



*Great Public Schools for Every Student*

# Association Liability Insurance

## 2013-2014

*Underwritten by*  
Nautilus Insurance Company

### MEMORANDUM OF INSURANCE

This "Memorandum of Insurance" is for general information purposes, and is not an Insurance Policy. The original policy is on file with NEA, and should be referred to for detailed information.

# ASSOCIATION LIABILITY POLICY

(Declarations)

1. Insured: NATIONAL EDUCATION ASSOCIATION

POLICY NO.	EFFECTIVE DATE	EXPIRATION
PMP_NEA0001_P-1	September 1, 2013	September 1, 2014

3. Limits of Liability:	\$1,500,000	Each Claim
	\$5,000,000	Annual Aggregate

**NAUTILUS INSURANCE COMPANY,**

a stock insurance company, hereinafter called the Company, does hereby agree with the Insured named in Item 1 of the Declarations in consideration of the payment of the premium and subject to the limits of liability, exclusions, conditions and other terms of this policy:

**INSURING AGREEMENTS**

**I. COVERAGE**

- A. The Company agrees that if, during the Policy Period, any Claim is first made against an Insured, individually or collectively, for a Wrongful Act or series of related Wrongful Acts that occurred on or after September 1, 1980, the Company shall pay on behalf of such Insured, his/her or its executors, administrators or assigns, all Loss which such Insured shall become legally obligated to pay.
  
- B. The Company shall have no duty or obligation to provide for the defense, nor to reimburse an Insured for the costs of the defense of any Claim covered under this policy and the Insured shall control defense counsel selected at its cost. However, the Company, in the exercise of its sole discretion, shall have the right to make any investigation it deems necessary and participate, at its cost, in the defense of such Claim and may, at its option, make or cause to be made, any settlement of such Claim as is deemed prudent by the Company.

**II. DEFINITIONS**

The defined terms are:

**A. Authorized Association Activities**

The term "Authorized Association Activities" shall mean those activities of an Insured which

are approved by a governing body of the Named Insured or an Affiliated Unit for the purpose of carrying out objectives set forth in its governing documents or which are undertaken in connection with an approved policy or program of the Named Insured or an Affiliated Unit.

**B. Named Insured**

The term “Named Insured” shall mean the Association named in Item 1 of the Declarations.

**C. Insured**

The term “Insured” shall mean:

- (1) the Named Insured;
- (2) the state affiliates of the Named Insured in the jurisdictions listed by Endorsement to this policy; organizations of employees, retired employees, or students that are affiliated with such state affiliates at the local, district, or county level; any UniServ Unit in the jurisdictions listed by Endorsement; and any local affiliate of the Named Insured that is not affiliated with a state affiliate of the Named Insured. Each of the above entities shall be referred to hereinafter as an “Affiliated Unit”;
- (3) any person who at the time of the Wrongful Act was or is an Employee of the Named Insured or an Affiliated Unit;
- (4) any person who at the time of the Wrongful Act was or is an officer, director, or member of a governing body of the Named Insured or an Affiliated Unit; or
- (5) any person who at the time of the Wrongful Act was or is a member of the Named Insured or an Affiliated Unit

and was or is designated by the Named Insured or an Affiliated Unit to act on its behalf.

- (6) the lawful spouse or domestic partner (whether such status is derived by reason of statutory law, common law or otherwise of any applicable jurisdiction in the world) of an Insured for claims arising solely out of his or her status as the spouse or domestic partner of an Insured, including such claims that seek damages recoverable from marital community property, property jointly held by the Insured to the spouse, or property transferred from the Insured to the spouse: provided, however, that this extension shall not afford coverage for any claim for any actual or alleged Wrongful Act of the Spouse or Domestic Partner and that this policy shall apply only to actual or alleged Wrongful Acts of an Insured subject to the full policy's terms and conditions.

The term "Insured" shall not include an individual who or an entity which at the time of the Wrongful Act was or is an independent contractor or was or is paid on a retainer, per diem, or other fee-for-services basis, but such term shall include an individual who was or is a member of the Named Insured or an Affiliated Unit who was or is paid on such basis to perform collective bargaining or related services.

