that culminates in a written document or record, the school district personnel should remember the foregoing and contact the TPA regarding the investigation, or contact legal counsel and act pursuant to legal counsel’s instructions.
- D. Any document or record created in an investigation by school district personnel should be labeled as “Confidential, For Litigation Purposes.” The person who performs the investigation must be the one who also creates the document or record.
- E. **Investigation documents should not be disseminated to anyone other than the TPA, legal counsel, the insurance carrier and those composing the control group, as needed.** School district personnel who act as investigators or agents directly at the request of defense counsel or the insurance carrier do not need to be higher level employees. A privilege called the work product privilege would apply in this instance, but only if there is strict compliance with this procedure. [For example, if an altercation occurs, school district personnel can contact its legal counsel, insurer or TPA for directions regarding the investigation. At the request of legal counsel, the insurer or the TPA, a security guard could conduct the investigation and prepare a written report. The report would be privileged because the security guard was acting as agent for legal counsel, the TPA or the insurance carrier in this situation.]
- F. Photographs are often very good evidence. However, the school district should not have a policy that photographs are taken in every instance.
- G. Above all, report any significant incident which you reasonably believe is likely to result in a claim or litigation (especially where a serious injury occurs) to the TPA following the recommended procedures. **Faxing a report to the CLIC Board, a member thereof or to anyone other than the TPA will result in lost time and can effect prompt handling and liability exposure.**

Keep in mind that statements are rarely privileged with few exceptions. *What* is said in a statement or a report can often be misunderstood, misinterpreted and could prevent prompt dismissal from a case because it creates a question or difference of information regarding an incident. If in doubt contact the A. The TPA can obtain the assistance of legal counsel promptly. The attached provides a checklist to consider during an investigation.



## SCHOOL ACCIDENT INVESTIGATION CHECKLIST

**1. Photographs/Videotapes**

- A. Photographs or videotapes should show the scene, equipment, etc. without extraneous objects being included.
- B. Properly label, date, and identity of photographer/videographer.
- C. Do not just use up the roll be discriminating, take what you need and less is often more.
- D. Record other sources for photographs (police, private parties, surveillance cameras).
- E. Property surveys or inspections.

**2. Record of Witnesses**

- A. Record all names, telephone numbers, addresses, titles (position) and other helpful identification information of potential witness including but not limited to: teachers having classes nearby, hall monitors/security, person(s) likely to be in the area (workers, custodians, etc.) person(s) responsible for the area or student (Dean, Special Education Personnel, Security).
- B. Identity of the primary administrator responsible for the area or activity.
- C. Classmates of injured party or other students involved.

**3. School Investigation**

- A. Locate incident report, witness statements taken by school personnel, letters, other documents and reports.
- B. Identify applicable school policies or procedures (Student Handbook, Board Policies, School Rules/Regulations).
- C. The school bell schedule at time of incident.
- D. School-Board minutes regarding incident if any.
- E. Information regarding prior notice (or lack thereof) of the alleged condition or conduct.
- F. How property was being used at time of incident.
- G. Inter-governmental sharing agreements (contractual indemnity, other insurance).

**4. Statements**

- A. Take statements only if witnesses have valuable, and likely supportive information.
- B. Use pre-interview techniques before deciding on a recorded statement. Be sure person has first-hand information which is helpful.
- C. Prepare list of bad witnesses and summarize bad testimony only in correspondence to legal counsel or preparation for lawsuit.
- D. Make sure you have information to locate **a** good witnesses for trial.

**5. Other Investigation**

- A. Weather reports, newspaper reports, if applicable.
- B. Retain equipment/object involved to prevent spoliation of evidence.
- C. Obtain exemplar of equipment/object involved if actual object is lost, destroyed or unavailable.
- D. Obtain brochures, catalogs, manuals, instructions as to equipment/object involved.
- E. Determine age, date of manufacture, purchase of equipment/object (third-party, contribution action).
- F. Determine identity of architect, engineer, contractor involved in construction of accident site (statute of repose defense, third-party liability, contribution).

**6. Comparative Fault**

- A. What was student or employee doing, how long, was that prior similar activity.
- B. What student(s), contractors, outside personnel, visitors or other persons may be responsible who are not affiliated with the school district?

