

# COVERAGE AGREEMENT

2018-2019





# Coverage Agreement

## #COV18-19

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**Declaration:**

This document is not a contract of insurance. The Washington Schools Risk Management Pool (WSRMP) is not an insurance company. This document is an Agreement by WSRMP to pay all covered losses subject to the definitions, terms, conditions, exclusions, deductibles and limits of liability of this Agreement and any addenda attached hereto. In consideration of the contribution by the Member Districts (District), this document provides the coverages set forth in this Agreement.

**Period of Agreement:**

The words Period of Agreement shall be understood to mean the following period:

Beginning of September 1, 2018 through the end of August 31, 2019.

**Territory:**

Coverage under this Agreement applies worldwide, but coverage does not extend to claims brought in courts outside the United States, its territories, or possessions and Canada.

**Covered Parties:**

Coverage under this Agreement is extended to individual Member Districts as identified in the Declarations to this Agreement and to the Washington Schools Risk Management Pool, including its Board of Directors, officers, employees, and committees acting in the course and scope of their official duties or employment. The Washington Schools Risk Management Pool is afforded coverage under this Agreement to the same extent as any District named in the Declarations. All terms, conditions, coverages, exclusions and limits of liability shall apply to the Washington Schools Risk Management Pool as would apply to any individually named Member District.

Issued by:

*Washington Schools Risk Management Pool  
P.O. Box 88700  
Tukwila, Washington 98138-2700  
(206) 394-9737*

## Article I.A. Property Coverage

### A. Automobile Physical Damage

Unless otherwise excluded, WSRMP agrees, subject to the applicable deductibles, limits of liability, terms and conditions of this Agreement, to cover loss or damage to:

1. automobiles owned by the District; and
2. non-owned automobiles hired by the District and for which the District has a written obligation to provide insurance;

wherever located, against all unforeseen, unexpected, or unintended risks of direct physical loss occurring during the period of this Agreement. If this Agreement expires before WSRMP has paid all the amounts due under this paragraph, WSRMP will continue to make the payments to which the District is entitled until that obligation is satisfied.

### B. Buildings, Contents, Equipment, Electronic Data Processing Equipment

Unless otherwise excluded, WSRMP agrees, subject to the applicable deductibles, limits of liability, exclusions, terms and conditions of this Agreement, to cover all unforeseen, unexpected, and unintended risks of direct physical loss or damage to any property of the District, wherever located, occurring during the period of this Agreement. If this Agreement expires before WSRMP has paid all the amounts due under this paragraph, WSRMP will continue to make the payments to which the District is entitled until that obligation is satisfied.

### C. Other Property

1. Valuable Papers and Records, Electronic Data, and Electronic Data Processing Media

Unless otherwise excluded, WSRMP agrees, subject to the applicable deductibles, limits of liability, terms and conditions of this Agreement, to cover loss or damage to:

- a. valuable papers and records;
- b. electronic data; and
- c. electronic data processing Media owned by the District or for which the District has a written obligation to provide adequate coverage;

wherever located, against all unforeseen, unexpected, and unintended risks of direct physical loss or damage occurring during the period of this Agreement.

**2. Employee's Personal Property**

WSRMP agrees, subject to the applicable District deductibles, exclusions, limits of liability, terms and conditions of this Agreement, to pay loss, up to the actual cash value of the damaged property at the time of loss, incurred by an employee of the District who sustains unforeseen, unexpected, or unintended damage to the employee's personal property while the property is on District premises or in a District-owned or District-leased vehicle, and is being used for purposes usual, customary, and incidental to the employee's job duties, and when such loss occurs in conjunction with the District's covered loss.

**3. District Students' Personal Property**

WSRMP agrees, subject to the applicable District deductibles, exclusions, limits of liability, terms and conditions of this Agreement, to pay loss, up to the actual cash value of the damaged property at the time of loss, incurred by a student of the District who sustains unforeseen, unexpected or unintended direct physical loss to the student's personal property while the property is on District premises or in a District-owned or District-leased vehicle, and when such loss occurs in conjunction with the District's covered loss.

**D. Builders' Risk (applies to specific covered projects on file with WSRMP)**

WSRMP agrees, subject to the applicable deductibles, limits of liability, exclusions and terms and conditions of this Agreement, to cover all unforeseen, unexpected, and unintended risks of direct physical loss or damage to property under construction. Property under construction means new construction, additions to existing buildings, renovation or remodel of existing buildings, and repair of buildings or structures, provided that the contracted cost of the project is \$300,000 or more.

Property covered shall include:

1. existing real property at the location of the covered project, but only when the covered construction works are contained within or attached to such existing real property and then only to the extent loss or damage arises out of the contractor's performance of the covered project.
2. permanent works and temporary works, the value of which is included in the estimated total contract value for the covered project as on file with WSRMP.

As used in this section, permanent works includes all materials, supplies, equipment, machinery, and other property of a similar nature, being property of the District or of others for which the District may be contractually responsible and as declared by the District, all when used, or to be used in, or incidental to, the demolition of existing structures, site preparation, fabrication or assembly, installation or erection, alteration, renovation or construction of the covered project.

As used in this section, temporary works includes all scaffolding, form work, fences, shoring, hoarding, falsework and temporary buildings all incidental to the project as declared by the District.

Conditions applicable to Builders' Risk coverage:

1. This Builders' Risk coverage applies only to projects for which the contracted cost is \$300,000 or more.
2. This Builders' Risk coverage applies only to projects submitted to WSRMP in advance and kept on file with WSRMP.
3. This Builders' Risk coverage applies only to projects for which the contractor or district has obtained separate builders' risk coverage for the project with limits sufficient to cover the cost of the project. WSRMP may, at its discretion, waive this requirement of separate district or contractor's builders' risk coverage.
4. This Builders' Risk coverage applies only in excess of any other valid and collectible builders' risk coverage, whether that other coverage or insurance is stated to apply on a primary, excess, contingent or any other basis. This condition does not apply to coverage obtained by WSRMP to apply on an excess basis specifically to WSRMP's Builders' Risk coverage.
5. This Builders' Risk coverage will pay the cost to repair or replace the lost or damaged property, the amount to be determined by values as of the time and place of loss, with material of like kind and quality, less betterment, including contractor's reasonable profit and overhead in the same proportion as that included in the original contract documents. If not so replaced, loss shall be settled on an actual cash value basis with proper deduction for depreciation and exclusive of overhead and profit. With respect to temporary works, the coverage will pay the actual cash value of the lost or damaged property as of the time and place of loss.
6. This Builders' Risk coverage terminates on the date of issuance of a certificate of occupancy by the applicable municipal authority, or at the completion of the project as per a notice of substantial completion.



**E. Collapse**

Subject to the applicable deductibles, exclusions, terms, conditions, and limits of liability of this Agreement, WSRMP shall pay for direct physical loss to covered property involving collapse of a building or any part of a building if the collapse was caused by one or more of the following:

1. Fire, lightning, explosion, windstorm, hail, smoke, aircraft, vehicles, riot, civil commotion, vandalism, sprinkler leakage, sinkhole collapse, volcanic action, falling objects, weight of snow, ice, or sleet, leakage from an appliance or system, and breakage of building glass;
2. Decay that is hidden from view and the presence of such decay is not known to the District prior to collapse;
3. Insect or vermin damage that is hidden from view and that the presence of such damage is not known to the District prior to collapse;
4. Weight of contents, equipment, animals or people;
5. Weight of rain that collects on a roof.

Loss to an awning, fence, patio, pavement, swimming pool, underground pipe, flue, drain, cesspool, septic tank, foundation, retaining wall, bulkhead, pier, wharf or dock is not included under Items b., c., d., and e. unless the loss is a direct result of the collapse of a building or any part of a building.

**F. Terrorism**

Subject to the applicable deductibles, limits of liability, exclusions, terms and conditions of this Agreement, this Article I.A. provides coverage for direct physical loss or damage to any property of the District caused by or resulting from an act of terrorism (as defined). Any amounts recoverable under this Additional Coverage for terrorism are excluded from coverage available elsewhere in the Coverage Agreement. This Additional Coverage for terrorism provides no liability coverage for any claims that may be made against the District.

This Additional Coverage for terrorism does not apply to and does not cover loss or damage arising out of or caused by any of the following events. Loss or damage is considered to have been caused by these events if that event directly and solely results in loss or damage or initiates a sequence of events that results in loss or damage, regardless of the nature of any intermediate or final event in that sequence.

1. Loss that involves the use, release or escape of nuclear material, or that directly or indirectly results in nuclear reaction or radiation or radioactive contamination; or

2. Loss that is carried out by means of the dispersal or application of pathogenic or poisonous biological or chemical materials; or
3. Loss in which pathogenic or poisonous biological or chemical materials are released, and it appears that one purpose of the terrorism was to release such materials; or
4. Loss that involves action taken to prevent, defend against, respond to or retaliate against terrorism or suspected terrorism; or
5. Automobile physical damage.

**G. Additional Expenses Coverage**

**1. Loss of Income**

WSRMP will pay lost income of the District if the District's operations are interrupted as a result of loss to property owned or leased by the District from a covered cause of loss. This loss will be limited to the District's actual loss of income after deduction for expenses avoided as a result of the interruption. Loss of income coverage will only extend for the time period reasonably required to repair or replace the damaged or destroyed property with the exercise of due diligence and dispatch, and only in the event that the District actually repairs or replaces the damaged or destroyed property.

Loss of income does not include loss of funding or grants from a governmental or private entity, foundation, or person.

**2. Extra Expense**

- a. Subject to the applicable deductibles, exclusions, terms, conditions and limits of liability of this Agreement, WSRMP will pay expense over and above the District's ordinary business expenses which are necessary to continue normal operations after a loss to property owned or leased by the District from a covered cause of loss. This coverage will continue only for the period of time reasonably necessary as determined by WSRMP, to repair or replace the damaged or destroyed property, subject further to the condition that the District must make every reasonable effort to resume operations or partial operations as soon as possible;
- b. Coverage is extended to include losses covered hereunder, for a period not exceeding two (2) weeks, when, as a direct result of other physical damage not otherwise excluded by this Agreement, access to the covered property is prohibited by order of civil authority;
- c. In addition to all other exclusions, this extension does not cover extra expense resulting from:

- i. the suspension, lapse or cancellation of any lease, license, contract or order;
- ii. interference at premises by strikers or other persons while repairing or replacing the property damaged or destroyed or with the resumption or continuation of the District's occupancy;
- iii. loss or damage to property rented or leased to others while away from the premises of the District;
- iv. error in machine programming or instructions to machine;
  - (1) except with respect to loss to electronic data processing equipment and/or data processing media, damage due to mechanical failure;
  - (2) except with respect to loss to electronic data processing equipment and/or data processing media, damage due to short circuit, blowout or other electrical disturbance within electrical apparatus (other than lightning), unless fire or explosion ensues and then only for damage or expense caused by such ensuing fire or explosion;
- v. loss of use of real property, equipment or fixtures.

### **3. Pollutant Clean Up and Removal**

WSRMP agrees to pay up to, but no more than, the amount specified in Article I.A. H.7 for removal of pollutants from District land or water resulting from covered causes of loss occurring during the term of this Agreement. Regardless of the number of covered causes of loss occurring during the 12-month term of this Agreement and regardless of the total cost to the District to remove pollutants resulting therefrom, WSRMP will pay no more than the amount specified in Article I.A. H.7 for such removal. The coverage provided under this Subsection is excess over any policy or contract of insurance providing pollution liability, removal or clean-up coverage to a district. Any policy or contract of insurance insuring a district for pollution liability removal or clean-up shall be considered for purposes of this coverage extension as primary coverage.

### **4. Debris Removal**

Subject to the applicable deductibles, exclusions, terms, conditions and limits of liability of this Agreement, this Agreement covers the reasonable expense of removing debris from the premises covered under this Agreement and remaining after any covered loss, including loss to property scheduled as a demolition only site, except that there shall be no liability assumed by virtue of this paragraph for the expense of removal of any foundation, or any expense associated with the removal or restoration of soil, sediment, ground water, or surface water, whether contaminated or not.

### **5. Removal Clause**

Subject to the applicable deductibles, exclusions, terms, conditions and limits of liability of this Agreement, this Agreement covers the reasonable expense incurred

and damage occasioned by removal of property from the premises endangered by a loss not otherwise excluded by this Agreement, wherever such property is located or removed for preservation. WSRMP will not cover by virtue of this paragraph, however, any expense associated with the removal or restoration of contaminated soil or water.

**6. Architect's Fees and Construction Project Management Fees**

Subject to the applicable deductibles, exclusions, terms, conditions and limits of liability of this Agreement, this Agreement covers the reasonable expense of architect fees for professional services rendered, and arising from a covered loss, but only to the extent made necessary by damage resulting from a covered loss not otherwise excluded by this Agreement and only to the extent such architect's fees are incurred for professional services necessary, as authorized by WSRMP, for covered repair or replacement.

WSRMP will not pay the cost of construction project management, unless, due to the size and complexity of the project and in WSRMP's sole discretion, it is determined that separate construction project management is warranted. If construction project management is determined to be warranted, WSRMP reserves the right to select and retain the project manager of its choice and will not be obligated to retain the District's project manager or other District in-house personnel.

**7. Civil Authority Clause**

Subject to the applicable deductibles, exclusions, terms, conditions, and limits of liability of this Agreement, property which is covered hereunder is also covered against the risk of damage or destruction by civil authority during a conflagration for the purpose of retarding the same; provided that neither such conflagration nor such damage or destruction is caused or contributed to by war, invasion, revolution, rebellion, insurrection or other hostilities or warlike operations.

**8. Building Laws Clause**

Subject to the applicable deductibles, exclusions, terms, conditions, and limits of liability of this Agreement, WSRMP shall pay for the loss occasioned by the enforcement of any existing state, county or municipal law, ordinance or code, which necessitates expense in repairing or rebuilding property damage after a covered cause of loss, or replacement of material to meet such requirements. Cost of demolition required to comply with such enforcement is also covered.

This coverage for building laws expense applies only to the enforcement of building ordinances or laws resulting directly from the repair or replacement of covered damage and is limited to the building where the covered loss occurred and to the type of damage that made enforcement necessary. This coverage does not apply to

the expense required to bring undamaged parts of the building into compliance with current building ordinances or laws where such compliance is not the result of the covered damage.

**9. Expense to Reduce or Prevent Loss Relating to an Occurrence**

The District is authorized to take immediate action to minimize the extent of any covered loss. Reasonable expenses necessarily incurred by the District as a result of its good faith effort to minimize the extent of loss will be reimbursed by WSRMP.

**10. Burglary or Trespass Involving Master Key**

Subject to the applicable deductibles, exclusions, terms, conditions and limits of liability of this Agreement, this Agreement covers the reasonable expense of re-keying the locks of a District building following a covered loss arising from the burglary, break-in, or trespass of such building involving the unauthorized use of a master key.

**11. Limited Water Extraction and Clean-up**

Subject to the applicable property deductible, exclusions, terms, conditions and limits of liability of this Agreement, this Agreement covers the repair of damage caused by, or clean-up of property as a result of, surface water. This Additional Coverage applies to all locations.

**H. Limits of Liability**

The limit of liability for each occurrence is the most WSRMP will pay for all damage that results from that occurrence.

If loss or damage to property caused by a single occurrence begins in one period of Agreement and ends in another, only the coverage and limits in the last period of Agreement in time shall apply and only one Property Coverage limit shall be available for each such multi-period of Agreement occurrence.

WSRMP's limit of liability for Property Coverage under this Agreement shall be only:

**1. Automobile Physical Damage**

Under Article I.A., Section A, WSRMP will pay, less the deductible set forth in the Declarations, for each loss or occurrence:

- a. Automobiles other than buses: up to the actual cash value of the automobile at the time of loss;
- b. Buses: the cost of repairs up to the replacement cost of a new bus of like kind and

quality, except that a total loss shall be paid at actual cash value unless the District signs a binding contract to replace the bus with like kind and quality within 180 days of the physical loss. The replacement cost payment by WSRMP shall be made at such time as the District takes possession of each new bus.

2. Property damage to Buildings, Contents, Equipment, and Electronic Data Processing Equipment, other than automobiles.

Under Article I.A., Section B, WSRMP will pay the Ultimate net loss, less the applicable deductibles set forth in the Declarations or other endorsements attached to this Agreement, up to:

- a. the cost to repair, rebuild or replace the destroyed or damaged property with property of the same size, function (at the time of the loss), and quality, using new material of like kind and quality. (If the District does not actually repair, rebuild or replace the destroyed or damaged property then loss or damage will be paid at Actual Cash Value.) If the District decides to replace destroyed or damaged property on another site, cost of such site is not included hereunder; or
- b. with respect to real property designated by the District by Endorsement to this Agreement as demolition only (property not to be repaired or replaced in the event of a covered loss), the District agrees, in exchange for a waiver of the premium applicable to such designated property, that WSRMP will pay, in the event of covered loss, the cost of demolition up to the limit of liability, provided that this coverage applies only if the loss exceeds 50% of the total replacement cost of the designated property. If the loss is less than 50% of the total replacement cost, WSRMP will have no obligation with regard to such loss. This coverage for demolition only property applies on a per building basis, and is payable only upon completion of demolition. This coverage for demolition only property does not apply to the demolition or removal of foundations.

The obligation of WSRMP to pay under Article I.A., Section B, is subject to a per occurrence limit for replacement coverage, as stated in the Declarations, and subject to WSRMP Retention and Insolvency of Excess provision, Article VII, Section B.

- c. With respect to Flood, in the event of a loss or accumulation of losses whereby the amount of loss exceeds the limits of this Agreement for Flood, the payments to individual members will be made on a proportional basis. This proportion shall be determined as the ratio of the total limits available divided by the total amount that would have been payable if no exhaustion of limits had occurred. This provision applies to exhaustion of limits on a per occurrence and annual aggregate basis.