**D. Claim**

- (1) The term "Claim" shall mean any written demand made, suit or other proceeding filed or otherwise brought seeking monetary damages against an Insured for any Wrongful Act or series of related Wrongful Acts occurring on or after

September 1, 1980. A Claim shall be deemed to have been made as of the date on which an Insured receives a written notice from or on behalf of any individual or entity which in substance indicates that it is the intention of such individual or entity to hold that Insured responsible for any Wrongful Act or series of related Wrongful Acts. A demand, suit or other proceeding in which the only monetary damage sought is in the form of court costs or attorney fees incurred in making the demand or filing or bringing the suit or proceeding, shall not be considered a "Claim" under this policy.

- (2) Such insurance as is provided by this policy will apply to a specific incident, circumstance or situation (Possible Claim) other than a "Claim" that the "Insured" first becomes aware of during the "Policy Period" of this policy and which Possible Claim reasonably may lead to or form the basis of a "Claim" for which this policy would otherwise provide coverage. Written notice must be given to the Company of any such Possible Claim as soon as practicable but not later than the end of the "Policy Period". Any "Claim" that may subsequently be made against the "Insured" arising out of such Possible Claim shall be considered a "Claim" first made against the "Insured" during the Policy Period of this policy and shall be subject to all terms and conditions of the policy.

#### **E. Loss**

The term "Loss" shall mean any amount which an Insured shall become legally obligated to pay as the result of the Insured's own Wrongful

Act or series of related Wrongful Acts or as indemnification as the result of another Insured's Wrongful Act or series of related Wrongful Acts including judgments, settlements, premiums on bonds, and reasonable expenses incurred by an Insured at the request of the Company, but excluding salaries of officers and Employees of the Named Insured or an Affiliated Unit. Loss shall not include fines or penalties imposed by law or matters deemed uninsurable under the law pursuant to which this policy shall be construed or attorney fees awarded against an Insured as a plaintiff.

**F. Wrongful Act**

The term "Wrongful Act" shall mean any actual or alleged Personal Injury, breach of duty, neglect, error, misstatement, misleading statement, act or omission by an Insured in the course of Authorized Association Activities.

**G. Occurrence**

The term "Occurrence" shall mean a Wrongful Act which results, or a series of related Wrongful Acts which result, in one or more Claims against one or more Insureds by one or more persons. The term "series of related Wrongful Acts" means more than one Wrongful Act that in combination constitute a single factual event giving rise to a Loss, and the Occurrence shall be deemed to have taken place as of the most recent Wrongful Act.

**H. Personal Injury**

The term "Personal Injury" shall mean:

- (1) false arrest, detention or imprisonment, or malicious prosecution;
- (2) the publication or utterance of a libel or slander or of other defamatory material, or a publication or utterance in violation

of any individual's right of privacy, except when any of the foregoing arises from publications or utterances in the course of or related to advertising, broadcasting or telecasting activities to the general public which are undertaken by or on behalf of an Insured (a) for commercial purposes, or (b) in support of any illegal strike by that or any other Insured while such strike is in actual progress; or

- (3) wrongful entry or eviction, or other invasion of the right of private occupancy

**I. Employees**

The term "Employee" shall mean any person who receives wages or salary from the Named Insured or an Affiliated Unit, but such term shall not include any person who serves as an officer of the Named Insured or an Affiliated Unit.

**III. POLICY PERIOD**

This policy applies only to Claims which are made during the Policy Period set forth in Item 2 of the Declarations, or if this policy is canceled prior to the completion of the Policy Period, during the period from the effective date of this policy to the effective date of such cancellation. All periods of insurance shall begin and end at 12:01 a.m. at the address of the Named Insured.