## IX. YMCA Use Agreements

LEGAL ADVISORY 5-24-07; UPDATED 9-1-21

To: CLIC Member School Districts

From: CLIC Executive Board/Legal Counsel

### 1. YMCA Use Agreements

Many CLIC Members use the facilities and equipment of a local YMCA. The standard YMCA agreement for this use is called, "Facility License Agreement." This agreement contains indemnity and release language which we recommend be modified. The agreement states, in part:

Licensee hereby agrees to indemnify, defend, save and hold harmless YMCA, its directors, officers, Board of Managers, Board of Trustees, members, employees and agents ("Releases") and each of them from any and all loss, liability, damage, expense or cost (including, without limitation, reasonable attorneys' fees) they may incur arising from Licensee's or its participant's, guest's or visitor's (each a "Participant") presence in, upon or about any YMCA property, including but not limited to any use of YMCA equipment or facilities by any Participant. **Licensee hereby releases, waives, discharges and covenants not to sue each of the Releases from any and all liability of Licensee or any Participant for any loss or damage and any claim or demands therefore on account of injury to person or property or resulting in death from Licensee's or Participant's presence in, upon or about YMCA property including but not limited to use of YMCA equipment or facilities except to the extent caused solely [sic] by YMCA's negligence or willful misconduct. [bold added]**

It is recommended that the following changes be made before the agreement is signed.

- A. Change the word **License or Licensee** whenever it appears, to **Lease or Leasee/Lessor**, whichever is appropriate when these words appear.

This agreement is not actually a License; however, under Illinois law the YMCA is utilizing a little known provision to obtain indemnification where it would not otherwise be permitted. Your use of the YMCA facility and equipment is more in the nature of a lease or use agreement. Under this type of agreement, the YMCA is not entitled to indemnification for its own negligence. By calling the use agreement a license, they are trying to avoid application of this Illinois law and obtain indemnity from the School District.

- B. Delete the word **solely** in the sentence which states in part, "...except to the extent caused solely by the YMCA's negligence or willful misconduct."

A determination of whether the injury is caused by the sole negligence or willful misconduct of the YMCA will not be made until after a trial and is likely to be alleged only as its negligence along with the negligence of others, hence not their sole liability. Even if the YMCA is liable due to a defective condition of its facility or equipment, you would not be relieved of the indemnification obligation.

- C. If possible delete all of the language in **bold** in the above quote – see 1. above.

This is far too broad and open-ended to be reasonable. The same protection can be accomplished with simpler language. As drafted, the mere presence of a parent or spectator to watch an event releases the YMCA from liability and prevents you, the School District, from enforcing your right to seek contribution. The simplest change is to modify the definition of 'Participant' by deleting the words guest and visitor. Also, remove the words, "...waives, discharges and covenants not to sue..." from the bolded section quoted above.

## **2. Use of School District Facilities by Local Catholic Schools**

Many CLIC School Districts enter into use agreements or leases with the Archdiocese of Chicago/Catholic Bishop of Chicago when a local private school wants to use the District's facilities. Even if you include indemnity language and the obligation to be named as an additional insured by the local private school/Archdiocese school [both of which you should do], we have found that no insurance may be available and the Catholic Archdiocese will refuse to indemnify the School District, especially if the document is termed a lease. Please have your legal counsel review any of those agreements before signing a contract with the Archdiocese.

## X. Sample Laptop Policy

\_\_\_\_\_ SCHOOL DISTRICT

The \_\_\_\_\_ School District has decided to allow staff to use school laptop computers inside and outside the school in order to enhance, enrich, and facilitate teaching and administrative duties as well as school communications. The School's laptops are to be used as a productivity tool for school-related business, curriculum enhancement, research, and communications. Staff members may use the School's laptops for limited personal purposes subject to this policy and its limitations therein.

Staff members also shall exercise appropriate professional judgment and common sense when using the School's laptop computers. All laptops and related equipment and accessories are School property and are provided to the staff members for a period of time as deemed appropriate by the school's administration. As a condition of their use of the School's laptop computers, staff members must comply with and agree to all of the following:

- Prior to being issued one of the School's laptop computers, staff members will sign the Laptop Acceptance Form and agree to all outlined policies.
- Staff members should NOT attempt to install software or hardware or change the system configuration including network settings without prior consultation with Tech Support.
- Staff members are expected to protect school laptops from damage and theft.
- Each staff member is monetarily responsible for any hardware damage that occurs off school premises and/or software damage (including labor costs).
- Staff members will not be held responsible for computer problems resulting from regular school-related use; however, staff members will be held personally responsible for any problems caused by their negligence as deemed the School's administration. Staff members will provide access to any laptop computer, equipment, and/or accessories they have been assigned upon the School's request.