**3. Builders' Risk**

Under Article I.A., Section D, subject to all terms, conditions, and applicable deductibles of the Coverage Agreement, WSRMP will pay, on an excess basis over any other valid and collectible builders' risk coverage, no more than \$300,000 per occurrence for property under construction, as defined in Section D of this Article.

This \$300,000 limit applies to WSRMP's obligation to pay such loss or damage regardless of the availability of additional coverage for such loss from excess insurance or reinsurance.

For loss in excess of WSRMP's \$300,000 per occurrence limit, coverage is provided by WSRMP's reinsurer on an excess basis over, first, any other valid and collectible builders' risk coverage and, second, WSRMP's \$300,000 per occurrence limit, subject to a \$100,000,000 Per Occurrence Limit excluding Soft Costs.

**4. Valuable Papers and Records, Electronic Data, and Electronic Data Processing Media.**

Under Article I.A., Section C, Subsection 1, WSRMP will pay, less the deductible set forth in the Declarations for each occurrence, the cost to reproduce or restore (from duplicates or from originals) the valuable papers and records, electronic data, and electronic data processing media sustaining damage or loss. In the event the District elects not to reproduce such property, WSRMP will pay the cost of the media used to store such property.

**5. Employee's Personal Property**

Under Article I.A., Section C, Subsection 2, WSRMP will pay, less the deductible set forth in the Declarations for each loss or occurrence, the Ultimate net loss up to the actual cash value at the time of loss of the property damaged or destroyed while the property is on District premises or in a District-owned or District-leased vehicle at the time of loss, and is being used for purposes usual, customary, and incidental to the employee's job duties. In the event of loss arising from the maintenance of order and discipline by the employee in compliance with the provisions of RCW 28A.400.370, the deductible will not apply.

**6. District Student's Personal Property**

Under Article I.A., Section C, Subsection 3, WSRMP will pay, less the deductible set forth in the Declarations, for each loss or occurrence, the Ultimate net loss up to the actual cash value at the time of loss of the property damaged or destroyed, subject to a limit of \$500 per student, and an aggregate loss limit of \$50,000 per occurrence, for student property damaged or destroyed while the property is on District premises or in a District-owned or District-leased vehicle at the time of loss.

**7. Pollutant Clean Up and Removal**

Under Article I.A., Section G, Subsection 3, WSRMP will pay no more than \$50,000 per occurrence, regardless of the number of losses occurring during the term of the Agreement and regardless of the total cost to the District to remove pollutants. The coverage provided under Article I.A., Section G, Subsection 3, is at all times subject to the deductible set forth in the Declarations and is excess over any policy or contract of insurance providing pollution liability, removal or clean-up coverage to a district. Any such policy or contract of insurance shall be considered primary.

**8. Debris Removal, Removal and Building Laws Clause—Asbestos**

Under Article I.A., Section G, Subsection 4, Subsection 5 and Subsection 8 WSRMP will pay, less the deductible set forth in the Declarations, an aggregate limit of \$50,000 for expense to contain, remove or abate asbestos if the containment, removal or abatement is legally required after a covered cause of loss. This limit is the total limit of coverage under any and all portions of this agreement and shall not be interpreted as separate limits for each subsection.

**9. Terrorism**

Under Article I.A., Section F, WSRMP will pay, less the deductible set forth in the Declarations, no more than \$1,000,000 per occurrence and no more than \$3,000,000 in the aggregate on an annual Pool-wide basis for covered loss or damage by an act of terrorism, as provided in Article I.A., Section F, above.

**10. Property damage to Buildings, Contents, Equipment, and Electronic Data Processing Equipment: Physical Loss or Destruction of Money or Securities**

Under Article I.A., Section B, WSRMP will pay, less the deductible set forth in the Declarations, no more than \$25,000 per occurrence and aggregate for the physical loss or destruction of money or securities. This is the total limit of WSRMP's liability with respect to all loss or losses of money or securities of one or more persons or organizations arising out of one or more occurrences.

**11. Burglary or Trespass Involving Master Key**

Under Article I.A., Section G, Subsection 10, WSRMP will pay up to, but no more than, \$50,000 per occurrence for the reasonable expense of rekeying locks covered by that provision.



## 12. Limited Water Extraction and Clean-up

Under Article I.A., Section G, Subsection 11, WSRMP will pay up to, but no more than, \$25,000 per occurrence per District for the repair of damage caused by or clean-up of property as a result of surface water.

### I. Exclusions

1. With regard to all property, this Agreement does not cover loss or damage arising out of or caused by any of the following excluded events as described below. Loss or damage is considered to have been caused by an excluded event if that event: directly and solely results in loss or damage; or initiates a sequence of events that results in loss or damage, regardless of the nature of any intermediate or final event in that sequence.

#### a. Building Ordinance

the enforcement of any ordinance or law:

- i. regulating the construction, use or repair of any property; or
- ii. requiring the tearing down of any property, including the cost of removing its debris;

other than repairing or rebuilding to current code after a covered cause of loss occurs.

#### b. Nuclear Hazard

nuclear reaction or radiation, or contamination by radioactive or fissionable material, whether controlled or uncontrolled, or other contamination from any cause, all whether direct or indirect, proximate or remote. Loss caused by nuclear hazard is not loss caused by fire, explosion or smoke.

#### c. War and Military Action

- i. war, including undeclared or civil war;
- ii. warlike action by a military force, including action in hindering or defending against an actual or expected attack by any government, sovereign or other authority using military personnel or other agents;
- iii. insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these; or
- iv. destruction, seizure or use for a military purpose, or discharge of a nuclear weapon, whether accidental or intentional.

d. any of the following:

- i. wear and tear, marring or gradual deterioration;
- ii. improper or inadequate maintenance;
- iii. rust, corrosion, electrolysis;
- iv. fungus, mold or mildew, wet or dry rot and bacteria, including the presence, growth, proliferation, spread or any activity of fungus, mold or mildew, wet or dry rot, or bacteria. If fungus, mold or mildew, wet or dry rot or bacteria results in loss or damage that is otherwise covered under this Agreement, WSRMP will pay for such resulting loss or damage. This exclusion does not apply if fungus, mold or mildew, wet or dry rot, or bacteria results from fire, lightning, or explosion.
- v. smog, or the release, discharge or dispersal of contaminants or pollutants;
- vi. settling, shrinkage or expansion in pavements, foundations, walls, floors or ceilings;
- vii. nesting or infestation, or discharge or release of waste products or secretions, by insects, birds, rodents or other animals.

e. Freezing, variation in temperature

damage to heating, cooling, and plumbing systems, and any ensuing loss or damage, caused by freezing, dampness of atmosphere or variation in temperature, unless the District attempts to maintain heat in the building or structure, or drains the system and shuts off the supply if the heat is not maintained, or otherwise, where possible, takes reasonable steps to protect the property.

f. Inventory

shortage discovered on taking inventory;

g. Asbestos

any of the following:

- i. demolition or increased cost of reconstruction, repair, debris removal or loss of use necessitated by the enforcement of any law or ordinance regulating asbestos material, except, however, WSRMP does agree to pay the first \$50,000 of expense, subject to the aggregate loss limits specified in Article I.A., Section H, Subsection 8, to contain, remove, or abate asbestos if the containment, removal, or abatement is legally required following a covered cause of loss; or
- ii. any governmental direction or request declaring that asbestos material present in or part of or utilized on any undamaged portion of the District's property can no longer be used for the purpose for which it was intended or

installed and must be removed or modified.

- h. Design defect; construction defect
  - i. defect, fault, inadequacy or unsoundness in design, specifications, workmanship, material or construction, except for ensuing loss or damage which is otherwise covered under this Agreement.
  - ii. collapse, except as provided in Section E, Collapse. But if collapse results in loss or damage otherwise covered by this Article I.A., WSRMP will pay for the resulting loss or damage.
- 2. WSRMP will not cover loss or damage to:
  - a. any aircraft, unmanned aircraft system, or any watercraft;
  - b. animals, growing crops, or standing timber, including forest, woods, or undeveloped buffer areas, except this exclusion does not apply to landscaping or ornamental vegetation, shrubs, lawns, hedges, athletic or recreational fields, or trees not taller than a natural height of 25 feet;
  - c. any vehicle or automobile which is designed, constructed or modified for the purpose of racing, speed or demolition contests;
  - d. property under construction, as defined in Section D of this Article, except as provided in Article I.A., Section D, and Article I.A., Section H, Subsection 3.
- 3. WSRMP's obligation to cover loss or damage to property of employees does not apply to loss or damage:
  - a. to an employee's automobile;
  - b. to an employee's property or personal items in employee's automobile;
  - c. to an employee's money or negotiable instruments;
  - d. to an employee's property or personal items in any residence provided to an employee by the District.
- 4. WSRMP's obligation to cover loss or damage to property of District students does not apply to loss or damage:
  - a. to an automobile owned or used by a student;
  - b. to a student's property or personal items located in any automobile owned or

- used by any student;
  - c. of a student's money or negotiable instruments;
  - d. occurring independent of the District first sustaining a covered loss.
5. WSRMP's obligation to cover loss or damage to real property, fixtures and equipment does not extend to loss or damages for the loss of use of real property, fixtures or equipment.
  6. The coverage provided by this Article does not apply to costs, fees and other expenses incurred by the District in establishing the existence of or amount of any loss covered under this Article, including fees charged by accountants, auditors, project managers and the like. WSRMP may, at its own discretion, pay such costs, fees or other expenses.
  7. WSRMP's obligation to cover loss or damage to District property does not extend to loss or damage to surplus property. However, WSRMP will pay for the disposal of damaged surplus property under the Additional Expenses Coverage for Debris Removal, Article I.A., Section G, Subsection 4. Surplus property means property that the District has declared as surplus, or property that has no value, is obsolete, or cannot be used.
  8. WSRMP will not cover the physical loss or destruction of money or securities under this Article I.A. to the extent that the loss or destruction is covered under Article II.
- J. Terms and Conditions Specific to Article I.A.
1. Duties in the Event of Loss or Damage
    - a. The District must see that the following are done in the event of loss or damage to any property covered under Sections A, B, C, D, E, F, or G of this Article:
      - i. Provide WSRMP with prompt notice of the loss or damage and include a description of the property involved. As soon as possible, provide WSRMP with a description of how, when and where the loss or damage occurred.
      - ii. In the event of suspected vandalism, theft, or other criminal activity, immediately notify the police for the purpose of generating a police report.
      - iii. Take all reasonable steps to protect District property from further damage and keep a record of necessary expenses and this will not increase the Limit of Liability. WSRMP will not pay for any subsequent loss or damage resulting from a cause of loss not covered by this Agreement. If feasible, set the damaged property aside and in the best possible order for examination.
      - iv. At WSRMP's request, provide complete inventories of the damaged and

undamaged property, including quantities, costs, values and amount of loss claimed.

- v. As often as may be reasonably required, permit WSRMP to inspect the property involved in the loss and to examine District books and records. Permit WSRMP to take samples of damaged and undamaged property for inspection, testing and analysis, and permit WSRMP to make copies from District books and records.
  - vi. At WSRMP's request, provide a signed, sworn proof of loss containing the information requested by WSRMP to investigate the claim. Provide this within 60 days of WSRMP's request. WSRMP will supply the necessary forms.
  - vii. Cooperate with WSRMP in the investigation or settlement of the claim.
- b. Upon WSRMP's request, the District shall submit to examinations under oath by WSRMP and give WSRMP a signed statement of the answers to such examinations under oath. The examinations of any District employee may take place, while not in the presence of any other employee, at such times as may be reasonably required and about any matter relating to the claim, including the District's books or records.

## **2. Mortgage Clause**

The interest of any mortgagee of property covered hereunder is included as if a separate Endorsement were attached hereto to the extent of the amount of mortgage as of the date of loss, subject to the limits of liability set forth in this Agreement.

## **3. WSRMP Tender of Recovery**

In the event the District sustains a property loss that:

- a. is not covered by this Agreement; or
- b. is covered, but the available coverage is less than the District's Ultimate net loss;

and in the event WSRMP has an excess insurance policy whereby WSRMP is entitled to payment on the basis of such loss sustained by the District, then the sum paid to WSRMP by the excess insurer shall be tendered to the District sustaining such loss.

## **4. Appraisal**

In the event the District and WSRMP are unable to agree as to the amount necessary to rebuild, repair or replace the damaged or destroyed property or the actual amount of reimbursement to be paid, each party shall name a competent and disinterested

appraiser and the two so chosen shall, before proceeding further, appoint a competent and disinterested appraiser to serve as umpire. The appraisers together shall obtain reconstruction estimates, and calculate the amounts of reimbursement due, and failing to agree, shall submit their differences and points in question to the umpire who will determine the outcome. Both parties shall pay the cost of their own appraisers and equally share the cost of the umpire. In the event a party is aggrieved by the decision of the umpire, and an arbitration is commenced pursuant to Article VII, Section L of this Agreement, to determine the amount necessary to rebuild, repair, or replace the damaged or destroyed property, or the amount of reimbursement to be paid, then the prevailing party in the arbitration shall be awarded actual attorneys' fees and costs incurred in the arbitration.

The prevailing party, for purposes of this paragraph, shall be determined by comparison of the amount determined by the umpire with the amount ultimately determined in arbitration.

**5. Notice of Recoveries**

The District shall immediately notify WSRMP of any reimbursement or recovery obtained or restitution awarded on account of any loss covered by this Article.

**6. Earth Movement**

Should any Earth Movement commence prior to expiration of this Agreement and extend past the expiration date, WSRMP shall pay all such Earth Movement losses occurring during such period as if such period fell entirely within the term of this Agreement.

WSRMP shall not be liable, however, for any loss caused by any Earth Movement occurring before the effective date and time of this Agreement or commencing after the expiration date and time of this Agreement.

**7. Flood**

Should any Flood commence prior to expiration of this Agreement and extend past the expiration date, WSRMP shall pay all such flood losses occurring during such period as if such period fell entirely within the term of this Agreement.

WSRMP shall not be liable, however, for any loss caused by any Flood occurring before the effective date and time of this Agreement or commencing after the expiration date and time of this Agreement.

**End of Article I.A.**

## Article I.B. Equipment Breakdown

### A. Coverage

This section provides coverage for a Covered Cause of Loss as defined in A.1. below. In the event of a Covered Cause of Loss, WSRMP will pay for loss as described in A.2. below.

#### 1. Covered Cause of Loss - Accident

The Covered Cause of Loss is an accident, as defined by this Article I.B. Without an accident, there is no Equipment Breakdown Coverage.

#### 2. Coverages Provided

This section lists the coverages that may apply in the event of an accident. Each coverage is subject to a specific limit as shown in the Declarations.

These coverages apply only to the direct result of an accident. For each coverage, WSRMP will pay only for that portion of the loss, damage or expense that is solely attributable to the accident.

##### a. Property Damage

WSRMP will pay for physical damage to covered property that is at a covered location at the time of the accident.

##### b. Off Premises Property Damage

If you have transportable covered equipment that, at the time of the accident, is within the Coverage Territory, but is not:

- i. at a location shown in the schedule provided to WSRMP by the District, or
- ii. at any other location owned or leased by the District, WSRMP will pay for physical damage to such covered equipment.

##### c. Business income

- i. WSRMP will pay the District's actual loss of business income during the period of restoration that results directly from the necessary total or partial interruption of the District's business.
- ii. WSRMP will also pay any necessary expenses the District incurs during the period of restoration to reduce the amount of loss under this coverage. WSRMP will pay for such expenses to the extent that they do not exceed

the amount of loss that otherwise would have been payable under this coverage.

d. Extra Expense

WSRMP will pay the reasonable and necessary extra expense to operate the District's business during the period of restoration.

e. Service Interruption

WSRMP will pay for the District's loss and expense as defined under Business income coverage and Extra Expense coverage that is the result of an interruption of service.

f. Contingent Business Income

WSRMP will pay for the District's loss and expense as defined under Business income and Extra Expense coverages that results from an interruption of supply.

g. Perishable goods

WSRMP will pay:

- i. for physical damage to perishable goods due to spoilage;
- ii. for physical damage to perishable goods due to spoilage that is the result of an interruption of service;
- iii. for physical damage to perishable goods due to contamination from the release of refrigerant, including but not limited to ammonia; and
- iv. any necessary expenses the District incurs during the period of restoration to reduce the amount of loss under this coverage. WSRMP will pay for such expenses to the extent that they do not exceed the amount of loss that otherwise would have been payable under this coverage.

h. Data Restoration

- i. WSRMP will pay for the District's reasonable and necessary cost to research, replace or restore lost data.
- ii. WSRMP will also pay for the District's loss and expense as defined under Business Income coverage and Extra Expense coverage that is the result of h.i. above, if such coverage is otherwise applicable under this Agreement.



i. Demolition

This coverage applies if an accident damages a building that is covered property and the loss is increased by an ordinance or law that:

- i. requires the demolition of a building that is otherwise reparable;
- ii. is in force at the time of the accident; and
- iii. is not addressed under Hazardous Substances coverage.

WSRMP will pay for the following additional costs to comply with such ordinance or law:

- i. the District's actual and necessary cost to demolish and clear the site of the undamaged parts of the building; and
- ii. the District's actual and necessary cost to reconstruct the undamaged parts of the building.

As used in this coverage, additional costs mean those beyond what would have been payable under this Equipment Breakdown Coverage had no such ordinance or law been in force at the time of the accident.

j. Ordinance or Law

This coverage applies if an accident damages a building that is covered property and the loss is increased by an ordinance or law that:

- i. regulates the construction or repair of buildings, including building utilities;
- ii. is in force at the time of the accident; and
- iii. is not addressed under Demolition coverage or Hazardous Substances coverage.

WSRMP will pay for the following additional costs to comply with such ordinance or law:

- i. the District's actual and necessary cost to repair the damaged portions of the building;
- ii. the District's actual and necessary cost to reconstruct the damaged portions of the building; and
- iii. the District's actual and necessary cost to bring undamaged portions of the

building into compliance with the ordinance or law, provided that such compliance is required as a direct result of the covered damage. This coverage is limited to the building where the covered loss occurred and to the type of damage that made enforcement necessary. This coverage does not apply to the expense required to bring undamaged parts of the building into compliance with current building ordinances or laws where such compliance is not the result of the covered damage.