**IV. TERRITORY**

- A. This policy applies to Loss by reason of a Wrongful Act anywhere in the world.
- B. The Company is not an admitted or authorized insurer outside of the United States of America, its territories and possessions, or Canada, and the Company assumes no responsibility for the furnishing of certificates or evidence



of insurance or bonds in any country in which it is not admitted or authorized. The Company shall not be liable for any fine or penalty imposed upon an Insured for failing to insure with an admitted or authorized insurer nor for any other failure of an Insured to comply with an insurance law of a country, state, province, territory or possession in which the Company is not an admitted or authorized insurer.

**V. LIMITS OF LIABILITY**

Regardless of the number of:

- (1) Insureds under this policy;
- (2) Persons or entities who sustain injury or damage; or
- (3) Claims made or suits brought as the result of a Wrongful Act,

the Company's total liability for all Loss resulting from a Wrongful Act shall be limited to the amount stated in Item 3 of the Declarations as applicable to "Each Claim" provided, however, that the amount stated in Item 3 of the Declarations as "Annual Aggregate" shall be the maximum aggregate limit of liability of the Company under this policy for all Loss resulting from all Claims made during the Policy Period as set forth in Section III of this policy.

## **VI. OTHER INSURANCE**

The coverage provided by this policy is excess over any other valid and collectible insurance unless such other insurance is written as specific excess over the limits provided by this policy. This coverage applies only to the amount of Loss that is not paid by any other insurance, regardless of whether the other insurance is primary, contributing, excess, or contingent, provided that this coverage shall not apply to the amount of Loss that is not paid by any other insurance to the extent that such non-payment results from the failure of the Insured to comply with the terms of this policy, including but not limited to, Section VIII(A), (B) and (D).

## **VII. EXCLUSIONS**

### **A. Activities Which Are Not Authorized Association Activities**

Except as provided to the contrary herein, this policy does not apply to activities of any Insured which are not Authorized Association Activities as defined in the policy.

### **B. Claims Between and Among Insureds**

If a Claim is made against an Insured by any other Insured, the Named Insured shall determine which, if any, of the Insureds in question shall be eligible for the coverage provided by this policy, provided that this policy shall not apply to a Claim made by or on behalf of any Employee or former Employee of the Named Insured or an Affiliated Unit arising out of the employment relationship between said Employee or former Employee and the Named Insured or an Affiliated Unit.

### **C. Medical and Related Arts**

This policy does not apply to the rendering, or failure to render medical, surgical, psychological, psychiatric, dental, nursing, or similar therapeutic or diagnostic services, including but not limited to, the furnishing or dispensing of drugs or medical, dental or surgical information, advice, supplies or appliances by any Insured.

### **D. Boards of Trustees**

This policy does not apply to any Insured acting in the capacity, whether paid or unpaid, of a board member, trustee, director, governor, or any similar capacity on the governing body of any organization, corporation, partnership, or similar entity other than the Named Insured or an Affiliated Unit, provided that this policy shall apply to directors, officers, members and employees of an Insured serving in such capacity at the direction of the Named Insured or an Affiliated Unit in a limit of liability not to exceed \$250,000 per Claim.

### **E. Fiduciary**

This policy does not apply to any claim alleging, arising out of, based upon, attributable to, or in any way involving, directly or indirectly, violation(s) of any of the responsibilities, obligations or duties imposed upon fiduciaries by the Employee Retirement Income Security Act of 1974 (ERISA) or amendments thereto, or any similar provisions of state, local or foreign statutory law or common-law.

### **F. Dishonest, Fraudulent or Improper Acts**

This policy does not apply to any Claim:

- (1) seeking return of any remuneration which a court has held was paid to an Insured in violation of law;

- (2) arising from any act of an Insured which a court has held constituted fraud or dishonesty; or
- (3) arising from any act of an Insured by means of which said Insured gained personal profit or advantage to which a court has held said Insured was not legally entitled.

#### **G. Civil Suits Arising from Criminal Acts**

This policy does not apply to any Claim arising from any criminal act or acts committed by or at the direction of any Insured which is or are punishable in the jurisdiction in which such act or acts occurred by a sentence in excess of one (1) year in jail. This exclusion applies even if such Claim is: (1) of a different kind or degree than intended or reasonably could have been expected, or (2) sustained by a different person than intended or reasonably could have been expected.