### GENERAL LAPTOP USE RULES

If you have important data on the laptop, such as grades, tests or exams, you must back it up on your network folder as a safety precaution against hard drive failure. The seconds that it takes to create a backup are well worth the frustration if/when the computer hard disk fails. Since the laptop's keyboard and touch pad are permanently attached to the rest of the system, make sure that your hands are clean before using them. Because hand lotion is a major contributing factor to dirt and dust, please make sure your hands are free from lotion before using the computer. It is costly to change a laptop keyboard and/or touch pad that has been damaged by excessive dirt.

Do not place drinks or food in close proximity to your laptop.

Extreme temperatures or sudden changes in temperature can damage a laptop. You should NOT leave a laptop in an unattended vehicle.

When using the laptop, keep it on a flat, solid surface so that air can circulate through it. For example, using the laptop while it is directly on a bed can cause damage due to overheating.

ALWAYS keep your laptop plugged into the supplied surge protector when it is plugged in or charging.

### HOW TO AVOID LAPTOP COMPUTER THEFT

Due to size and portability, laptop computers are especially vulnerable to theft. Staff members should follow the rules set out below. A staff member will be held personally responsible for any School laptop computers, equipment, and/or accessories that are stolen during the time they have been assigned to that staff member. Below are some tips on how to protect your laptop from being stolen.

- Do not leave a laptop in an unlocked vehicle, even if the vehicle is in your driveway or garage. Never leave it in plain sight. If you must leave your laptop in a vehicle, the best place is in a locked trunk. If you do not have a trunk, cover it and lock the doors.



- Be aware of the damage extreme temperature can cause to computers.
- Carry your laptop in a nondescript carrying case or bag when traveling.
- Do not leave a meeting or conference room without your laptop. Take it with you.
- Never check a laptop as luggage at the airport.
- Lock the laptop in your office or classroom during off-hours or in a locked cabinet or desk when possible.

If a theft does occur, immediately notify School's Administration and Tech Support.

# SAMPLE LAPTOP POLICY ACCEPTANCE FORM

Last Name \_\_\_\_\_ First Name \_\_\_\_\_

School \_\_\_\_\_ Room # \_\_\_\_\_

I understand that all laptop computers, equipment, and/or accessories the School has provided to me are the property of the \_\_\_\_\_ School District. I agree to all of the terms in the School's Staff Laptop Policy, the School's Acceptable Use Policy, and the School's Tech Support policies. I will return the equipment to the School in the same condition in which it was provided to me.

I understand that I am personally responsible for any damage to or loss of any laptop computer and/or related equipment and accessories. In case of damage or loss I will replace or pay the full cost of replacement of the damaged or lost equipment with equipment of equal value and functionality subject to the approval of the School.

I will not install any additional software or change the configuration of the equipment in any way without prior consultation with Tech Support.

I will not allow any other individuals to use any laptop computer and/or related equipment and accessories that have been provided to me by the School.

I understand that a violation of the terms and conditions set out in the policy will result in the restriction and/or termination of my use of the School's laptop computers, equipment, and/r accessories and may result in further discipline up to and including termination of employment and/or other legal action.

Signature \_\_\_\_\_ Date \_\_\_\_\_

Home Phone \_\_\_\_\_ Model \_\_\_\_\_ School # \_\_\_\_\_ Items Loaned / Condition – *If used or damaged please make additional comments*

<u>Item</u>	<u>Loaned</u>		<u>Condition</u>		
Computer	Yes <input type="checkbox"/>	No <input type="checkbox"/>	New <input type="checkbox"/>	Used <input type="checkbox"/>	Damaged <input type="checkbox"/>
Power Supply & Cord	Yes <input type="checkbox"/>	No <input type="checkbox"/>	New <input type="checkbox"/>	Used <input type="checkbox"/>	Damaged <input type="checkbox"/>
Video Adapter	Yes <input type="checkbox"/>	No <input type="checkbox"/>	New <input type="checkbox"/>	Used <input type="checkbox"/>	Damaged <input type="checkbox"/>
Surge Protector	Yes <input type="checkbox"/>	No <input type="checkbox"/>	New <input type="checkbox"/>	Used <input type="checkbox"/>	Damaged <input type="checkbox"/>
Laptop Bag	Yes <input type="checkbox"/>	No <input type="checkbox"/>	New <input type="checkbox"/>	Used <input type="checkbox"/>	Damaged <input type="checkbox"/>
Phone Cable	Yes <input type="checkbox"/>	No <input type="checkbox"/>	New <input type="checkbox"/>	Used <input type="checkbox"/>	

Comments: (overall condition, scratched, dented, bent, missing keys, missing parts)

## XI. Sample School Sexual Harassment Policy

### POLICY STATEMENT

The \_\_\_\_\_ School District is committed to providing and continuing to provide a cooperative and comfortable work environment free of sexual harassment of any kind. This policy is intended to be consistent with, and intended to be, enforced in conformance with the Illinois Fair Employment and Housing Act as well as Title VII of the Civil Rights Act of 1964, which proscribes harassment in the workplace.