As used in this coverage, additional costs mean those beyond what would have been payable under this coverage had no such ordinance or law been in force at the time of the accident.

k. Expediting Expenses

With respect to the District's damaged covered property, WSRMP will pay the reasonable extra expenses to make temporary repairs; and expedite permanent repairs or permanent replacement.

l. Hazardous Substances

WSRMP will pay for the additional cost to repair or replace covered property because of contamination by a hazardous substance resulting from an accident. This includes the additional expenses to clean up or dispose of such property. This does not include contamination of perishable goods by refrigerant, including but not limited to ammonia, which is addressed in Perishable goods, A.2.g.iii.

As used in this coverage, additional costs mean those beyond what would have been payable had no hazardous substance been involved.

WSRMP will also pay for the District's loss and expense as defined under Business Income coverage and Extra Expense coverage that is the result of the above, if such coverage is otherwise applicable under this Agreement.

m. Newly Acquired Locations

The District must notify WSRMP promptly of any newly acquired location that the District has purchased or leased during the period of Agreement. Coverage will not be extended to any newly acquired location not reported to WSRMP within 365 days of its acquisition by the District.

All coverages applicable to any scheduled location is extended to a newly acquired location that the District has purchased or leased during the period of Agreement.

This coverage begins at the time the District acquires the property. As respects newly constructed properties, WSRMP will only consider them to be acquired by the District when the District has accepted or occupied the completed project.

n. Builders' Risk – Property under Course of Construction

This Equipment Breakdown coverage is automatically included with respect to property in the course of construction. The District will notify WSRMP promptly of any expansion or rehabilitation of any location on file with WSRMP.

**B. Limits of Liability**

The most WSRMP will pay for loss, damage or expense arising from any one accident is the amount shown as the Equipment Breakdown Limit in the Declarations.

**Coverage Limits**

1. The limits of liability under each of the coverages listed in A.2. from loss, damage or expense arising from any one accident is the amount indicated for that coverage in the Declarations. These limits are a part of, and not in addition to, the Equipment Breakdown Limit. If an amount of time is shown, coverage will continue for no more than that amount of time immediately following the accident. If a coverage is shown as Included, that coverage is provided up to the remaining amount of the Equipment Breakdown Limit.
2. If two or more coverage limits apply to the same loss or portion of a loss, WSRMP will pay only the smallest of the applicable limits for that loss or portion of the loss. This means that if:
  - a. the District has a loss under one of the coverages listed in A.2.; and
  - b. All or part of the loss is not covered because the applicable coverage is excluded or has a limit that is less than the amount of loss, WSRMP will not pay the remaining amount of such loss under any other coverage.
3. If loss or damage to covered property or covered equipment caused by a single accident begins in one period of Agreement and ends in another, only the coverage and limits in the last period of Agreement in time shall apply and only one Equipment Breakdown limit shall be available for each such multi-period of Agreement accident.

**C. Exclusions**

This Article I.B. does not apply to loss, damage or expense caused directly or indirectly by

any of the following, whether or not caused by or resulting from an accident.

1. Fire and Explosion

- a. Fire, including smoke from a fire.
- b. Combustion explosion. This includes, but is not limited to, a combustion explosion of any steam boiler or other fired vessel.
- c. Any other explosion, except as specifically provided in Article I.B., Section E.1.a.iii.

2. Earth Movement

Earth Movement, whether natural or human-made, including but not limited to earthquake, shock, tremor, subsidence, landslide, rock fall, earth sinking, sinkhole collapse or tsunami.

3. Nuclear Hazard

Nuclear reaction, detonation or radiation, or radioactive contamination, however caused.

4. War and Military Action

- a. War, including undeclared or civil war;
- b. Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- c. Insurrection, rebellion, revolution, usurped power, political violence or action taken by governmental authority in hindering or defending against any of these.

5. Water

- a. Flood, surface water, waves, tides, tidal waves, overflow of any body of water, or their spray, all whether driven by wind or not;
- b. Mudslide or mudflow; or
- c. Water that backs up or overflows from a sewer, drain or sump.

However, if electrical covered equipment requires drying out because of the above, WSRMP will pay for the amount the District actually expends to dry out such equipment, subject to the applicable Property damage limit and per occurrence deductible. WSRMP will not pay more than the Actual Cash Value of the affected electrical covered equipment. WSRMP will not pay to replace such equipment or for any other loss, damage or expense.

**6. Failure to Protect Property**

The District failure to use all reasonable means to protect covered property from damage following an accident.

**7. Fines, penalties or punitive damages.**

**8. Mold**

Mold, fungus, mildew or yeast, including any spores or toxins created or produced by or emanating from such mold, fungus, mildew or yeast. This includes, but is not limited to, costs arising from clean-up, remediation, containment, removal or abatement of such mold, fungus, mildew, yeast, spores or toxins. However, this exclusion does not apply to spoilage of personal property that is perishable goods to the extent that such spoilage is covered under Perishable goods coverage.

**9. Deliberate Acts**

The deliberate act of any person to cause damage or harm, including but not limited to vandalism, malicious mischief or sabotage.

WSRMP will not pay for an accident caused by or resulting from any of the following causes of loss:

**10. Lightning.**

**11. Windstorm or hail.**

This exclusion does not apply when:

- a. Covered equipment located within a building or structure suffers an accident that results from wind- blown rain, snow, sand or dust; and

- b. The building or structure did not first sustain wind or hail damage to its roof or walls through which the rain, snow, sand or dust entered.

12. Collision or any physical contact caused by a vehicle.

This includes damage by objects falling from aircraft or unmanned aircraft systems. However, this exclusion does not apply to any unlicensed vehicles which the District owns or which are operated in the course of District business.

13. Riot or Civil Commotion.

14. Leakage or discharge of any substance from an automatic sprinkler system, including collapse of a tank that is part of the system.

15. Volcanic action.

16. An electrical insulation breakdown test.

17. A hydrostatic, pneumatic or gas pressure test.

18. Water or other means intended to extinguish a fire, even when such an attempt is unsuccessful.

19. Elevator collision.

WSRMP will not pay for an accident caused by or resulting from any of the following perils, if such peril is a covered cause of loss under another coverage part, whether collectible or not, and without regard to whether or not the other coverage part provides the same coverage or scope of coverage as this Article 1.B.

20. Falling objects.

21. The weight of snow, ice or sleet.

22. Collapse.

23. Breakage of glass.

24. Freezing caused by cold the weather.

25. Discharge of molten material from equipment, including the heat from such discharged material.

Exclusions 10. through 25. do not apply if all of the following are true:

- a. The excluded peril occurs away from any location on file with WSRMP and causes an electrical surge or other electrical disturbance;
- b. Such surge or disturbance is transmitted through utility service transmission lines to a described location;
- c. At the described location, the surge or disturbance results in an accident to covered equipment that is owned or operated under the control of the District; and
- d. The loss, damage or expense caused by such surge or disturbance is not a covered cause of loss under another coverage part, whether collectible or not, and without regard to whether or not the other coverage part provides the same coverage or scope of coverage as this Article 1.B.

With respect to Business Income, Extra Expense and Service Interruption coverages, WSRMP will not pay for:

- 26. Loss associated with business that would not or could not have been carried on if the accident had not occurred;
- 27. Loss caused by the District's failure to use due diligence and dispatch and all reasonable means to resume business;
- 28. That part of any loss that extends beyond or occurs after the period of restoration. This includes, but is not limited to:
  - a. Business income that would have been earned after the period of restoration, even if such loss is the direct result of the suspension, lapse or cancellation of a contract during the period of restoration; and
  - b. Extra expense to operate district business after the period of restoration, even if such loss is contracted for and paid during the period of restoration.
- 29. Any increase in loss resulting from an agreement between you and your customer or supplier. This includes, but is not limited to, contingent bonuses or penalties, late fees, demand charges, demurrage charges and liquidated damages.

30. Loss of funding or grants from a governmental or private entity, foundation, or person.

With respect to Off Premises Property damage coverage, Service Interruption coverage, Contingent Business Income coverage and paragraph ii. of Perishable goods coverage, WSRMP will not pay for an accident caused by or resulting from any of the perils listed in Exclusions 20. through 25. above, whether or not such peril is a covered cause of loss under another coverage part.

With respect to Data Restoration coverage, WSRMP will not pay to reproduce:

- a. Software programs or operating systems that are not commercially available;  
or
- b. Data that is obsolete, unnecessary or useless to the District.

With respect to Demolition and Ordinance or Law coverages, WSRMP will not pay for:

- a. Increased demolition or reconstruction costs until they are actually incurred; or
- b. Loss due to any ordinance or law that:
  - i. the District was required to comply with before the loss, even if the building was undamaged; and
  - ii. the District failed to comply with; whether or not the District was aware of such non-compliance.

**D. Terms and Conditions Specific to Article I.B.**

The following conditions apply:

**1. Duties in the Event of Loss or Damage**

- a. The District must see that the following are done in the event of loss or damage to any property covered under this Article 1.B.:
  - i. Provide WSRMP with prompt notice of the loss or damage and include a description of the property involved. As soon as possible, provide WSRMP with a description of how, when and where the loss or damage occurred.
  - ii. The District must reduce loss, damage or expense, if possible, by:



- (1) Protecting property from further damage. WSRMP will not pay for the District's failure to protect property, as stated in Exclusion C.6.;
  - (2) Resuming business, partially or completely at the location of loss or at another location;
  - (3) Using the property or services of others; and
  - (4) Salvaging the damaged property.
- iii. In the event of suspected vandalism, theft, or other criminal activity, immediately notify the police for the purpose of generating a police report.
- iv. Allow WSRMP a reasonable time and opportunity to examine the property and premises before repair or replacement is undertaken or physical evidence of the accident is removed. But the District must take whatever measures are necessary for protection from further damage.
- v. At WSRMP's request, provide a signed, sworn proof of loss containing the information requested by WSRMP to investigate the claim. Provide this within 60 days of WSRMP's request. WSRMP will supply the necessary forms.
- vi. Cooperate with WSRMP in the investigation or settlement of the claim.
- b. Upon WSRMP's request, the District shall submit to examinations under oath by WSRMP and give WSRMP a signed statement of the answers to such examinations under oath. The examinations of any District employee may take place, while not in the presence of any other employee, at such times as may be reasonably required and about any matter relating to the claim, including the District's books or records.

## **2. Errors and Omissions**

WSRMP will pay the District if such loss is otherwise not payable solely because of any of the following:

- a. Any error or unintentional omission in the description or location of property as insured under this Article 1.B.
- b. Any failure through error to include any premises owned or occupied by the District at the inception of this Article 1.B., or
- c. Any error or unintentional omission by that District that results in cancellation of any premises insured under this Article 1.B.

It is a condition of this coverage that such errors or unintentional omissions shall be reported and corrected when discovered.

### 3. Valuation

WSRMP will determine the value of covered property as follows:

- a. Except as specified otherwise, payment for damaged covered property will be the smallest of:
  - i. The cost to repair the damaged property;
  - ii. The cost to replace the damaged property on the same site; or
  - iii. The amount the District actually spend that is necessary to repair or replace the damaged property.
- b. The amount that WSRMP pays will be based on the most cost-effective means to replace the function, capacity and remaining useful life of the damaged property. This may include the use of generic, used or reconditioned parts, equipment or property.
- c. Except as described in d. below, the District must pay the extra cost of replacing damaged property with property of a better kind or quality or of a different size or capacity.
- d. Environmental, Safety and Efficiency Improvements

If covered equipment requires replacement due to an accident, WSRMP will pay the District's additional cost to replace with equipment that WSRMP agrees is better for the environment, safer for people or more energy efficient than the equipment being replaced, subject to the following conditions:

- i. WSRMP will not pay more than 125% of what the cost would have been to repair or replace with like kind and quality;
- ii. WSRMP will not pay to increase the size or capacity of the equipment;
- iii. This provision only applies to Property damage coverage;
- iv. This provision does not increase any of the applicable limits;
- v. This provision does not apply to any property valued on an Actual Cash Value basis; and
- vi. This provision does not apply to the replacement of component parts.

- e. The following property will be valued on an Actual Cash Value basis:
  - i. Any property that does not currently serve a useful or necessary function for the District;
  - ii. Any covered property that the District does not repair or replace within 24 months after the date of the accident; and
  - iii. Any covered property for which Actual Cash Value coverage is specified in the Declarations.

Actual Cash Value includes deductions for depreciation.

- f. Except as specifically provided for under Data Restoration coverage, data and media will be valued on the following basis:
  - i. For mass-produced and commercially available software, at the replacement cost.
  - ii. For all other data and media, at the cost of blank media for reproducing the records. WSRMP will not pay for data representing financial records based on the face value of such records.
- g. Air conditioning or refrigeration equipment that utilizes a refrigerant containing CFC (chlorofluorocarbon) substances will be valued at the cost to do the least expensive of the following:
  - i. Repair or replace the damaged property and replace any lost CFC refrigerant;
  - ii. Repair the damaged property, retrofit the system to accept a non-CFC refrigerant and charge the system with a non-CFC refrigerant; or
  - iii. Replace the system with one using a non-CFC refrigerant.

In determining the least expensive option, WSRMP will include any associated Business Income or Extra Expense loss. If option ii. or iii. is more expensive than i., but the District wishes to retrofit or replace anyway, WSRMP will consider this better for the environment and therefore eligible for valuation under paragraph d., Environmental, Safety and Efficiency Improvements.

#### 4. Jurisdictional Inspections

It is the District's responsibility to comply with any state or municipal boiler and pressure

vessel regulations. If any covered equipment that is covered property requires inspection to comply with such regulations, at the District's option WSRMP's reinsurer agrees to perform such inspection.

**5. Maintaining Your Property and Equipment**

It is the District's responsibility to appropriately maintain its property and equipment. WSRMP will not pay the District's costs to maintain, operate, protect or enhance the District's property or equipment, even if such costs are to comply with WSRMP's recommendations or prevent loss, damage or expense that would be covered under this Agreement.

**End of Article I.B.**

## Article II. Crime Coverage

### A. Money and Securities

WSRMP agrees, subject to the deductible stated in the Declarations and the limits of liability, terms, conditions and exclusions of this Article, to indemnify the District for all loss caused by reason of theft, burglary, robbery, disappearance or destruction of any money or securities which may at any time be or believed by the District to be in or upon any premises occupied or used by the District or by any bank, trust company or safety deposit company. This Section also applies to deposits within a night depository safe provided by a bank or trust company on its premises for the use of its customers or while in transit in the custody of the District's officers or employees. It is understood and agreed that this Section covers money and securities of the District or for which the District is legally liable or held by it in any capacity, whether or not the District is liable for the loss thereof. If legal proceedings are taken against the District to enforce a claim for money and securities so held, the District shall immediately notify WSRMP in writing.

### B. Blanket Employee Dishonesty and Faithful Performance Coverage

WSRMP agrees, subject to the deductible stated in the Declarations and the limits of liability, terms, conditions and exclusions of this Article, to indemnify the District against any loss of money, securities, or other property, which the District shall sustain resulting directly from:

1. one or more fraudulent or dishonest acts committed by any employee, acting alone or in collusion with others; or
2. the failure of any employee to faithfully perform his or her duties as prescribed by law, including an inability to faithfully perform those duties because of a criminal act committed by a person other than an employee.

### C. Limits of Liability

WSRMP's limit of liability for Crime Coverage under this Agreement shall be only:

#### 1. Money and Securities

Under Article II, Section A, WSRMP agrees to pay, less the deductible set forth in the Declarations, the Ultimate net loss. The limit of liability applicable to Article II, Section A, is \$50,000 per occurrence and aggregate. This is the total limit of WSRMP's liability with respect to all loss or losses of money, securities or other property of one or more persons or organizations arising out of one or more occurrences. All loss or losses incidental to an actual or attempted fraudulent, dishonest or criminal act or series of related acts, whether

committed by one or more persons (whether an employee or not), shall be deemed to arise out of one occurrence for purposes of applying the deductible.

**2. Blanket Employee Dishonesty and Faithful Performance Coverage**

Under Article II, Section B, WSRMP agrees to pay, less the deductible set forth in the Declarations, the Ultimate net loss. The limit of liability applicable to Article II, Section B, is \$1,000,000 per occurrence and aggregate. This is the total limit of WSRMP's liability with respect to any loss or series of losses caused by any employee or in which an employee is concerned or implicated.

3. If loss of money or securities caused by a single fraudulent, dishonest or criminal act or series of related acts begins in one period of Agreement and ends in another, only the coverage and limits in the last period of Agreement in time shall apply and only one Crime Coverage limit shall be available for each such multi-period of Agreement loss.

**D. Exclusions**

**1. This Agreement does not apply:**

- a. to loss, or to that part of any loss, as the case may be, the proof of which, as to its factual existence, is dependent upon an inventory computation or a profit and loss computation. This exclusion does not apply to a loss which is confirmed by independent evidence of wrongdoing, but which requires an inventory or profit and loss computation solely for the purpose of determining the extent of loss. A loss shall not be documented solely by means of a profit and loss computation without other evidence from which the extent of loss may be confirmed;
- b. to the defense of any legal proceeding brought against the District or any fees, costs or expenses incurred or paid by the District in prosecuting or defending any legal proceeding, whether or not such a proceeding results or would result in a loss to the District covered under this Article;
- c. to costs, fees and other expenses incurred by the District in establishing the existence of or amount of any loss covered under this Article, including fees charged by accountants, auditors and the like;
- d. to potential income not realized by the District because of an employee's fraudulent or dishonest act or the failure of an employee to faithfully perform duties as prescribed by law;
- e. to damages of any type for which the District is legally liable, except direct

compensatory damages arising from a loss covered under any portion of this Article.