#### **H. Criminal Acts**

This policy does not apply to the payment of any fines, monies, levies or other forms of restitution resulting from the commission or attempted commission of a criminal act by or at the direction of any Insured, whether in the nature of a misdemeanor or a felony as defined by the relevant federal, state or local statutes. This Exclusion applies even if the Insured:

- (1) lacks the mental capacity to govern his or her own actions; and
- (2) was not charged with or convicted of the commission or attempted commission of a crime.

(The Wrongful Act of any Insured shall not be imputed to any other Insured for the purpose of determining the applicability of the foregoing exclusions F, G, and H.)

### **I. Punitive Damages**

This policy does not apply to punitive or exemplary damages except where insurable by law. Any amount paid for punitive or exemplary damages shall be combined with all other Loss for purposes of the Company's total Limits of Liability set forth in this policy, including but not limited to, those set forth in Section V.

### **J. Contracts**

This policy does not apply to any Loss which:

- (1) an Insured expressly has agreed to pay on behalf of any non-insured under any contract, except for liability that would have arisen in the absence of a contract; or
- (2) results from the failure of an Insured to pay rent, pay fees for contracted services or make any other payment or fulfill any other financial obligation in connection with a commercial transaction, provided that the term "commercial transaction" as used herein shall not include any aspect of a collective bargaining relationship between an Insured and any non-insured, except for liability that would have arisen in the absence of a contract.

### **K. Bodily Injury or Property Damage**

This policy does not apply to any damages, direct or consequential, arising from bodily injury, sickness, disease or death of any person, or for damage to or destruction of any tangible property, including loss of use thereof.

### **L. Legislated Coverages**

This policy does not apply to any obligation of the Insured pursuant to the relevant federal or state laws regarding Workers' Compensation, unemployment compensation, disability benefits, or similar laws.

**M. Pollution**

This policy does not apply to any Claim arising out of the actual, alleged or threatened discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants regardless of whether such discharge, dispersal, release or escape causes harm or damage of any kind to the environment.

**N. Firearms and Related Devices**

This policy does not apply to any Claim associated with the use of a firearm or any similar device by any Insured.

**O. Strikes**

This policy does not apply to any Claim based upon actions taken by an Insured in support of an illegal strike by that or any other Insured while such strike is in actual progress.

**P. Dram Shop**

This policy does not apply to any Claim for which any Insured may be held liable as an individual or entity: (a) by, or because of the violation of, any statute, ordinance or regulation pertaining to the gift, sale, distribution or use of any alcoholic beverage or any intoxicant; (b) by reason of the selling, serving or giving of any alcoholic beverage or any intoxicant to a minor or to any person actually or allegedly under the influence of any alcoholic beverage or any intoxicant or which causes or contributes to the intoxication of any person; (c) by reason of any actual or alleged negligent supervision of a minor or any person actually or allegedly under the influence of any alcoholic beverage or any intoxicant; or (d) by reason of any actual or alleged negligent entrustment of any alcoholic beverage or

any intoxicant to a minor, or to any person actually or allegedly under the influence of any alcoholic beverage or any intoxicant.

This Exclusion applies regardless of whether the Insured is engaged in the business of manufacturing, distributing, selling or serving alcoholic beverages or intoxicants.

**Q. Agency Shop and Payroll Deductions**

This policy does not apply to any Claim arising out of:

- (1) an agency shop or similar arrangement; or
- (2) a payroll deduction system pursuant to which payments are made to an Insured.

**R. Declaratory Judgments**

This policy does not apply to any suit or other similar proceeding seeking solely declaratory judgment, injunctive relief, or any other kind of non-monetary relief.

**S. Employment Related Claims**

This policy shall not apply to any Claim arising out of any act or omission by an Insured in its capacity as an employer, or related to a claimant's employment by any Insured, including but not limited to, any claim arising out of the actual, alleged or threatened discharge of, coercion of, harassment of, or discrimination against any claimant.