The policy of the \_\_\_\_\_ School District forbids discrimination against any employee, applicant for employment, or student, on the basis of sex. The school will not tolerate sexual harassment activity by any of its employees. This policy similarly applies to non-employee volunteers or any other persons who work subject to the control of school authorities.

#### 1. Definitions

- A. Conduct of a Sexual Nature – Conduct of a sexual nature may include, but is not limited to, verbal or physical sexual advances, including subtle pressure for sexual activity; touching, pinching, patting, or brushing against; comments regarding physical or personality characteristics of a sexual nature; sexually-oriented “kidding,” “teasing,” double-entendres, and jokes, and any harassing conduct to which an employee would not be subjected by for such employee’s sex.
- B. Unwelcome Conduct of a Sexual Nature.
  - Verbal or physical conduct of a sexual nature may constitute sexual harassment when the allegedly harassed employee has indicated, by his or her conduct, that it is unwelcome.
  - An employee who has initially welcomed such conduct by active participation must give specific notice to the alleged harasser that such conduct is no longer welcome in order for any such subsequent conduct to be deemed unwelcome.
  - The \_\_\_\_\_ School District prohibits any conduct of a sexual nature directed toward students by teachers or others to whom this policy applies, and shall presume that any such conduct is unwelcome.

#### 2. Sexual Harassment Prohibited

- A. For the purposes of this policy, unwelcome sexual advances or requests for sexual favors, and other unwelcome conduct of a sexual nature constitute prohibited sexual harassment if:
  - Submission to the conduct is made either an explicit or implicit condition of employment (as an illustration, and not as a limitation, where a person’s continued employment is conditioned upon or impacted by prohibited sexual-based factors);
  - Submission to or rejection of the conduct is used as a basis for an employment decision affecting the harassed employee; and
  - The conduct substantially interferes with an employee’s student’s performance, or creates an intimidating, hostile, or offensive work or school environment, regardless of whether the employee’s continued employment or compensation is affected).

B. Specific Prohibitions. a. Administrators and Supervisors.

- It is sexual harassment for a manager or supervisor to use his or her authority to solicit sexual favors or attention from subordinates when the subordinate's failure to submit will result in adverse treatment, or when the subordinate's acquiescence will result in preferential treatment.
- Administrators and supervisors who either engage in sexual harassment or tolerate such conduct by other employees shall be subject to sanctions, as described below.
- Non-managerial and Non-supervisory Employees – It is sexual harassment for a non-administrative and non-supervisory employee to subject another such employee to any unwelcome conduct of a sexual nature. Employees who engage in such conduct shall be subject to sanctions as described below.
- Employees and Students – It is sexual harassment for an employee to subject a student to any conduct of a sexual nature. Employees who engage in such conduct shall be subject to sanctions.

**3. Reporting, Investigation, and Sanctions**

- A. It is the express policy of the \_\_\_\_\_ School District to encourage victims of sexual harassment to report such claims. This may be done through the employee grievance resolution procedure or by reporting such matters to the Superintendent, Assistant Superintendent for Personnel or the Human Resources Department.
- Employees who feel that their superiors are conditioning promotions, increases in wages, continuation of employment, or other terms or conditions of employment upon agreement to unwelcome conduct of a sexual nature, are encouraged to report these conditions to the appropriate administrator. If the employee's direct administrator or supervisor is the offending person, the report shall be made to the next higher level of authority.
  - Employees are also urged to report any unwelcome conduct of a sexual nature by superiors or fellow employees if such conduct interferes with the individual's work performance, or creates a hostile or offensive working environment.
  - Confidentiality will be maintained and no reprisals or retaliation will be allowed to occur as a result of the good-faith reporting of charges of sexual harassment.
  - Students are urged to report any conduct of a sexual nature by school employees or others to whom this policy applies to a school counselor or administrator.
- B. In determining whether alleged conduct constitutes sexual harassment the totality of the circumstances, the nature of the conduct and the context in which the alleged conduct occurred has to be investigated. The Superintendent or the Board has a responsibility to investigate and resolve complaints of sexual harassment.
- C. Any employee found to have engaged in sexual harassment shall be subject to sanctions, including, but not limited to, warning or reprimand, suspension, or termination, subject to applicable procedural requirements. Conduct of a sexual nature directed toward students shall be reported as child abuse for investigation by appropriate authorities.