2. Article II, Section A, does not apply to loss due to:

- a. any fraudulent, dishonest or criminal act by an employee or authorized representative of any District, while working or otherwise, and whether acting alone or in collusion with others; provided, this exclusion does not apply to robbery or attempted robbery;
- b. the giving or surrendering of money or securities in any exchange or purchase;
- c. accounting or arithmetical errors or omissions;
- d. loss of manuscripts, books of account or records; or
- e. loss by fire.

E. Terms and Conditions Specific to Article II

1. Loss Under Prior Bond or Policy

WSRMP will cover a loss occurring no more than one year prior to the inception date of this Coverage Agreement if coverage under this Article has been substituted for a prior bond or policy, including prior WSRMP coverage, which was terminated when this Article took effect. WSRMP will cover such prior loss only if:

- a. the District had coverage for that loss in the prior bond or policy; and
- b. it would have been covered under this Article if this Article had been in effect at the time the loss occurred; and
- c. provided further, that recovery under this Article on account of such loss shall in no event exceed the lesser of:
  - i. the amount which would have been recoverable under the coverage of this Article applicable to such loss in the amount for which it is written as of the time of such substitution, had this Article been in force when such acts or events were committed or occurred; or
  - ii. the amount which would have been recoverable under such prior bond or policy had such prior bond or policy continued in force until the discovery of such loss.

This Article II, Section E, Subsection 1 applies only to Districts whose membership in WSRMP commenced during the effective term of this Coverage Agreement.

For Districts whose membership commenced prior to the term of this Coverage Agreement, coverage for loss that occurred after September 1, 1986 is available. Under no circumstances will coverage apply to any loss that took place prior to September 1, 1986.

**2. Prior Fraud, Dishonesty or Cancellation**

- a. This coverage shall be deemed canceled as to any employee from and after the time that the District or any officer or employee thereof not in collusion with such employee shall obtain knowledge or information that such employee has committed any fraudulent or dishonest act, or failed to faithfully perform his or her duties as prescribed by law, whether such act or failure be committed before or after the date of employment by the District.
- b. If, prior to the issuance of any coverage under this Article, any fidelity insurance or Pool coverage in favor of the District and covering one or more of the District's employees shall have been canceled as to any of such employees by reason of the giving of written notice of cancellation by the insurer or Pool issuing such fidelity insurance, or coverage, and if such employee shall not have been reinstated under the coverage of such fidelity insurance or coverage, WSRMP shall not be liable on account of such employees unless WSRMP shall agree in writing to include such employees within coverage under this Article.
- c. Article II also may be canceled by WSRMP by mailing to the District, by registered or certified mail, written notice stating the date such cancellation shall be effective. That date will be at least fifteen (15) days after the date of mailing.

The mailing of this notice to the District shall be sufficient proof of notice. The effective date of cancellation stated in the notice shall become the end of the term of Agreement for any affected Section. Delivery of notice is the same as mailing.

- d. If this Article is canceled, the District has three (3) years from the earlier of the cancellation date or the date the District gains knowledge of or discovers the loss to make a claim for loss under this Article.

**3. Books and Records**

The District shall keep records of all District property in such manner that WSRMP can accurately determine therefrom the amount of any loss.

**4. Limits of Liability Not Cumulative**

Regardless of the number of years any coverage under this Article shall remain in force, and the number of contributions which shall be payable or paid, the limits of



liability provided in the Article shall not be cumulative from year to year or period to period.

**5. Recoveries**

In case any reimbursement be obtained or recovery be made by the District or by WSRMP on account of any loss covered under this Article, the net amount of such reimbursement or recovery, after deducting the actual cost of obtaining or making the same, shall be applied to reimburse the District in full for that part if any, of such loss in excess of any applicable coverage under this Article, and the balance, if any or the entire net reimbursement or recovery if there be no such excess loss, shall be applied to that part of such loss covered by this Article or, if payment shall have been made by WSRMP, to its reimbursement therefor. The District shall execute all necessary paper and render all assistance not pecuniary to secure unto WSRMP the rights provided for in this paragraph.

The District shall immediately notify WSRMP of any reimbursement or recovery obtained or restitution awarded on account of any loss covered by this Article.

The following shall not be reimbursement or recovery within the meaning of this paragraph: suretyship, insurance or reinsurance; also security or indemnity taken from any source by or for the benefit of WSRMP.

**6. Coverage for Public Officials**

It is agreed that within the term Employees are various public officials of the District who by law are required to be separately bonded. It is further agreed that this Agreement shall apply as excess coverage and then only after such legally required other insurance, coverage or bonding has been exhausted.

**7. Valuation; Payment Replacement**

In no event shall WSRMP be liable as respects securities for more than the actual cash value thereof on the day on which the loss was discovered, nor as respects other property, for more than the actual cash value thereof at the time of loss.

**8. Coverage Period; Discovery**

**a. Discovery**

Loss is covered under this Article only if discovered not later than one (1) year from the end of the Period of Agreement.

b. Coverage Period (Money and Securities)

Coverage for Money and Securities under Article II, Section A, applies only to loss sustained during the period of Agreement.

c. Coverage Period (Blanket Employee Dishonesty and Faithful Performance Coverage)

Except to the extent of covered loss under prior bond or policy (Article II, Section E, Subsection 1), Article II, Section B, applies only to loss sustained by the District through fraudulent or dishonest acts committed during the period of Agreement by any of the employees, or in which such employee is concerned or implicated.

9. Notice of Loss; Proof of Loss; Litigation Proceedings

- a. Upon knowledge or discovery of loss or of an occurrence which may give rise to a claim for loss under this Article, the District shall:
  - i. provide WSRMP with prompt notice of the loss, and, as soon as possible, provide WSRMP with a description of how, when and where the loss occurred;
  - ii. immediately notify the police for the purpose of generating a police report; and
  - iii. file a detailed, sworn proof of loss with WSRMP within four (4) months after the discovery of the loss.
- b. No review by the Executive Board or an arbitration, pursuant to Article VII, Section L, to recover on account of loss under this Article shall be commenced until ninety (90) days after the required sworn statement in proof of loss shall have been furnished to WSRMP, nor at all unless commenced within three (3) years from the date when the District has knowledge of or discovers the loss.
- c. Upon WSRMP's request, the District shall submit to examinations under oath by WSRMP and give WSRMP a signed statement of the answers to such examinations under oath. Also, upon request by WSRMP, the District shall produce for WSRMP's examination all pertinent records, at such reasonable times and places as WSRMP may designate and shall cooperate with WSRMP in all matters pertaining to the investigation or settlement of any loss or claim of loss.

**End of Article II**

## Article III. Liability Coverage

### A. General Liability and Automobile Liability Coverage

Subject to all applicable limits of liability, deductibles, retentions, terms, conditions, and exclusions, WSRMP will pay on behalf of the District those sums which the District shall become legally obligated to pay as damages because of bodily injury, property damage, and/or personal injury, caused by an occurrence during the term of this Agreement, and to which this Agreement applies, whether the District's obligation to pay damages is based on direct liability or vicarious liability.

The Automobile Liability coverage provided by this Agreement applies only to a District owned or hired bus or automobile. This coverage is excess of any and all other insurance or coverage available on an automobile or bus not owned by the District, and is excess of any and all other insurance or coverage available on an automobile or bus hired by the District, provided such bus or automobile is used in the business of the District and with the District's permission, and provided that non-owned buses used to provide pupil transportation under the terms of a fleet contract entered into by the District, under which the fleet provider provides drivers and insurance, are not deemed to be hired by the District.

Damages because of bodily injury include damages claimed for care, loss of services or death resulting at any time from the bodily injury.

WSRMP will have the right and duty to defend the District against any suit seeking damages as set forth herein, but:

1. WSRMP may investigate and settle any claim or suit at WSRMP's discretion;
2. upon reasonable notice to the District, WSRMP's right and duty to defend is terminated when the applicable limits of liability are exhausted in the payment of legal fees, defense costs, charges, expenses, judgments or settlements under this Agreement;
3. WSRMP shall have the right to select counsel to defend any suit brought against the District and covered by this Article;
4. such defense shall be provided even if such suit is groundless, false or fraudulent;
5. expenses incurred by WSRMP in connection with the right and duty to defend under this Article III shall be included in and shall not expand the limits of liability.

**B. Additional Automobile Coverage**

**1. Automobile Medical Payments**

In the event of bodily injury to persons lawfully occupying, entering, or exiting a District owned or hired bus or automobile, WSRMP will pay, subject to the terms, conditions, exclusions, and limits of liability contained in this Agreement, reasonable and necessary medical expenses, provided that:

- a. the expenses are incurred and reported to WSRMP within one (1) year from the date of the accident;
- b. the accident occurs during the term of this Agreement;
- c. the injured person submits to examination, at Pool expense, by physicians of WSRMP's choice as often as WSRMP reasonably requires; and
- d. payments are limited to reasonable expenses for:
  - i. first aid at the time of the accident;
  - ii. necessary medical, surgical, x-ray, and dental services, including prosthetic devices; and/or
  - iii. necessary ambulance, hospital, professional nursing and funeral services.

**C. Defense, Settlement, and Supplementary Payments**

**1. Defense, Settlement, Supplementary Payments**

In the event of suit against the District alleging liability covered by this Agreement, WSRMP shall:

- a. pay all contributions on bonds to release attachment for an amount not in excess of the applicable limits of liability of this Agreement, all contributions on appeal bonds required in any such defended suit and the cost of bail bonds required of the District in the event of accident or occurrence during the coverage period with respect to which coverage is afforded under this Agreement (not to exceed the sum of \$250 per bail bond), but without an obligation to apply for or furnish any such bonds;
- b. pay all expenses incurred by WSRMP, all costs, and all interest accrued after the entry of judgment which expenses, costs and interest shall be included in and shall not expand the limits of liability;
- c. reimburse the District for all reasonable expenses, other than loss of earnings and personnel expense, incurred at WSRMP's request;

- d. pay the cost of defense, but not any settlement or judgment, in the event of any suit filed against the District for punitive damages;
- e. at its own discretion, after notice to the District, compromise or settle any suit or claim if, at the time, WSRMP determines that settlement or compromise will be more economical than defense. If the District does not want the suit settled or compromised, the District may at that time assume the cost of defense, settlement and/or judgment;
- f. at its own discretion, defend the spouse of an individual covered as a District, where the spouse has been named in the suit solely by reason of the covered individual's marital community, provided that such defense of the spouse is subject to all coverage reservations applicable to the District, including the covered individual, and that WSRMP will neither defend nor indemnify the spouse for any claim or liability based on the spouse's own actions or conduct.

**2. Supplemental Emergency Medical Expense**

In the event of an accident causing bodily injury to any person other than a district employee or volunteer, lawfully on premises owned, rented or solely occupied by the District, WSRMP may pay at its discretion, subject to the terms, conditions and exclusions contained in this Agreement up to \$2,000 per person for reasonable and necessary emergency medical expenses incurred by, or at the direction of, the District provided that:

- a. the accident occurs during the term of this Agreement;
- b. the expenses are incurred and reported to WSRMP within 90 calendar days of the accident;
- c. payments are limited to reasonable expenses for immediate relief to others for:
  - i. first aid at the time of accident;
  - ii. necessary medical, surgical, x-ray and dental services;
  - iii. necessary ambulance, hospital, and professional nursing services;
  - iv. in the event of bodily injury to which this Supplemental Emergency Medical Expense applies, and subject to the limit stated herein, the replacement of eyeglasses or contact lenses damaged by the same occurrence causing the bodily injury; and
  - v. in the event of bodily injury to which this Supplemental Emergency Medical Expense applies, and subject to the limit stated herein, the repair or replacement of a student's orthodontic retainer or orthodontic device, provided that the bodily injury was to the student's mouth area and the

orthodontic retainer or device was in the mouth at the time the bodily injury took place.

This coverage is excess over any other available medical payments coverage available from any other source or insurance policy.

**3. Defense of Retaliation Claims**

WSRMP will defend, but not indemnify, a Member District against a claim for retaliation. This provision provides defense only, not indemnity.

WSRMP, at its discretion, may defend, but not indemnify, an individually-named defendant against a claim for retaliation, provided that the individual otherwise qualifies for coverage under the Coverage Agreement. WSRMP will not indemnify an individual defendant for such a claim.

**D. Limits of Liability**

WSRMP's limit of liability for Liability Coverage under Article III of this Agreement shall be the aggregate of all damages, payments, legal fees and defense costs, charges and expenses arising from any covered occurrence during the term of this Agreement but shall not exceed the limits of liability set forth herein.

For the purpose of determining WSRMP's limit of liability under this agreement, all bodily injury, personal injury, or property damage arising out of continuous or repeated exposure to substantially the same general conditions or from related conditions shall be considered as arising out of one occurrence.

In the event an occurrence begins in one period of Agreement and ends in another, only the coverage and limits in the last period of Agreement in time shall apply and only one per occurrence limit shall be available for each such multi-period of Agreement occurrence.

**1. Under Article III, Section A, General Liability and Automobile Liability**

WSRMP agrees to pay the Ultimate net loss, not to exceed the limits for this Article stated in the Declarations for each covered loss or occurrence. The stated limit is subject to WSRMP Retention and Insolvency of Excess provision, Article VII, Section B.

**2. Under Article III, Section A, General Liability and Automobile Liability**

WSRMP agrees to pay up to \$500,000 per occurrence and as the aggregate maximum for Property damage, Recovery, Cleanup, or Containment Costs arising out of the actual, alleged, or threatened discharge, dispersal, release, or escape of pollutants from an automobile part designed by its manufacturer to hold, store, receive, or dispose of such pollutants provided:

- a. The pollutants or the automobile part in which they are contained are upset, overturned, or damaged as a result of the use of an automobile covered under Article I.A., Section A or Article III, Section A of this Agreement; and
- b. The discharge, dispersal, release, or escape of pollutants is caused directly by upset overturn, or damage.

The \$500,000 aggregate maximum limit set forth herein constitutes a sublimit which is contained within and is not in addition to the limits stated above for General Liability and Automobile Liability.

3. Under Article III, Section A, General Liability and Automobile Liability

WSRMP will pay indemnity and defense expenses for one, but not more than one, loss or occurrence for each class action lawsuit that alleges liability covered by this Article.

4. Under Article III, Section B, Subsection 1, Automobile Medical Payments

WSRMP agrees to pay up to \$2,000 for any one person, not to exceed an aggregate of \$1,000,000 for each covered loss or occurrence.

5. Under Article III, Section C, Subsection 2, Supplemental Emergency Medical Expense

WSRMP may pay at its discretion, up to \$2,000 for any one person, not to exceed an aggregate of \$1,000,000 for each accident or occurrence, for emergency medical expenses.

6. Deductible

The District is required to bear a share of any payments WSRMP makes for settlements, judgments or defense costs. The deductible shown in the Declarations is the amount the District is required to pay for all claims which arise from an occurrence or series of related occurrences, regardless of the number of claimants. WSRMP may, at its option, pay any part or all of the deductible to defend or settle a claim. If WSRMP does so, the District must reimburse WSRMP for any such amounts WSRMP has advanced within 30 days after WSRMP gives the District written notice of WSRMP's action. WSRMP may waive all or any part of the District's deductible.

E. Exclusions

1. WSRMP shall not be obligated to make any payment or defend any suit arising out of:

a. Wrongful Employment Practices

WSRMP does not cover any claim or suit for damages which alleges liability or

damages arising wholly or in part from any wrongful employment practice as that term is defined in Article VII of this Agreement. Coverage for such claims is excluded herein regardless of whether or not coverage is extended in whole or in part under the terms and conditions of Article V;

b. Breach of Contract

WSRMP does not cover any claim or suit for damages alleged as a result of the breach of a written or oral contract, whether express or implied;

c. Employee Benefits Programs

WSRMP does not cover any liability arising from the investment or inadequacy of assets of any pension or savings plan;

d. Discrimination

WSRMP does not cover under this Article III discrimination of any kind, including, but not limited to, any failure to integrate or desegregate student enrollment, participation in any District educational or extracurricular program, or any busing or other transportation of students;

e. Criminal Acts or Omissions

WSRMP does not cover any claim arising from any actual or alleged criminal act or omission committed by a District, nor shall WSRMP defend a District in any criminal proceeding or reimburse a District for its defense expenses, including attorney's fees, arising from such criminal proceeding;

f. Non-monetary Relief

WSRMP does not cover any claims, demands or action seeking relief or redress in any form other than money damages, and WSRMP shall have no obligation to indemnify the District for any costs, legal fees or expenses in connection with any action or other judgment for injunctive or declaratory relief;

g. Conduct Contrary to Court Order

WSRMP does not cover acts or omissions committed or continued in contravention of a court order;

h. Employer's Liability

WSRMP does not cover bodily injury to:



- i. an employee of the District arising out of and in the course of employment by the District, or
- ii. the spouse, child, parent, brother or sister of that employee as a consequence thereof.

This exclusion does not apply to any claim of a District employee for bodily injury resulting from the deliberate intention of the District to produce such bodily injury, provided that the coverage afforded for such a claim will apply only in excess of any other coverage available to the District from any other source. Exclusion t of this Article does not apply to such a claim.

i. Workers' Compensation

WSRMP does not cover any obligation of the District under any workers' compensation, unemployment compensation or disability benefits law or under any similar law, plan or agreement;

j. Aircraft; Racing; Watercraft

WSRMP does not cover personal injury, bodily injury or property damage arising out of the manufacture, ownership, maintenance, operation, use, loading or unloading of:

- i. any owned or non-owned aircraft, whether or not operated by any District, or
- ii. any owned or non-owned Unmanned Aircraft System (UAS) that is not in compliance with Federal Aviation Administration (FAA) rules & regulations.
- iii. any owned or non-owned motorized vehicle, automobile, or unmanned aircraft system while engaged in any racing, speed, or demolition contest or in any stunt activity, or in practice or preparation for any such contest or activity, provided, however, that this exclusion j.iii. does not apply to electric-powered endurance activities, or
- iv. any owned or non-owned motorized or non-motorized watercraft over twenty-six feet in length, except:
  - 1). owned watercraft over twenty-six feet in length, specifically identified and scheduled in an endorsement to this Agreement, and
  - 2). non-owned watercraft over twenty-six feet in length, where prior to the rental, lease or use of any such non-owned watercraft, the District obtains the following information:  
the name of the operator/owner's insurance carrier, a certificate of insurance, and the operator/owner's representation that the carrier has issued a minimum of \$1,000,000 Protection and Indemnity (marine liability) insurance to the operator/owner. This Coverage Agreement provides coverage for such watercraft only if the District obtains the foregoing insurance information prior to its rental, lease or use of the watercraft. This Coverage Agreement provides coverage for such watercraft only if the

operator/owner provides a captain, operator or crew not employed by the District. No such watercraft is covered by this Article if crewed by District employees or volunteers. The foregoing information need not be provided for the use of common carriers such as Washington State Ferries or Clipper Navigation.