**T. Sexual Abuse and Molestation**

This policy does not apply to any Claim arising out of:

- (1) an Insured's actual, alleged or threatened sexual abuse, molestation, or harassment of any person; or
- (2) the employment, supervision or retention of a person for whom any Insured is or ever

was responsible and whose conduct would be excluded by paragraph (1) above.

**U. Motor Vehicle Trailer, Aircraft or Watercraft**

This policy shall not apply to any Claim arising out of the ownership, maintenance, use, loading or unloading of any motor vehicle trailer, aircraft or watercraft.

**V. Certain Employee and Other Benefit Programs**

This policy does not apply to Claims arising, directly or indirectly, out of:

- (1) actions taken by an Insured while acting as an owner, organizer, or administrator, or sponsoring or overseeing the operation, of any organization, association, trust or other entity that is involved with nursing or retirement homes, or that provides retirement, pension, profit sharing, welfare benefit, employee benefit, or similar plans, programs or benefits; or
- (2) an Insured's sponsorship of a product or service offered by such an entity,

provided that this policy shall apply to such claims at a limit of liability not to exceed \$250,000 per Occurrence. This exclusion shall not apply to actions taken by an Insured while acting as or on behalf of a collective bargaining representative, or otherwise representing employees with regard to salaries, hours, or other terms and conditions of employment. All related Claims, whenever made, shall be deemed to be a single Claim.

**W. Scholarships**

This policy does not apply to Claims arising, directly or indirectly, out of actions taken by an



Insured while acting as an owner, organizer, or administrator of any organization, association, trust or other entity that provides or awards scholarships to individuals for educational purposes, provided that this policy shall apply to such claims at a limit of liability not to exceed \$250,000 per Occurrence. This exclusion shall not apply to actions taken by an Insured in connection with educational scholarships that are provided or awarded by the Named Insured or an Affiliated Unit.

## **VIII. CONDITIONS**

### **A. Notice of Claim**

Upon first receipt of notice of a "Claim" by the President, Executive Director, Chief Financial Officer, General Counsel, Deputy General Counsel, Director of Collective Bargaining and Member Advocacy, Manager of Legal Services Programs or General Counsel of a State Affiliate, written notice thereof shall be given to the Company as soon as practicable. Such notice shall contain particulars sufficient to identify the Insured and also reasonably obtainable information respecting the time, place and circumstances of the Wrongful Act, the names and addresses of the claimants and of available witnesses. Such notice shall be deemed to have been received by the Company if sent by prepaid mail properly addressed. Every written demand, notice, summons or other process received by or on behalf of the President, Executive Director, Chief Financial Officer, General Counsel, Deputy General Counsel, Director of Collective Bargaining and Member Advocacy, Manager of Legal Services Programs or General Counsel of a State Affiliate shall be forwarded to the Company as soon as practicable. Failure by the President, Executive Director, Chief

Financial Officer, General Counsel, Deputy General Counsel, Director of Collective Bargaining and Member Advocacy, Manager of Legal Services Programs or General Counsel of a State Affiliate to provide notice of a Claim as soon as practicable after their first receipt of notice of such Claim may be cause for denial of such Claim. No misrepresentation, failure to disclose or breach of warranty of facts shall void this policy or any part thereof unless the misrepresentation or non-disclosure was made, or the breach of warranty was committed, deliberately and knowingly by the insured so as to induce the company to accept this policy or to decide upon the terms thereof and the company was so induced.