- v. any owned or non-owned motorized or non-motorized watercraft, including any raft, tube or other vessel, while on any body of water that has been designated as Class I through Class VI under the international whitewater classification system.
- vi. any jet ski or other similar motorized personal watercraft.

k. Nuclear Liability

WSRMP does not cover injury, sickness, disease, death or destruction with respect to which a District under this Agreement is also an Insured under a nuclear energy liability policy issued by the Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada or would be an Insured under any such policy but for its termination upon exhaustion of its limit of liability.

l. Nuclear Material

WSRMP does not cover loss resulting from the hazardous properties of nuclear material and with respect to which:

- i. any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954 or any law ambulatory thereof; or
- ii. the District is, or had such policy not been issued, would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.

m. Nuclear Material; Nuclear Facility

WSRMP does not cover loss resulting from the hazardous properties of nuclear material, if:

- i. the nuclear material is at any nuclear facility owned by, or operated by or on behalf of, a District, or has been discharged or dispersed therefrom;
- ii. the nuclear material contained in spent fuel or waste is at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of a District; or
- iii. the injury, sickness, disease, death or destruction arises out of the furnishing by a District of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any nuclear facility,

but if such facility is located within the United States of America, its territories or possessions or Canada, this part applies only to injury to or destruction of property at such nuclear facility.

n. Owned Property

WSRMP does not cover damage to property owned, occupied, rented or used by the District.

o. Penal Statue; Dishonest Acts

WSRMP does not cover the willful violation of a penal statute or ordinance or court order or dishonest acts committed by or with the knowledge and consent of the District.

p. Unjust Enrichment

WSRMP does not cover liability for damages arising out of the District's gaining any personal profit or advantage to which the District is not legally entitled.

q. Fines; Penalties; Punitive Damages

WSRMP does not cover liability for fines or penalties, including punitive or exemplary damages, imposed by law or other matters for which WSRMP may not provide coverage as a matter of law.

r. Pollution

WSRMP does not cover personal injury, bodily injury or property damage arising out of the actual, alleged or threatened discharge, dispersal, release, seepage, migration, or escape of pollutants:

- i. at or from any premises at any time owned, rented, or occupied by the District;
- ii. at or from any premises, site, or location at any time used by or for the District or others for the handling, storage, disposal, processing or treatment of waste;
- iii. which are or were at any time transported, handled, stored, treated, disposed of or processed as waste by or for the District or any person or organization for whom the District may be legally responsible; or
- iv. at or from any premises, site, or location on which the District or any contractors or subcontractors working directly or indirectly on the District's behalf are performing operations:
  - (1) if the pollutants are brought on or to the premises, site, or location in connection with such operations; or
  - (2) if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify, neutralize, or in any way respond to or assess the effects

of pollutants;

Subparagraphs r.i and r.iv.(1) do not apply to bodily injury or property damage arising out of heat, smoke or fumes from a hostile fire. As used in this exclusion, a hostile fire means one which becomes uncontrollable or breaks out from where it was intended to be.

s. Pollution Response

WSRMP does not cover any loss, cost, or expense arising out of any:

- i. request, demand, or order that any District or others test for, monitor, clean up, remove, contain, treat, detoxify, neutralize, or in any way respond to or assess the effects of pollutants; or
- ii. claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to or assessing the effects of pollutants.

t. Intentional Acts

WSRMP does not cover any claim arising out of:

- i. actual or alleged personal injury, bodily injury or property damage intentionally caused by the District;
- ii. actual or alleged willful misconduct by the District.

This exclusion does not apply to bodily injury resulting from the use of reasonable force to protect persons or property.

u. ERISA

WSRMP does not cover claims arising out of the Employer Retirement Income Security Act (ERISA) or similar legislation.

v. Asbestos

WSRMP does not cover liability for bodily injury or personal injury, including any aggravation or contribution to a condition or injury, resulting from asbestos or loss of, damage to or loss of use of property directly or indirectly caused by asbestos.

w. Contractual Liability

WSRMP does not cover personal injury, bodily injury, or property damage for which the District is obligated to pay damages by reason of the assumption of

liability in a contract or agreement. This exclusion does not apply to liability for damages: (1) the District would have in the absence of the contract or agreement; or (2) assumed in a contract or agreement that is a covered contract, provided the personal injury, bodily injury, or property damage occurs subsequent to the execution of the contract or agreement.

x. Student's Individual Education Plan

WSRMP does not cover any claim, settlement or judgment based upon the District's action, or failure to act, with respect to any District student's claim to or claim under an Individual Education Plan (IEP).

y. Alcohol

WSRMP does not cover any claim, suit, or liability of a District, party contracting with a District, or party for whom a District may under any circumstances be responsible arising out of:

- i. causing or contributing to the intoxication of any person;
- ii. the furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol;
- iii. any statute, ordinance, or regulation relating to the sale, gift, distribution, or
- iv. use of alcoholic beverages; or
- v. the ownership or leasing of any premises used for the manufacture, distribution, sale, or service of alcoholic beverages.

z. Underinsured Motorist

WSRMP does not cover any claim or suit for damages for which the owner or operator of an underinsured motor vehicle, hit-and-run vehicle, or phantom vehicle would be liable, as those terms are used in RCW 48.22.030.

aa. Sexual abuse

WSRMP does not cover sexual abuse, as defined in Article VII, by any District employee or volunteer.

bb. Fungus; Mold; Mildew

WSRMP does not cover any loss, injury, damage, cost or expense, including, but not limited to, losses, costs or expenses related to, arising from or associated with clean-up, remediation, containment, removal or abatement, caused directly or indirectly, in whole or in part, by:

- i. any fungus, mold, mildew or yeast, or

- ii. any spore or toxin created or produced by or emanating from such fungus, mold, mildew or yeast, or
- iii. any substance, vapor, gas, or other emission or organic or inorganic body or substance produced by or arising out of any fungus, mold, mildew or yeast, or
- iv. any material, product, building component, building or structure, or any concentration of moisture, water or other liquid within such material, product, building component, building or structure, that contains, harbors, nurtures or acts as a medium for any fungus, mold, mildew, yeast, or spore or toxin emanating therefrom.

Subsections i., ii., iii. and iv. above apply regardless of any other cause, event, material, product and/or building component that contributed concurrently or in any sequence to that loss, injury, damage, cost or expense. It is understood that to the extent any coverage may otherwise be provided under this Article, the provisions of this exclusion will supersede.

cc. Eminent Domain

WSRMP does not cover the operation of the principles of eminent domain, condemnation proceedings or inverse condemnation by whatever name called.

dd. Administrative Claims

WSRMP does not cover claims for relief or complaints filed with any local, state, or federal administrative body, including but not limited to the state or federal Human Rights Commission, Department of Labor and Industries, Office of the Superintendent of Public Instruction, or any similar administrative body. WSRMP reserves the right, however, to defend the District in any such proceeding should it choose to do so.

ee. Retaliation

WSRMP does not cover retaliation of any kind, except WSRMP will defend, but not indemnify, a Member District against a claim for retaliation, and, at its discretion, may defend an individually-named defendant against a claim for retaliation, all pursuant to Article III, Section C., Subsection 3.

ff. Firearms

WSRMP does not cover any liability for bodily injury or property damage caused by or arising out of the use or misuse of any firearm in the possession of a District employee, volunteer, intern, student teacher, paraeducator, or similar personnel. This exclusion does not apply to liability for bodily injury or property damage

caused by or arising out of the use or misuse of a firearm in the possession of a third-party who is not a District employee, volunteer, intern, student teacher, paraeducator, or similar personnel.

This exclusion does not apply to liability for bodily injury or property damage caused by or arising out of the activities of a JROTC program or a District-authorized gun or shooting club.

2. WSRMP shall not be obligated to pay any claim for Automobile Medical Payments:
  - a. to a person injured while occupying an automobile located for use, or used, as a residence or premises;
  - b. to a person, whether or not an employee of any District, if benefits for personal injury or bodily injury are payable or must be provided under a workers' compensation or disability benefits law or similar law;
  - c. to a person while occupying a District owned automobile without a reasonable belief by the claimant that the District authorized such use or occupancy;
  - d. caused by or as a consequence of:
    - i. discharge of a nuclear weapon (even if al);
    - ii. war (declared or undeclared);
    - iii. civil war, insurrection, revolution or rebellion;
  - e. from or as a consequence of nuclear reaction, radiation or radioactive contamination, whether controlled or uncontrolled or however caused;
  - f. to any person hired to do work for or on behalf of any District or any tenant of any District.
3. WSRMP shall not be obligated to pay any claim for Supplemental Emergency Medical Expenses:
  - a. to or for any person included in the Article III definition of District;
  - b. to or for a person hired or volunteering to do work for or on behalf of any District;
  - c. to or for a person, whether or not an employee of any District, if benefits for the bodily injury are payable or must be provided under a workers' compensation or disability benefits law or a similar law;

- d. to or for any non-student injured while taking part in extra-curricular athletic activities;
  - e. to or for a person if benefits for the bodily injury are payable or must be provided under any other insurance coverage;
  - f. to or for a person for bodily injury resulting from an intentional act;
  - g. to or for a person for bodily injury resulting from or as a consequence of nuclear reaction, radiation or radioactive contamination, whether controlled or uncontrolled or however caused;
  - h. caused by or as a consequence of:
    - i. discharge of a nuclear weapon (even if al);
    - ii. war, declared or undeclared;
    - iii. civil war, insurrection, revolution or rebellion.
  - i. to or for a person if benefits are available under Article III, Section B, Subsection 1, Automobile Medical Payments.
- F. Terms and Conditions Specific to Article III

#### Cross Liability

In the event of claims for damages alleged by any District party to this Agreement against another District party to this Agreement, WSRMP will provide coverage, subject to the limits of liability, conditions and exclusions of this Agreement, in the same manner as if separate Agreements had been issued to each District. WSRMP agrees to waive all rights of subrogation against all or any of the members or individuals comprising the District in such a case.

#### **End of Article III**



## **Article IV. Errors and Omissions Liability Coverage**

### **A. Errors and Omissions Liability Coverage**

Subject to all applicable limits of liability, deductibles, retentions, terms, conditions and exclusions, WSRMP will pay those damages which the District shall become legally obligated to pay as a result of wrongful acts as defined herein, occurring during the term of this Agreement, whether the District's obligation to pay damages is based on direct liability or vicarious liability. WSRMP will have the right and duty to defend the District against any suit seeking damages as set forth herein. This coverage includes, but is not limited to, payment of damages resulting from the District's liability for:

1. wrongful acts arising out of sexual abuse by any District employees or volunteers, or sexual abuse by a student(s) against another student(s);
2. wrongful acts of District employees (other than medical doctors) rendering professional health care services.

### **B. Defense, Settlement, and Supplementary Payments**

In the event of suit against the District alleging liability covered by Article IV of this Agreement, WSRMP shall:

1. pay all contributions on bonds to release attachment for an amount not in excess of the applicable limits of liability of this Agreement, all contributions on appeal bonds required in any such defended suit and the cost of bail bonds required of the District in the event of a wrongful act during the coverage period with respect to which coverage is afforded under this Agreement (not to exceed the sum of \$250 per bail bond), but without an obligation to apply for or furnish any such bonds.
2. pay all expenses incurred by WSRMP, all costs other than attorneys' fees or costs incurred by an adverse party in a claim or suit covered hereunder which may be taxed against the District in any such suit and all interest accrued after the entry of judgment, which expenses, costs and interest shall be included in and shall not expand the limits of liability.
3. reimburse the District for all reasonable expenses, other than loss of earnings and personnel expense, incurred at WSRMP's request.
4. have the right to select counsel to defend any suit brought against the District and covered by this Article.
5. pay the cost of defense, but not any settlement or judgment, in the event of any suit filed against the District for punitive damages.

6. at its own discretion, after notice to the District, compromise or settle any suit or claim at such time WSRMP determines that settlement or compromise will be more economical than defense. If the District does not want the suit settled or compromised, the District may at that time assume the cost of defense, settlement and/or judgment.
7. at its own discretion, defend the spouse of an individual covered as a District, where the spouse has been named in the suit solely by reason of the covered individual's marital community, provided that such defense of the spouse is subject to all coverage reservations applicable to the District, including the covered individual, and that WSRMP will neither defend nor indemnify the spouse for any claim or liability based on the spouse's own actions or conduct.
8. at its own discretion, defend, but not indemnify, a district superintendent, acting superintendent, or board member against a claim for declaratory, injunctive, or other equitable or non-monetary relief, where coverage would not otherwise exist.
9. WSRMP will defend, but not indemnify, a Member District against a claim for retaliation. This provision provides defense only, not indemnity.

WSRMP, at its discretion, may defend, but not indemnify, an individually-named defendant against a claim for retaliation, provided that the individual otherwise qualifies for coverage under the Coverage Agreement. WSRMP will not indemnify an individual defendant for such a claim.

WSRMP reserves the right to defend any claim or suit not otherwise covered under this Coverage Agreement if, in the sole discretion of WSRMP, its interests are best served by doing so.

**C. Limits of Liability**

**1. Coverage Limits**

The limit of liability for each wrongful act is the most WSRMP will pay for all claims that result from a single wrongful act or from a series of related wrongful acts. Any claims, suits, or damages incurred because of a series of related wrongful acts shall be subject to the limits for a single wrongful act.

WSRMP's limit of liability for Errors and Omissions coverage under Article IV of this Agreement shall be the aggregate of all damages, payments, legal fees and defense costs, and other charges and expenses arising from any covered wrongful act during the term of this Agreement. The limit of liability shall not exceed the limits of liability set forth in the Declarations and in this section of Article IV.

**2. Multiple Coverage Agreement Periods**

In the event a wrongful act begins in one period of Agreement and ends in another, only the coverage and limits in the last period of Agreement in time shall apply and only one wrongful act limit shall be available for each such multi-period of Agreement wrongful act.

**3. Ultimate net loss**

WSRMP agrees to pay, less the applicable deductible, the Ultimate net loss not to exceed the per occurrence and aggregate limit stated in the Declarations for any occurrence. The limit of liability stated in the Declarations is subject to WSRMP Retention and Insolvency of Excess provision, Article VII, Section B.

**4. Class Action Lawsuits**

WSRMP will pay indemnity and defense expenses for one, but not more than one, loss or occurrence for each class action lawsuit that alleges liability covered by this Article.

**5. Benefits Available for Special Education Claims**

**a. Pre-hearing Legal Advice**

WSRMP will provide up to \$5,000 for legal services to assist the District in connection with a claim, prior to a Hearing Request, based upon the District's alleged action or failure to act with respect to any District student's claim to or claim under an Individual Education Plan (IEP). WSRMP reserves the right to assign defense counsel of its choosing in connection with this provision. The limit stated in this subsection 5.a. is the most WSRMP will pay for pre-hearing legal advice for any one claim.

**b. Administrative Proceedings Under a Student's IEP**

WSRMP will pay up to a maximum of \$35,000 for defense costs in connection with an administrative proceeding based upon the District's alleged action or failure to act with respect to any District student's claim to or claim under an Individual Education Plan (IEP), provided that each of the following conditions are first met:

- i. a Hearing Request has been filed with the Office of the Superintendent of Public Instruction;
- ii. a case number has been assigned by the Office of Administrative Hearings;
- iii. WSRMP has received written notice of the Hearing Request not later than 5 calendar days after the District's receipt of the initial Hearing Request from the Office of Administrative Hearings.

WSRMP will not provide coverage and will not indemnify the District for any such administrative proceeding or for any award of fees or costs in such proceeding.

WSRMP reserves the right to assign defense counsel of its choosing in connection with this provision.

The limit stated in this subsection 5.b. is the most WSRMP will pay for administrative proceedings under a student's IEP for any one claim.

c. Administrative Proceeding Initiated by a District.

When a District member demonstrates a need to initiate an administrative proceeding regarding a student's IEP, WSRMP, in its sole discretion, may agree to pay up to \$35,000 in legal costs related to the proceeding.

d. Lawsuits Brought Under a Student's IEP

- i. WSRMP will pay up to a maximum of \$200,000 for defense costs for any lawsuits in connection with or relating to a District's acts or failure to act with respect to any District student's claims to or claims under an Individual Education Plan (IEP), regardless of the number of wrongful acts or lawsuits in connection with any one assigned Office of Administrative Hearings claim number.
- ii. WSRMP will pay up to a maximum of \$25,000 for plaintiff's attorney fees and costs awarded in such lawsuits.
- iii. WSRMP reserves the right to assign defense counsel of its choosing in connection with this provision. The limits stated in this subsection 5.c. are the most WSRMP will pay for any lawsuits brought under a student's IEP for any one claim.

6. Sexual Abuse

- A. All allegations or claims based on or arising out of sexual abuse by an employee or volunteer, or more than one employee and/or volunteer acting in concert, will be considered as arising out of one wrongful act and shall be deemed to have been committed at the time of the last of such acts or alleged acts, regardless of:
  - i. the number of persons sexually abused;
  - ii. the number of locations where the sexual abuse occurred;
  - iii. the number of acts of sexual abuse; or
  - iv. the period of time over which the sexual abuse took place. If a series of related wrongful acts committed by one or more District employees or volunteers takes place over more than one period of Agreement, the wrongful acts shall be deemed to have been committed during the last period of Agreement, only

the coverage and limits of that Agreement will apply, and only one wrongful act limit shall be available.