**B. Assistance and Cooperation of Insured(s)**

Upon Insured's first receipt of notice of a Claim and until conclusion of the Claim, Insured shall cooperate with the Company in the investigation, settlement and defense of any Claim, including providing any and all reports or other information to the Company as reasonably requested, and shall help the Company to obtain payment from anyone who may be jointly responsible for Loss. Upon the Company's request, Insured shall attend hearings and trials and shall assist in effecting settlements and obtaining the attendance of witnesses. The Company shall not be liable under this policy if an Insured voluntarily makes any settlement, agrees to settlement or judgment, or assumes any obligation of settling any Claim covered under this policy without the prior written consent of the Company. Such consent shall not be unreasonably withheld by the Company. Nor shall the Company be liable if judgment is rendered, settlement is made or a conclusion is otherwise reached in a Claim

prior to notice of the Claim being provided to the Company or prior to the Company being granted an opportunity to participate in the investigation, settlement or defense of the Claim. When the Insured has the duty to defend, it, at its option, shall select and assign defense counsel; however, the Company may engage additional counsel, solely at their expense, to associate in the defense of any "claim" covered hereunder.

### **C. Cancellation**

This policy may be cancelled by the Named Insured at any time by sending to the Company, by certified or registered mail, written notice stating when after the sending of said notice such cancellation shall become effective. This policy may be cancelled by the Company by sending to the Named Insured, by certified or registered mail, at the address set forth in Item 1 of the Declarations, written notice stating when, not less than 60 days after the sending of said notice, such cancellation shall become effective. If this policy is cancelled by the Named Insured, the Company shall retain the customary short rate proportion of the premium hereon, as indicated in Endorsement 10 to this policy. If this policy is cancelled by the Company, the Company shall retain the pro rata proportion hereon. Payment or tender of any unearned premium by the Company shall not be a condition precedent to the effectiveness or cancellation, but such payment shall be made as soon as practicable after the effective date of cancellation. If the period set forth herein for the giving of notice of cancellation is invalid under the law pursuant to which this policy shall be construed, said notice period shall be deemed amended to reflect the minimum notice period allowed by such law.

#### **D. Subrogation**

In the event of payment under this policy, the Company shall be subrogated to an Insured's right of recovery therefore against any person or organization that is not also an Insured, and the Insured shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. An Insured shall do nothing after the Wrongful Act to prejudice such rights.

Should the Company elect to provide a defense of any Claim, it shall be subrogated to any rights of an Insured under any other insurance for defense costs in excess of the amount necessary to reimburse the National Education Association and an Affiliated Unit for the payment of any expenses that they incurred related to such defense. The Insured shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. An Insured shall do nothing after a Wrongful Act to prejudice such rights.

#### **E. Authorizations to Named Insured**

By acceptance of this policy, the Named Insured agrees to act on behalf of all Insureds with respect to the giving and receiving of notice of cancellation, the payment of premiums and the receiving of any return premiums that may become due under this policy, and the Insureds agree that the Named Insured shall, with respect to the aforementioned matters, act on their behalf.

#### **F. Changes**

Notice to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or a change of any part of this policy or stop the Company or an Insured from asserting any right under the terms of

this policy; nor shall the terms of this policy be waived or changed, except by endorsement issued to form a part of this policy, signed by the President or Executive Director of the Named Insured and by an authorized representative of the Company.

#### **G. Action Against Company**

No action shall lie against the Company unless, as a condition precedent thereto, an Insured shall have fully complied with all terms of this policy. In the event of the insolvency, reorganization, bankruptcy or death of an Insured, the Company shall not be relieved of payment hereunder but shall be required to make such payment as would have been payable but for such insolvency, reorganization, bankruptcy or death.

#### **H. Assignment**

Assignment of interest under this policy shall not bind the Company until its consent is endorsed thereon.

#### **I. Unenforceability of Exclusion**

Notwithstanding Item 4 of the Declarations or Section V, "Limits of Liability," if any Exclusion contained in Section VII is found to violate public policy or is otherwise unenforceable, the Limits of Liability applicable to any Loss covered by such Exclusion shall be:

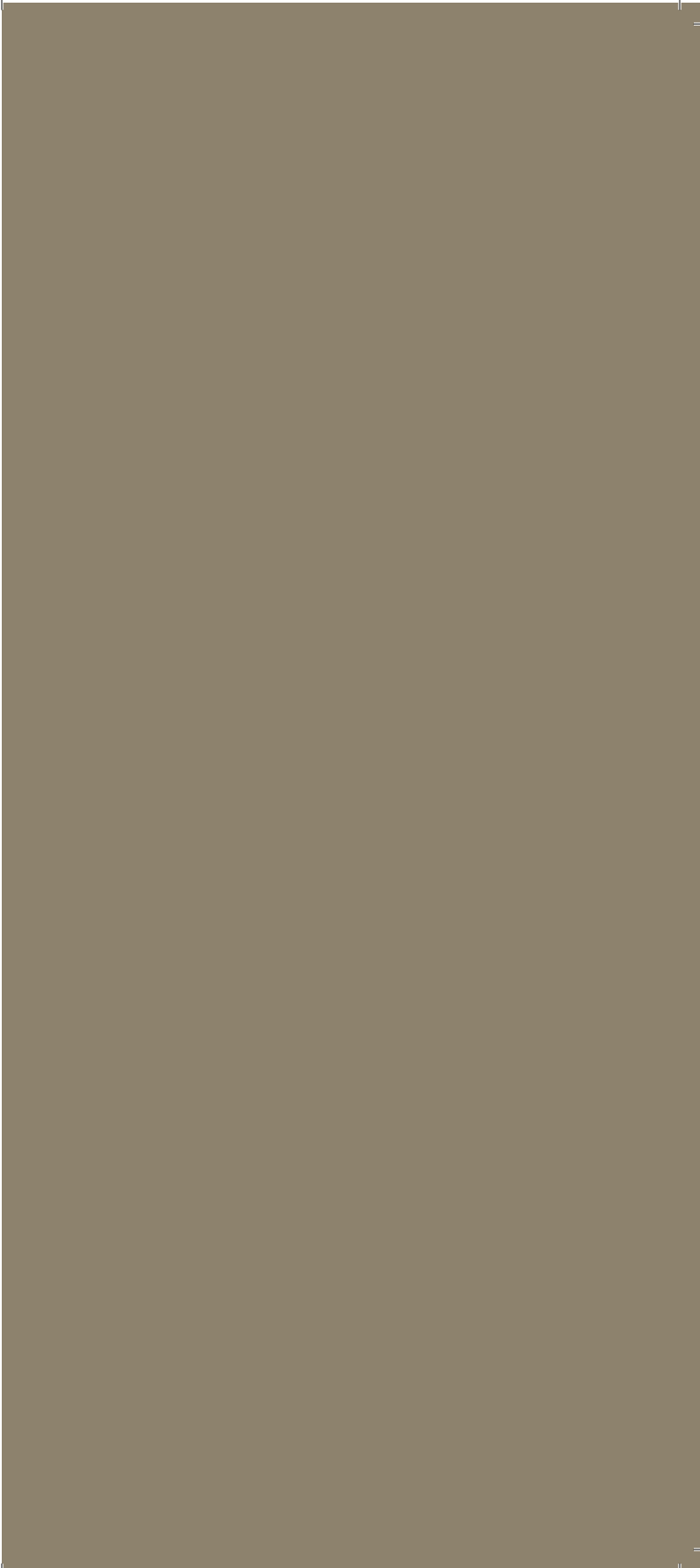
- (1) \$50,000.00 Each Occurrence
- (2) \$100,000.00 Maximum Annual Aggregate

#### **J. Governing Law and Jurisdiction**

This policy shall be interpreted and applied in accordance with the law of the District of Columbia. The state and federal courts in the District of Columbia shall have exclusive jurisdiction over any dispute involving the interpretation or application of this policy.

**K. Warranty and Severability**

It is warranted that the particulars and statements contained in the written application, and the Declarations page of this policy are the basis of this policy and are to be considered as incorporated in and constituting a part of this policy. This policy shall be construed as a separate agreement with each Insured, except that the amount of the Company's liability shall be subject to the limits set forth in this policy, including but not limited to, those set forth in Section V.





*Great Public Schools for Every Student*

Collective Bargaining &  
Member Advocacy  
Legal Services Programs  
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