B. In a single event or in a series of related events, all allegations or claims based on or arising out of sexual abuse occurring student to student, shall be deemed to have arisen out of one wrongful act, regardless of:

- i. the number of persons sexually abused;
- ii. the number of locations where the sexual abuse occurred;
- iii. the number of acts of sexual abuse; or
- iv. the period of time over which the sexual abuse took place. If a series of related wrongful acts committed by one or more students acting in concert against another student(s) takes place over more than one period of Agreement, the wrongful acts shall be deemed to have been committed during the last period of Agreement, only the coverage and limits of that Agreement will apply, and only one wrongful act limit shall be available.

#### 7. Deductible

The District is required to bear a share of any payments WSRMP makes for settlements, judgments or defense costs. The deductible shown on the Declarations is the amount the

District is required to pay for all claims which arise from a wrongful act or series of related wrongful acts, regardless of the number of claimants. WSRMP may, at its option, pay any part or all of the deductible to defend or settle a claim. If WSRMP does so, the District must reimburse WSRMP for any such amounts WSRMP has advanced within 30 days after WSRMP gives the District written notice of WSRMP's action. WSRMP may waive all or any part of the District's deductible.

#### D. Exclusions

WSRMP shall not be obligated to make any payment or defend any suit in connection with or relating to:

##### 1. Wrongful Employment Practices

WSRMP does not cover any claim or suit for damages which alleges liability or damages arising wholly or in part from any wrongful employment practice as that term is defined in Article VII of this Agreement. Coverage for such claims is excluded herein regardless of whether or not coverage is extended in whole or in part under the terms and conditions of Article V.

**2. Breach of Contract**

WSRMP does not cover any claim or suit for damages alleged as a result of a breach of a written or oral contract, whether express or implied.

**3. Employee Benefits Programs**

WSRMP does not cover any liability arising from the investment in, insolvency, or inadequacy of assets of any employee benefits program, including the failure of any investment to perform as represented by a District.

**4. Failure to Integrate or Desegregate**

WSRMP does not cover any failure to integrate or desegregate:

- a. student enrollment or placement; or
- b. any busing or other transportation of students to or from schools or extracurricular events in connection with a program or plan of such integration or desegregation on the basis of race, sex, creed, ethnic background, national origin or sensory, mental, or physical disability.

**5. Non-monetary Relief**

WSRMP does not cover claims, demands or actions seeking relief or redress in any form other than money damages, nor shall WSRMP have any obligation to indemnify the District for any costs, fees, or expenses in connection with a judgment for injunctive or declaratory relief, except as provided in Article IV, B8.

**6. Conduct Contrary to Court Order**

WSRMP does not cover acts or omissions committed or continued in contravention of a court order.

**7. Student's Individual Education Plan**

WSRMP does not cover any claim, settlement or judgment based upon the District's action, or failure to act, with respect to any District student's claim to or claim under an Individual Education Plan (IEP) (except WSRMP will pay pre-hearing legal advice pursuant to Article IV, Section C, Subsection 5.a., and will pay defense costs applicable to an administrative proceeding pursuant to Article IV, Section C, Subsection 5.b., and will pay defense costs applicable to a lawsuit pursuant to Article IV, Section C, Subsection 5.c., regardless of the number of wrongful acts).

**8. Claims Covered by Article III**

WSRMP does not cover any suit or claim for which coverage is provided under Article III of this coverage agreement or any suit or claim arising out of bodily injury, property damage or personal injury, except that coverage is provided under this Article IV for claims based on or arising out of sexual abuse.

**9. Unjust Enrichment**

WSRMP does not cover any claim arising out of actual or alleged receipt of any benefit (or attempt to receive any benefit) to which the District is not entitled.

**10. Intentional Acts**

WSRMP does not cover any claim arising out of:

- a. actual or alleged harm intentionally caused by the District;
- b. actual or alleged willful misconduct by the District; or
- c. actual or alleged criminal acts or omissions committed by a District, nor shall WSRMP defend a District in any criminal proceeding or reimburse a District for its defense expenses, including attorney's fees, arising from such criminal proceeding.
- d. actual or alleged retaliation of any kind, except WSRMP will defend, but not indemnify, a Member District against a claim for retaliation, and, at its discretion, may defend an individually-named defendant against a claim for retaliation, all pursuant to Article IV, Section B., Subsection 9.

**11. Employer's Liability**

WSRMP does not cover any claim of or liability to:

- a. an employee of the District arising out of and in the course of employment by the District, or
- b. the spouse, child, parent, brother or sister of that employee as a consequence thereof, except that this exclusion does not apply to a claim or suit based upon a wrongful act in the administration of an employee benefits program.

**12. Fines; Penalties; Punitive Damages**

WSRMP does not cover liability for fines or penalties, including punitive or exemplary damages, imposed by law or other matters for which WSRMP may not provide

coverage as a matter of law.

### **13. Pollution**

WSRMP does not cover any claim, suit, or proceeding alleging liability or damage arising out of the actual, alleged or threatened discharge, dispersal, release, seepage, migration, or escape of pollutants:

- a. at or from any premises at any time owned, rented, or occupied by the District;
- b. at or from any premises, site, or location at any time used by or for the District or others for the handling, storage, disposal, processing or treatment of waste;
- c. which are or were at any time transported, handled, stored, treated, disposed of or processed as waste by or for the District or any person or organization for whom the District may be legally responsible; or
- d. at or from any premises, site, or location on which the District or any contractors or subcontractors working directly or indirectly on the District's behalf are performing operations:
  - i. if the pollutants are brought on or to the premises, site, or location in connection with such operations; or
  - ii. if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify, neutralize, or in any way respond to or assess the effects of pollutants.

### **14. Pollution Response**

WSRMP does not cover any loss, cost, or expense arising out of any:

- a. request, demand, or order that any District or others test for, monitor, clean up, remove, contain, treat, detoxify, neutralize, or in any way respond to or assess the effects of pollutants; or
- b. claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to or assessing the effects of pollutants.

### **15. Asbestos**

WSRMP does not cover liability, including any aggravation or contribution to a condition or injury, resulting from asbestos or loss of, damage to or loss of use of property directly or indirectly caused by asbestos.



16. ERISA

WSRMP does not cover claims arising out of the Employer Retirement Income Security Act (ERISA) or similar Legislation.

17. Sexual abuse

WSRMP does not cover any allegation or claim of sexual abuse against a District employee or volunteer.

18. Eminent Domain

WSRMP does not cover the operation of the principles of eminent domain, condemnation proceedings or inverse condemnation by whatever name called.

19. Employee Benefits Programs

WSRMP shall not be obligated to make any payment or defend any suit or claim for damages based upon wrongful acts in the administration of any employee benefits program in connection with or relating to:

- a. any dishonest, fraudulent, criminal or malicious conduct of a District;
- b. the failure of an insurer or other organization to perform its obligations with respect to:
  - i. the payment of benefits under an employee benefits program; or
  - ii. the providing, handling or investing of funds related to an employee benefits program;
- c. the District's violation of any workers compensation, unemployment compensation, social security, disability benefits, or similar law;
- d. advice given by the District to any employee to participate or not to participate in any retirement account, savings plan, salary reduction plan, stock or investment subscription plan, or any employee benefits program;
- e. the cessation of any employee benefits plan.

WSRMP shall not be obligated to make any payment or defend any suit in connection with or relating to:

**20. Administrative Claims**

Claims for relief or complaints filed with any local, state, or federal administrative body, including but not limited to the state or federal Human Rights Commission, Department of Labor and Industries, Office of the Superintendent of Public Instruction, or any similar administrative body (except WSRMP will pay defense costs applicable to an administrative proceeding pursuant to Article IV, Section C, Subsection 5.b.). WSRMP reserves the right, however, to defend the District in any such proceeding should it choose to do so.

**21. Firearms**

WSRMP does not cover claims, demands or actions seeking liability for damages or injuries caused by or arising out of the use or misuse of any firearm in the possession of a District employee, volunteer, intern, student teacher, paraeducator, or similar personnel. This exclusion does not apply to liability for damages or injuries caused by or arising out of the use or misuse of a firearm in the possession of a third-party who is not a District employee, volunteer, intern, student teacher, paraeducator, or similar personnel.

This exclusion does not apply to liability caused by or arising out of the activities of a JROTC program or a District-authorized gun or shooting club.

**E. Terms and Conditions Specific to Article IV**

**1. Duty to Defend**

WSRMP's duty to defend shall arise even if the claim is groundless or fraudulent or brought solely because the District is a Board of Education, Board member or otherwise covered under this Agreement.

**2. Cross Liability**

In the event of claims for damages alleged by any District party to this Agreement against another District party to this Agreement, WSRMP will provide coverage, subject to the limits of liability, conditions and exclusions of this Agreement, in the same manner as if separate Agreements had been issued to each District. WSRMP agrees to waive all rights of subrogation against all or any of the members or individuals comprising the District in such a case.

**End of Article IV**

## Article V. Employment Practices Liability Coverage

### A. Employment Practices Liability Coverage

Subject to all applicable limits of liability, deductibles, retentions, terms, conditions and exclusions, WSRMP will pay damages which the District is legally required to pay as a result of sexual harassment; discrimination; wrongful employment termination; invasion of privacy; or libel, slander or defamation of character, all arising out of a wrongful employment practice which occurs during the coverage period, whether the District's obligation to pay damages is based on direct liability or vicarious liability.

### B. Defense, Settlement, and Supplementary Payments

#### 1. Defense of Claims

WSRMP will have the right and duty to defend any suit brought against the District alleging sexual harassment, discrimination, wrongful employment termination, invasion of privacy; or libel, slander or defamation of character, all arising out of a wrongful employment practice occurring during the coverage period and seeking damages that are covered by this Agreement. WSRMP will do this even if the allegations are groundless, false or fraudulent. But WSRMP will have no duty to defend any claim or suit to which this coverage does not apply. WSRMP's duty to defend begins upon the filing of suit by any person against a District. Any defense costs WSRMP incurs are part of the District's limits of coverage. WSRMP will pay the defense costs before WSRMP pays any damages. WSRMP shall have the right to select counsel to defend any suit brought against the District and covered by this Article.

#### 2. Settlement

WSRMP may, at WSRMP's discretion, investigate and/or defend any claim or suit brought against the District or any entities protected under this Agreement. WSRMP may settle any claims covered by the Agreement at WSRMP's discretion. WSRMP's right and duty to defend claims or suits ends when WSRMP has used up the limits of coverage in the payment of judgments, settlements, and/or defense costs.

#### 3. Additional Benefits

All of the following are in addition to the limits of coverage that apply to any claim. However, these benefits end when WSRMP has used up the applicable limits of coverage in the payment of judgments, settlements, and/or defense costs.

- a. WSRMP will pay prejudgment and post-judgment interest only on that part of any judgment WSRMP pays. WSRMP won't pay any prejudgment interest that accrues after WSRMP offers to pay the limit of coverage that applies. WSRMP won't pay

any post-judgment interest that accrues after WSRMP pays or offers to pay WSRMP's share of the judgment;

- b. WSRMP will pay premiums for bonds that are required in a suit WSRMP defends. These include appeal bonds and bonds to release property that is being used to secure a legal obligation. But WSRMP will only pay for bonds valued up to the limit of coverage that applies. WSRMP has no obligation to apply for or furnish these bonds;
- c. WSRMP will pay all reasonable costs other than personnel costs or expenses that the District incurs at our request to help us investigate or defend a claim.

#### **4. Defense of Spouse of Covered Individual**

In the event of suit against the District alleging liability covered by this Article, WSRMP may, at its own discretion, defend the spouse of an individual covered as a District, where the spouse has been named in the suit solely by reason of the covered individual's marital community, provided that such defense of the spouse is subject to all coverage reservations applicable to the District, including the covered individual, and that WSRMP will neither defend nor indemnify the spouse for any claim or liability based on the spouse's own actions or conduct.

#### **5. Superintendent and School Board Members**

In the event of suit against the District alleging liability covered by this Article, WSRMP may, at its own discretion, defend, but not indemnify, a district superintendent, acting superintendent, or board member against a claim for declaratory, injunctive, or other equitable or non-monetary relief, where coverage would not otherwise exist.

#### **6. Defense of Retaliation Claims**

WSRMP will defend, but not indemnify, a Member District against a claim for retaliation in the employment setting. This provision provides defense only, not indemnity.

WSRMP, at its discretion, may defend, but not indemnify, an individually-named defendant against a claim for retaliation in the employment setting, provided that the individual otherwise qualifies for coverage under the Coverage Agreement. WSRMP will not indemnify an individual defendant for such a claim.

**C. Limits of Liability**

**1. Coverage Limits**

The limits of coverage are stated in the Declarations per occurrence, and are subject to WSRMP

Retention and Insolvency of Excess provision, Article VII, Section B. The limit stated in the Declarations is the most WSRMP will pay regardless of the number of:

- a. persons or organizations covered under this agreement;
- b. wrongful employment practices committed;
- c. claims made;
- d. persons or organizations making claims; or
- e. Member Districts submitting claims for coverage.

**2. Single Claim**

The per occurrence limit is the most WSRMP will pay for all damages and all defense costs that arise out of a single claim. All claims which:

- a. arise from the same wrongful employment practice or from a series of related wrongful employment practices; or
- b. are brought in a single suit by three or more individual claimants; or
- c. are alleged in a single class action lawsuit;

will be deemed to be a single claim.

**3. Deductible**

The District is required to bear a share of any payments WSRMP makes for settlements, judgments or defense costs. The deductible shown on Endorsement No.1 is the amount the District is required to pay for all claims which arise from the same wrongful employment practice or from a series of similar or related wrongful employment practices regardless of the number of claimants. WSRMP may, at its option, pay any part or all of the deductible to defend or settle a claim. If WSRMP does so, the District must reimburse WSRMP for any such amounts WSRMP has advanced within 30 days after WSRMP gives the District written notice of WSRMP's

action. WSRMP may waive all or any part of the District's deductible.

**4. Multiple Coverage Agreement Periods**

The limits of coverage for Employment Practices Liability arising out of a wrongful employment practice or a series of related wrongful employment practices which occurs in more than one coverage agreement period shall be the limits extended under a single coverage agreement period:

- a. The limits which will apply to the claim shall not exceed the highest applicable available limit under any single coverage agreement period that applies; and
- b. The total limits, aggregate limits or per claim limits of more than one coverage agreement shall not be stacked; and
- c. For purposes of application of a coverage agreement's aggregate limit, a claim which arises from acts occurring in multiple coverage agreement periods with equally applicable and available limits shall be treated as occurring under the most recent of the coverage agreement periods.

**5. No Coverage Under Other Articles**

No coverage is extended under any other article of this Coverage Agreement for claims, causes of action or damages arising out of or related to wrongful employment practices.

**D. Exclusions**

There is no coverage and WSRMP will neither defend nor indemnify under this Article of the Coverage Agreement for:

**1. Intentional Acts**

WSRMP does not cover claims arising directly or indirectly from the District purposely, intentionally, willfully or with reckless disregard violating any statute, law, rule, regulation, agreement, or judicial or regulatory order; or from any Wrongful employment practice committed by the District or at the District's direction with dishonest, fraudulent, criminal, or malicious purpose or intent. In determining the applicability of this exclusion, the conduct of an Individual will not be imputed to any other individual, entity, or organization composing the District.

2. Bodily injury

WSRMP does not cover claims:

- a. for bodily injury, sickness, disease or death of any person; or
- b. brought by the person's domestic partner, spouse, child, parent, brother or sister  
as a result of such bodily injury, sickness, disease or death.

3. Property damage

WSRMP does not cover claims for damage to or destruction of any tangible property, including loss of its use.

4. Retaliation

WSRMP does not cover any claim for retaliation by a District against an employee, except WSRMP will defend, but not indemnify, a Member District against a claim for retaliation in the employment setting, and, at its discretion, may defend an individually-named defendant against a claim for retaliation in the employment setting, all pursuant to Article V, Section B., Subsection 6.

5. Fines, Punitive Damages, Multiplied Damages, Or Non-Monetary Relief

WSRMP does not cover:

- a. fines, taxes, penalties or liquidated damages;
- b. punitive or exemplary damages;
- c. the multiplied portion of any damage award that is subject to a multiplier;
- d. non-monetary or injunctive relief – except as provided in Article V, B5(b); or
- e. any other uninsurable amounts.

6. Administrative Remedies

WSRMP will not defend or indemnify the District against claims for relief or complaints filed with any local, state, or federal administrative body, including but not limited to the state or federal Human Rights Commission, Department of Labor and Industries, Office of the Superintendent of Public Instruction, EEOC, or any similar administrative body. WSRMP reserves the right, however, to defend the District in any such proceeding should it choose to do so.

**7. ERISA, COBRA and WARN Act Liability**

WSRMP does not cover any liability imposed on the District under:

- a. the Employee Retirement Income Security Act of 1974;
- b. the Comprehensive Omnibus Budget Reconciliation Act;
- c. the Worker Adjustment and Retraining Notification Act;
- d. any similar federal, state or local laws;
- e. any amendments to such laws; or
- f. any regulations promulgated under any such laws.

**8. Compliance with ADA Requirements**

WSRMP does not cover any costs or expenses incurred to make premises accessible to persons with disabilities as required by:

- a. the Americans With Disabilities Act of 1990;
- b. any similar federal, state or local law;
- c. any amendments to such laws; or
- d. any regulations promulgated under any such laws.

**9. Strikes and Lockouts**

WSRMP does not cover claims that arise out of a lockout, strike, picket line, replacement or other similar actions resulting from labor disputes or labor negotiations or any protections contained within the National Labor Relations Act.

**10. Reorganizations, Reductions in Force**

WSRMP does not cover claims that arise out of a lay off or termination of employment:

- a. from the permanent shutdown of a site of employment; or
- b. from a temporary shutdown of a site of employment that lasts at least 30 days; or
- c. that results because a District acquired another entity; or



d. that results because a District reorganizes with or into another entity.

**11. Workers Compensation Or Similar Law**

WSRMP does not cover any liability arising out of any obligation under a workers' compensation, disability benefits or unemployment compensation law, or any similar law.

**12. Contractual Liability**

WSRMP does not cover the liability of others assumed by the District in a contract or agreement. But this does not apply to liability that the District would have had in the absence of a contract or agreement.

**13. Damages Arising from Contracts**

WSRMP does not cover any damages determined to be owing under any personal services contracts or any written or express contract of employment or obligation to make payments in the event of the termination of employment.

**14. Back or Future Pay; Wages**

WSRMP does not cover any damages awarded as back pay, future pay, or lost wages.

**15. Benefits**

WSRMP does not cover any past or future benefits of any kind that a plaintiff or claimant may have been entitled to as an employee or former employee of the District.

**16. Assault and Battery**

WSRMP does not cover liability arising out of assault or battery by a District or its agents.

**17. Prior Notice**

WSRMP does not cover any liability arising directly or indirectly from any Wrongful Employment Practice or any fact, circumstance or situation which has been the subject of any notice given prior to the effective date of this Coverage Agreement under any prior Coverage Agreement or Insurance Policy, or any liability for employment practices, which have as a common nexus any fact, circumstance, situation, event, transaction or series of the same which has given rise to a notice given under a prior Coverage Agreement or Insurance Policy.

**18. Criminal Acts; Criminal Proceedings**

WSRMP does not cover any liability arising out of any actual or alleged criminal acts or omissions committed by a District, nor shall WSRMP defend a District in any criminal proceeding or reimburse a District for its defense expenses, including attorney's fees, arising from such criminal proceeding.

**19. Employee's Identity Theft**

WSRMP does not cover liability arising from the unlawful use, disclosure, publication, or appropriation of a District employee's personal or financial information that is in the District's possession and under its control.

**E. Terms and Conditions Specific to Article V**

**1. When Claims are Covered**

WSRMP will pay and defend a claim only when:

- a. the wrongful employment practices which are alleged to have caused the sexual harassment, discrimination, wrongful employment termination, invasion of privacy; or libel, slander or defamation of character took place:
  - i. during the Coverage Agreement Period; and
  - ii. in the Coverage Agreement territory; and
- b. on the effective date of this Agreement no person or entity knew or was aware of circumstances that might result in the claim or any similar or related claim based upon the alleged wrongful acts or practices not previously disclosed in the writing to WSRMP; and
- c. the claim is reported by the District to WSRMP as soon as practicable after the claim is made.

**2. Who is Covered under this Article**

The Washington Schools Risk Management Pool, including its Board of Directors, officers, employees, and committees while acting in the course and scope of their official duties or employment and any participating member District is covered. Independent contractors, consultants or volunteers providing services to the District are not covered, nor are students of any District. Employees other than the District's officers and directors are covered only for the conduct of the District's business within the scope and course of their employment.

**3. Exhaustion of Coverage Limits**

When WSRMP has used up the limits of coverage in the payment of judgments, settlements and defense costs, WSRMP will notify the District of all outstanding claims so that the District can take over control of their defense. WSRMP will help transfer control to the District. WSRMP will take whatever steps are necessary to continue the defense of any outstanding claim and avoid a default judgment during the transfer of control to the District. But this will not waive any of our rights. The District agrees to pay us for the reasonable expenses WSRMP incurs for taking such steps after the limits of coverage are exhausted.

**4. Required Notice to WSRMP**

A District which, during the Coverage Agreement period, learns of circumstances that may lead to a claim being made against a District must give WSRMP immediate notice, including full details about the specific wrongful employment practice involved.

**5. Duties in the Event of a Claim**

If any claim is made against any District, entity or person, the District must see to it that the following duties are performed:

- a. Immediately record the details of the claim and the date it was received by the District; and
- b. Notify WSRMP in writing immediately; and
- c. Send WSRMP copies of any demands, notices, summonses or legal papers received in connection with the claim; and
- d. Provide WSRMP with information at WSRMP's request and cooperate with us in the handling, investigation and defense of the claim; and
- e. Assist WSRMP, at our request, in enforcing any right of recovery against any person or organization which may be liable to the District. Do nothing to prejudice any rights of recovery that may exist.

**6. Other Insurance**

If the District or any person or entity claiming coverage under this Agreement is insured under any other insurance policy or agreement applicable to a loss covered under this Agreement, regardless of whether or not any loss resulting from a claim is collectible or recoverable under such policy or agreement, this Agreement will apply excess of the other insurance policy or agreement and not primary or contributing. This Agreement's coverage also shall be excess of any other coverage or insurance

provided on a claims-made basis subsequent to the coverage extended by this Agreement, whether that other coverage or insurance is stated to apply on a primary, excess, contingent or any other basis. Following cancellation or expiration of this Agreement, it is the intent of WSRMP and the District to apply this Agreement's coverage as primary only when no other coverage or insurance applies to the loss or claim. However, if the District purchases insurance in excess of the limits of liability stated in this Agreement, such excess insurance shall not be considered other insurance for the purposes of this paragraph and will not be considered in the application of any pro-rata liability or apportionment clause.

**End of Article V**

## Article VI. Investigation Coverage

### A. Investigation Coverage

Subject to all applicable limits of liability, deductibles, retentions, terms, conditions and exclusions, WSRMP in its discretion will have the right, but not the duty, to pay the expense of an investigation of facts or circumstances that may give rise to a significant or high-profile third- party liability claim or lawsuit against the District involving a wrongful employment practice; hostile work environment; violation of civil rights based on state or federal statute or constitution; harassment of an employee or student; or discrimination based on race, origin, nationality, religion, age, gender, disability, or sexual orientation. This coverage applies only:

1. before a claim or suit based on such facts or circumstances is commenced against the District; and
2. if the facts or circumstances occur during the term of this Agreement.

Coverage under this Article VI will cease upon the presentation of a claim or commencement of a suit against the District involving the facts or circumstances under investigation. The District shall immediately notify WSRMP of any such claim made or suit brought against it. Upon completion of the investigation under this Article or the commencement of a covered claim or suit against the District, WSRMP will handle the matter under another Article of this Agreement, as appropriate.

### B. Investigation Expenses

In the event of facts or circumstances covered by this Article, WSRMP shall:

1. pay all expenses incurred by WSRMP to conduct an investigation, including fees and expenses of an investigator or other expert or consultant of WSRMP's choosing, as determined necessary by WSRMP.
2. have the right, but not the duty, to select counsel of its own choosing to direct the investigation.

Investigation Expenses under this Article do not include any expense incurred by the District without prior consent of, or direction by, WSRMP.

### C. Limits of Liability

The most WSRMP will pay for Investigation covered by this Article is the amount stated for Investigation Coverage on the Declarations Page for the Member District. This is the most WSRMP will pay for Investigation Expenses under this Article for any one occurrence or

event or any one series of related events, including all fees and costs of an investigator, other expert, or attorney.

Should the facts or circumstances that may require an investigation covered by this Article begin in one period of Agreement and end in another, only the coverage and limits in the last period of Agreement in time shall apply and only one limit of liability shall be available for each such multi-period investigation.

**D. Exclusions**

WSRMP shall not be obligated to undertake any investigation or to pay the expense of any investigation in connection with or relating to facts or circumstances that may give rise to a claim or suit not covered by Article III Liability Coverage, Article IV Errors and Omissions Liability Coverage, or Article V Employment Practices Liability Coverage. The exclusions contained in those Articles of this Coverage Agreement shall apply to this Pre-claim Investigation Coverage as if fully set forth in this Article. In addition, WSRMP shall not be obligated to pay for:

The representation of the District at any administrative proceeding resulting from the facts or circumstances for which WSRMP has provided Investigation Coverage, or for the District's preparation for such administrative proceeding.

**End of Article VI**

## **Article VII. General Terms and Conditions Applicable to All Coverages**

### **A. Limits, Sublimits, and Aggregates**

All limits, sublimits, and aggregate limits set forth in the Coverage Agreement apply on a per Member District basis unless otherwise specified in the body of the coverage agreement document or endorsements thereto.

### **B. WSRMP Retention and Insolvency of Excess**

The limits of liability stated in the Declarations consist of (1) a retention amount provided by WSRMP, and (2) the remaining amount up to the full limit of liability indicated in the Declarations (hereafter the "excess amount") provided by reinsurance or excess insurance purchased by WSRMP. In the event of insolvency or inability to pay of any reinsurer or excess insurer, WSRMP will be liable only for its per occurrence retention amount and will not be obligated to pay any part of the excess amount, provided, however, that WSRMP retains the right to pay any part of the excess amount that it, in its sole discretion, may determine advisable.

### **C. Salvage and Recovery**

All salvages, recoveries and payments recovered or received subsequent to a loss settlement under this Agreement shall be applied as if received or recovered prior to the settlement and all necessary adjustments shall be made by the parties accordingly.

### **D. Inspections, Audit and Verification of Values**

WSRMP or its duly authorized representatives shall be permitted at reasonable times during the term of this Agreement to inspect the premises used by the District and to examine and audit the District's books or records so far as they relate to the coverage afforded by this Agreement, and to verify the value of scheduled assets.

WSRMP has the right and shall be afforded the opportunity, but has no obligation or duty, to inspect any damaged property owned by the District or in its care, custody, or control and for which a claim for benefits under this Coverage Agreement is made, before the property is repaired or replaced. At the request of WSRMP, the District shall make any such damaged property available for inspection by WSRMP or its duly authorized representatives.

### **E. Records**

It is hereby understood and agreed that the records and books as kept by the District shall be acceptable to WSRMP in determining the amount of loss or damage covered hereunder. As an express condition of this Agreement, the District grants to WSRMP, and WSRMP reserves, the right to periodically inspect and require reasonable changes

and/or improvement in record keeping.

**F. Cancellation**

This Agreement may be canceled by the District or by WSRMP according to the terms of the Washington Schools Risk Management Pool Account Agreement.

**G. Other Insurance**

The parties to this Agreement recognize that policies of insurance may contain Other Insurance Clauses and in consideration of the mutual promises and covenants contained herein, it is therefore intended, understood and agreed that if the District is insured against a loss covered by this Agreement, the coverage extended by this Agreement shall be excess of such insurance and not primary or contributing. This Agreement's coverage also shall be excess of any other coverage or insurance provided on a claims-made basis subsequent to the coverage extended by this Agreement, whether that other coverage or insurance is stated to apply on a primary, excess, contingent or any other basis. Following cancellation or expiration of this Agreement, it is the intent of WSRMP and the District to apply this Agreement's coverage as primary only when no other coverage or insurance applies to the loss or claim. Notwithstanding the foregoing, in the event the District purchases insurance in excess of the limits of liability stated in this Agreement, such excess insurance shall not be considered other insurance for the purposes of this paragraph, and will not be considered in the application of any pro-rata liability or apportionment clause. Also notwithstanding the foregoing, if the District purchases any insurance for firearm liability, this Agreement will not apply, and WSRMP will not contribute, whether on a primary, excess, contributory, or any other basis, to any claim or loss that is covered by such firearm liability policy.

**H. Notice of Occurrence, Wrongful Act, Claim or Suit**

In the event of an Occurrence or Wrongful Act, written notice shall be given by or on behalf of the District to WSRMP as soon as practicable. Such notice shall identify the District, the time, place and circumstances of the occurrence or wrongful act, the nature and extent of any property loss, the name and address of any injured person(s) and occurrence witnesses and information respecting applicable insurance available to the injured person(s) at the time of occurrence. If claim is made or a suit is brought against the District for a covered occurrence or wrongful act, the District shall immediately forward to WSRMP every demand, notice, summons, or other process received by the District or the District's representative. WSRMP is not authorized to accept notice of a claim against a District from any third party for purposes of compliance with any claim presentment statute.

**I. Assistance and Cooperation of District**

The District shall cooperate with WSRMP and upon WSRMP's request, shall assist in making settlements, in the conduct of suits and in enforcing any right of contribution or indemnity against any person or organization who may be liable to the District because of bodily injury, personal injury, property damage, wrongful act, or other liability with respect to which coverage



is afforded under this Agreement; and the District shall attend hearings and trials and assist in the securing and giving evidence and obtaining the attendance of witnesses.

The District shall not, except at its own cost, voluntarily make any payment or settlement, assume any obligations, admit liability or incur any expense other than for such immediate medical and surgical relief to others as shall be reasonably required at the time of the accident or occurrence. The District shall not agree to entry of a judgment against it without the express agreement of WSRMP.

In the event of loss or damage to property, or if a claim is made against the District, the District must:

1. immediately notify WSRMP in writing of the loss, damage or claim, giving a description of the property involved or the nature of the claim, along with how, when and where the loss or damage occurred or the claim took place.
2. notify the police in the event of suspected vandalism, theft, or other criminal activity.
3. provide WSRMP with copies of any demands, notices, summonses or legal papers received in connection with a claim.
4. provide WSRMP with information requested by WSRMP, including documentation and access to District personnel, and fully cooperate with WSRMP in the handling, investigation and defense of a claim, and in the handling, investigation and adjustment of loss or damage.

**J. Loss Payments**

WSRMP shall promptly pay on behalf of the District all payments in accordance with the amounts stated in the limits of liability section, subject to the terms and conditions of this agreement.

**K. Decision to Appeal Judgment**

In the event the District and WSRMP are unable to agree on whether a judgment should be appealed, a disinterested attorney, mutually agreeable to WSRMP and District, shall be retained and directed to render a written recommendation concerning such appeal. Such written recommendation shall be binding on both the District and WSRMP. Fees of such a retained attorney shall be borne equally by both parties. The District's portion of such fee shall not apply to its deductible, if applicable.

**L. Review by Executive Board and Arbitration**

Any claim, dispute or controversy arising out of or relating to this Coverage Agreement shall first be submitted to review by the Executive Board of WSRMP. The Executive Board shall consider all written submissions by either party, and, if requested by either party, provide both parties

equal opportunity for oral argument. Unless otherwise agreed by the parties and WSRMP, the Executive Board shall determine if WSRMP's position should be upheld or if the Member District should be granted coverage according to its position, and the Executive Board shall issue its decision in writing within thirty (30) days of submission of such claim, dispute or controversy to the Executive Board. Such written opinion shall briefly state the reasons for its decision.

If a Member District disagrees with the written decision of the Executive Board, then the Member District may submit, in writing, such claim, dispute or controversy to arbitration to be held in Seattle, Washington or such other location as the parties may agree upon, in accordance with the Commercial Arbitration Rules of the American Arbitration Association then in effect and the Revised Code of Washington, (RCW) 7.04A. There shall be three arbitrators, the Member District and WSRMP each selecting one arbitrator; the third arbitrator shall be selected by the two previously appointed arbitrators. The party demanding arbitration shall name its arbitrator in the demand for arbitration. The responding party shall name its arbitrator within fifteen (15) days after receipt of demand for arbitration. The third arbitrator shall be named within fifteen (15) days after the appointment of the second arbitrator. A Commissioner or Judge in the King County Superior Court shall be empowered to appoint any arbitrator not named in accordance with the procedure herein. The decision of the arbitrators shall be final and binding upon the parties with the right to appeal only as provided in RCW 7.04A.

Any award rendered by the arbitrators shall be final and judgment thereon may be entered by any court having jurisdiction thereof. The panel of arbitrators shall have the discretion to apportion the costs and expenses of the arbitration (including reasonable attorneys' fees) in accordance with the merits of the arbitration. The panel must render its decision by a majority of the panel within ninety (90) days of the appointment of the third arbitrator, following reasonable opportunities for presentation of evidence, law and argument.

**M. Subrogation**

WSRMP shall be subrogated to all rights which the District may have against any person or other entity with respect to any claim or payment made under this Agreement, and the District shall execute all papers required by WSRMP, shall cooperate with WSRMP to secure and protect WSRMP's rights, and shall do nothing before or after a loss to impair those rights. In case any reimbursement is obtained or recovery is made by the District or WSRMP on account of any loss covered by this Agreement, the net amount of such reimbursement or recovery, after deducting the actual cost of obtaining or making the same, shall be first applied in the following order:

1. First, to reduce the District's loss because of the application of the deductible;
2. Second, to the amount of loss which exceeds the applicable limit of liability;
3. Third, to reduce WSRMP's loss until WSRMP is fully reimbursed.

The District shall immediately notify WSRMP of any reimbursement or recovery obtained on account of any loss covered by this Agreement.

**N. Conflicting Statutes**

In the event any provision of this Agreement is unenforceable due to non-compliance with state, county or municipal law, this Agreement shall be enforceable by the District with the same effect as if it had been in compliance with such law.

**O. Assignment**

The District may not transfer or assign its rights, duties or interest under this Agreement without WSRMP's written consent, given by way of written Endorsement.

**P. Integration, Waiver, and Modification**

By acceptance of this Agreement, the District agrees that it embodies all agreements existing between the District and WSRMP or any of its agents relating to any coverage under this Agreement. None of the provisions, conditions or other terms of this Agreement shall be waived or altered except by written Endorsement issued by WSRMP. Notice to any agent or knowledge possessed by any agent or by any other person shall not be held to effect a waiver or change in any part of this Agreement.

**Q. War Clause**

There is no coverage under this Agreement for loss or damage directly or indirectly occasioned by, happening through or in consequence of war, invasion, acts of foreign enemies, any weapon of war employing atomic fission or radioactive force whether in time of peace or war, hostilities (whether war be declared or not), civil war, act of terrorism (except only as provided under Article IA, Section F), rebellion, revolution, insurrection, military or usurped power, confiscation or nationalization or requisition or destruction of or damage to property by or under the order of any government or public or local authority unless such acts of destruction by order of civil authority are at the time of and for the purpose of preventing spread of fire; or claims or liability arising directly or indirectly from nuclear fission, nuclear fusion or radioactive contamination.

There is no coverage under this Agreement for any claim or liability for, and WSRMP will not be obligated to make any payment or defend any suit in connection with or relating to, any bodily injury or property damage caused solely and directly by an act of terrorism involving the release or dispersal of nuclear, chemical, or biological agents or material.

**R. Cyber Loss**

There is no coverage under this Agreement for Data Breach Expenses, Privacy Liability, Network Security, Internet Media, Network Extortion, Digital Asset Loss, Income Loss, or Contingent Business Interruption, as those terms are defined in WSRMP's Cyber Loss Endorsement. Coverage for these risks is available through a separate Privacy and Network Liability policy issued by a commercial insurer, as explained in the Cyber Loss Endorsement.

There is no coverage under this Agreement for Technology E&O Liability, as that term is defined in WSRMP's Cyber Loss Endorsement, except for the limited Technology E&O Liability coverage described in the Cyber Loss Endorsement that applies only to Member Districts not purchasing the separate Digital Technology & Professional Liability policy.

**S. Fraudulent Claims**

If the District makes a claim known to the District to be false or fraudulent in any respect, this Agreement shall become void and all rights of the District hereunder shall be forfeited.

**T. District's Duty to Mitigate**

As a condition to any and all obligations of WSRMP hereunder, the District is obligated to take

reasonable steps in mitigation of any covered loss or damage. In the event the District fails to take reasonable steps in mitigation, WSRMP may deny coverage for any aspect of the loss which could have been avoided through reasonable steps in mitigation.

Among the acts of mitigation which the District shall be obligated to carry out is to cease taking a continuing action which is the subject of a claim where the Executive Board finds the continuing action is likely to unnecessarily increase the exposure of WSRMP to continuing damages during the pendency of the adjudication of the claim. The District shall be given at least seven (7) days notice of its obligation to thereafter take the mitigating action. If the District fails to follow the directive of the Executive Board, by vote of at least two-thirds of a quorum, it may, thereafter, decline to extend the coverage of WSRMP or, if previously extended to, thereafter, withdraw or place a limit on the amount of money damages and defense costs WSRMP will pay for the claim. Prior to taking action withdrawing or limiting coverage, the Executive Board shall consider the matter at a regular or special meeting at which the issue shall be noted on the agenda.

The District for which coverage is to be withdrawn or limited shall receive specific notice that this matter will be considered. WSRMP shall, in any case, pay for all defense costs incurred prior to the date that coverage is withdrawn.

**U. Caption Headings**

Any caption headings used in this Agreement are for the purpose of convenience only, and do not alter, amend, or supplement the terms of this Agreement.

**V. Definitions Applicable to All Coverages**

Unless otherwise defined in this Agreement, the following definitions shall be used in construction of this Agreement:

**1. ACCIDENT**

Except as applicable to Article I.B., Accident means an unforeseen and unexpected event which results in personal injury, bodily injury and/or damage to tangible property.

**2. ACCIDENT (applicable to Article I.B.)**

- a. Accident means a fortuitous event that causes direct physical damage to covered equipment. The event must be one of the following:
  - i. Mechanical breakdown, including rupture or bursting caused by centrifugal force;
  - ii. Artificially generated electrical current, including electrical arcing, that damages electrical devices, appliances or wires;
  - iii. Explosion, other than combustion explosion, of steam boilers, steam piping, steam engines or steam turbines;
  - iv. An event inside steam boilers, steam pipes, steam engines or steam turbines that damages such equipment;
  - v. An event inside hot water boilers or other water heating equipment that damages such equipment; or
  - vi. Bursting, cracking or splitting.
- b. None of the following is an accident, however caused and without regard to whether such condition or event is normal and expected or unusual and unexpected:
  - i. Depletion, deterioration, rust, corrosion, erosion, settling or wear and tear;
  - ii. Any gradually developing condition;
  - iii. Any defect, programming error, programming limitation, computer virus, malicious code, loss of data, loss of access, loss of use, loss of functionality or other condition within or involving data or media of any kind;
  - iv. Contamination by a hazardous substance; or
  - v. Misalignment, mis-calibration, tripping off-line, or any condition which can be corrected by resetting, tightening, adjusting or cleaning, or by the performance of maintenance.

**3. ACT OF TERRORISM**

Act of terrorism shall mean any act that is certified by the Secretary of the Treasury of the United States, in concurrence with the Secretary of State, and the Attorney General of the United States:

- a. to be an Act of terrorism pursuant to the federal Terrorism Risk Insurance Act of 2002 as amended and extended in 2005 and 2007;
- b. to be a violent act or an act that is dangerous to:
  - i. human life;
  - ii. property; or
  - iii. infrastructure;
- c. to have resulted in damage within the United States, or outside of the United States in the case of:
  - i. an air carrier or vessel described in paragraph (5)(B) of the Terrorism Risk Insurance Act of 2002; [for the convenience of this section, paragraph (5)(B) reads: occurs to an air carrier (as defined in Section 40102 of title 49, United States Code) to a United States flag vessel (or a vessel based principally in the United States, on which United States income tax is paid and whose insurance coverage is subject to regulation in the United States), regardless of where the loss occurs, or at the premises of any United States mission]; or
  - ii. the premises of a United States mission; and
- d. to have been committed by an individual or individuals, as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

Limitations: No act shall be certified as an act of terrorism if:

- a. the act is committed as part of the course of a war declared by the Congress, except that this clause shall not apply with respect to any coverage for workers' compensation; or
- b. property and casualty insurance losses resulting from the act, in the aggregate, do not exceed \$5,000,000.

The Terrorism Risk Insurance Act of 2002, as amended, includes a provision stating that if the aggregate insured losses exceed \$100 Billion during any calendar year, neither the United States Government nor any insurer that has met its insurer deductible shall be liable for the payment of any portion of the amount of such losses that exceed \$100 Billion. If the aggregate insured losses for all insurers exceed \$100 Billion, coverage may be reduced.

Determinations Final: Any certification of, or determination not to certify, an act as an act of terrorism under this paragraph shall be final and shall not be subject to judicial review.

Nondelegation: The Secretary may not delegate or designate to any other officer, employee, or person, any determination under this paragraph of whether, during the effective period of the Program, an act of terrorism has occurred.

**4. AIRCRAFT**

Aircraft means any contrivance used or designed for flight, including airplanes, helicopters, lighter than-air balloons, gliders, and rockets, but not including model or hobby aircraft or unmanned aircraft systems (UAS).

**5. ADMINISTRATION**

Administration, shall mean:

- a. informing employees or their dependents and beneficiaries of the content or scope of an employee benefits program;
- b. giving advice or counsel concerning an employee's eligibility to participate in any employee benefits program;
- c. handling records in connection with any employee benefits program;
- d. handling the enrollment, termination or cancellation of employees under any employee benefits program.

**6. AUTOMOBILE**

Automobile shall mean any licensed: bus, motor vehicle, trailer or semi-trailer, and any equipment permanently attached thereto.

**7. BODILY INJURY**

Bodily injury means any physical injury, sickness, or disease sustained by a person, including death resulting from any of these at any time.

**8. BOILERS AND VESSELS (applicable to Article I.B.) means:**

- a. Boilers;
- b. Steam piping;
- c. Piping that is part of a closed loop used to conduct heat from a boiler;
- d. Condensate tanks; and
- e. Unfired vessels which, during normal usage, operate under vacuum or pressure, other than the weight of contents.

This term does not appear elsewhere in this coverage form but may appear in the Declarations.

**9. BUILDING UTILITIES (applicable to Article I.B.)**

Building utilities means covered equipment permanently mounted on or in a building and used to provide any of the following services within the building: heating, ventilating, air conditioning, electrical power, hot water, elevator or escalator services, natural gas service or communications. Building utilities does not include personal property or equipment used in manufacturing or processing.

**10. BURIED VESSELS OR PIPING (applicable to Article I.B.)**

Buried vessels or piping means any piping or vessel buried or encased in the earth, concrete or other material, whether above or below grade, or in an enclosure which does not allow access for inspection and repair.

**11. BUS**

Bus shall mean every motor vehicle used regularly to transport children to and from school or in connection with school activities, which is subject to the requirements set forth in the most recent edition of Specifications for School Buses published by the State Superintendent of Public Instruction.

**12. BUSINESS INCOME (applicable to Article I.B.) means the sum of:**

- a. The Net Income (net profit or loss before income taxes) that would have been earned or incurred; and
- b. Continuing normal and necessary operating expenses included, including employee payroll.

**13. BUSINESS INCOME ACTUAL ANNUAL VALUE (applicable to Article I.B.) means the business income for the current fiscal year that would have been earned had no accident occurred.**

**14. CLAIM**

Claim, wherever used in this Agreement, shall mean any information sufficient to reasonably constitute notice of an event that may give rise to damages covered by this Agreement, including suit brought in connection therewith, which the District becomes aware of and has a duty to provide written notice of the same to WSRMP. But claim does not include a labor or grievance arbitration under a collective bargaining agreement, employment handbook or other employment policies or procedures.



**15. COLLAPSE**

Collapse means an abrupt falling down or caving in of a building or any part of a building with the result that the building cannot be occupied for its intended purpose. A building or any part of a building that is in danger of falling down or caving in is not considered to be in a state of collapse. A building or part of a building that is standing is not considered to be in a state of collapse even if it has separated from another part of the building or even if it shows evidence of cracking, bulging, sagging, bending, leaning, settling, shrinkage or expansion.

**16. COVERED CONTRACT**

Covered contract means:

- a. a contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to the District or temporarily occupied by the District with permission of the owner is not a covered contract;
- b. a sidetrack agreement;
- c. any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
- d. an obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
- e. an elevator maintenance agreement;
- f. that part of any other contract or agreement pertaining to the District's business (including an indemnification of a municipality in connection with work performed for a municipality) under which the District assumes the tort liability of another party to pay for bodily injury, personal injury, or property damage to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement. Paragraph f. does not include that part of any contract or agreement:
  - i. that indemnifies a railroad for bodily injury or property damage arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road-beds, tunnel, underpass or crossing;
  - ii. that indemnifies an architect, engineer or surveyor for injury or damage arising out of:
    - (1) preparing, approving or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders, or drawings and specifications; or

- (2) giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

**17. COVERED EQUIPMENT (applicable to Article I.B.)**

a. means unless specified otherwise:

- i. Equipment that generates, transmits or utilizes energy, including satellite dishes, electronic communications and data processing equipment; or
- ii. Equipment which, during normal usage, operates under vacuum or pressure, other than the weight of its contents.

Except as specifically provided for under Off Premises Property Damage, Service Interruption, Contingent Business Income and paragraph ii. of Perishable goods, such equipment must be at a location owned or leased by the District or operated under the District's control.

b. None of the following is covered equipment:

- i. Structure, including but not limited to the structural portions of buildings and towers, scaffolding, and any air supported enclosure;
- ii. Foundation;
- iii. Cabinet, compartment, conduit or ductwork;
- iv. Insulating or refractory material;
- v. Buried vessels or piping;
- vi. Waste, drainage or sewer piping;
- vii. Piping, valves or fittings forming a part of a sprinkler or fire suppression system;
- viii. Water piping that is not part of a closed loop used to conduct heat or cooling from a boiler or a refrigeration or air conditioning system;
- ix. Vehicle or any equipment mounted on a vehicle;
- x. Satellite, spacecraft or any equipment mounted on a satellite or spacecraft;
- xi. Dragline, excavation or construction equipment;
- xii. Equipment manufactured by you for sale; or
- xiii. Data.

**18. COVERED PROPERTY (applicable to Article I.B.)**

- a. means property that the District owns, leases, operates, or property that is in the District's care, custody or control and for which the District is legally liable. Such property must be at a covered location except as provided under Off Premises Property Damage coverage.

Newly acquired locations must be reported to WSRMP in accordance with the Newly Acquired Locations Coverage of Article I.B.

b. None of the following is covered property:

- i. Accounts, bills, currency, deeds or other evidences of debt, money, notes or securities;
- ii. Fine arts, jewelry, furs or precious stones;
- iii. Precious metal, unless forming a part of covered equipment;
- iv. Animals;
- v. Contraband, or property in the course of illegal transportation or trade;
- vi. Land (including land on which the property is located), water, trees, growing crops or lawns; or
- vii. Shrubs or plants, unless held indoors for retail sale.

## 19. DAMAGES

Damages means a monetary judgment or settlement and does not include fines, statutory penalties (whether imposed by law or otherwise), restitution or return of unjust enrichment. Damages does not include any amount the District, in the ordinary course of its duties, would be obligated to pay and would have paid but for the District's commission of a wrongful act.

## 20. DATA (applicable to Article I.B.)

Data means information or instructions stored in digital code capable of being processed by machinery.

## 21. DESEGREGATE

Desegregate means to eliminate District policies, adopted and maintained at a District administrative level, that isolate or separate members of different races, nationalities, ethnicities, or other protected groups, into different units, facilities, or programs. Desegregate includes District conduct intended to reverse the effects of such isolation or separation.

## 22. DISTRICT

District, as used in Articles I.A, I.B, and II, means the Member District named in the Declarations.

District, as used in Articles III, IV, V, VI, and VII, means:

- a. all participating Member School Districts, Educational Service Districts, and member interlocal cooperatives established by authority of RCW 39.34, their

elected and appointed officials and boards, board-appointed student representatives, commissions and committees acting in the course and scope of their official duties; the school district superintendent and other administrators authorized to undertake the performance of duties on behalf of the District; employees acting in the course and scope of their employment; volunteers acting under the direction of Member District personnel and in the course and scope of their assigned volunteer duties; and any legal representative of such person in event of their death or incapacity, individually and collectively when acting or deemed to be acting within the scope and performance of their duties on behalf of participating Member School Districts, Educational Service Districts, or member interlocal cooperatives. District also includes officers and volunteers of parent-teacher organizations and booster clubs, but only while acting under the direction of Member District personnel and in the course and scope of their assigned duties for the parent-teacher organization or booster club. District does not include the parent-teacher organization or booster club itself. Employees not authorized to administer an employee benefits program are not included within this definition with regard to claims or suits based upon a wrongful act in the administration of an employee benefits program.

- b. It is agreed that the unqualified word District wherever used in Article III includes not only the Member District, but also includes, persons, organizations, or other designated entities the Member District is obligated by written contract or agreement to indemnify against claims of bodily injury, personal injury, or property damage, but only as respects operations undertaken or performed by the Member District, and excepting any actual or alleged sole negligence of the non-member person, organization, or entity.

## **23. DEFENSE COSTS**

Defense costs means reasonable legal fees and expenses WSRMP incurs to investigate, defend or settle a claim. But defense costs do not include overhead or salaries paid to any employees.

## **24. DISCRIMINATION**

Discrimination means the unlawful treatment of persons based on their race, color, religion, age, sex, sexual orientation or preference, marital status, pregnancy, disability or national origin. Disability means any physical or mental impairment that substantially limits one or more of a person's major life activities. Disability does not include an impairment that is the result of, or arises from, the use of alcohol or illegal drugs.

## **25. EARTH MOVEMENT**

Earth movement means any natural or man-made earth movement including, but not limited to earthquake, shocks, tremors, volcanic action, earth rising or shifting, landslide, subsidence, sinkhole, rockfall and tsunami, regardless of any other cause or event contributing concurrently or in any other sequence of loss. However, physical damage by fire, explosion, or sprinkler leakage resulting from Earth movement will not be considered to be loss by Earth movement within the terms and conditions of this Agreement. All earth movements within a continuous 168-hour period will be considered a single Earth movement within the meaning of this section.

## **26. ELECTRICAL GENERATING EQUIPMENT (applicable to Article I.B.)**

Electrical generating equipment means equipment which converts any other form of energy into electricity. This includes, but is not limited to, the following:

- a. Boilers used primarily to provide steam for one or more turbine-generator units;
- b. Turbine-generators (including steam, gas, water or wind turbines);
- c. Engine-generators;
- d. Fuel cells or other alternative electrical generating equipment;
- e. Electrical transformers, switchgear and power lines used to convey the generated electricity; and
- f. Associated equipment necessary for the operation of any of the equipment listed in a. through e. above.

Electrical generating equipment does not mean:

- a. Elevator or hoist motors that generate electricity when releasing cable; or
- b. Equipment intended to generate electricity solely on an emergency, back-up basis. This term does not appear elsewhere in this Coverage Agreement but may appear in the Declarations.

## **27. ELECTRONIC DATA**

Electronic data means information, data, facts or computer programs stored in electronic data processing media, including systems and applications software. The

term “computer programs” means a set of related electronic instructions which direct the operations and functions of a computer or device connected to it, which enable the computer or device to receive, process, store, retrieve or send data.

## **28. ELECTRONIC DATA PROCESSING MEDIA**

Electronic data processing media means any electronic device within which electronic data can be stored, created, used or transmitted, including hard or floppy disks, CD-ROM or DVD disks, tapes, drives, cells, data processing devices or any other repositories of computer software which are used with electronically controlled equipment.

## **29. EMPLOYEE OR EMPLOYEES**

Employee or Employees, means respectively one or more of the natural persons who on the effective date of this Agreement or at any other time during the term of this Agreement are in the regular service of the District in the ordinary course of the District's business and who are compensated by salary, wages, and whom the District has the right to govern and direct at all times in the performance of such service.

As used in Article II, Employee shall include students enrolled in a school while under the jurisdiction of the District while handling or having possession of school property or funds in connection with student activities. Employee does not mean brokers, factors, commission merchants, consignees, contractors or other agents or representatives of the same general character.

As used in all other Articles, Employee does not mean students, brokers, factors, commission merchants, consignees, contractors, independent contractors, borrowed servants, loaned servants, or other agents or representatives of the same general character, regardless of the control that the District may exercise over such person.

## **30. EMPLOYEE BENEFITS PROGRAM**

Employee Benefits Program means any pension and profit sharing plan; individual retirement account (IRA) plan; salary reduction plan; employee stock or investment subscription plan; savings plan; group life, disability, health, dental, automobile, homeowners, or legal advice insurance plan; social security system benefit; workers

compensation and unemployment insurance; educational tuition reimbursement plan; or travel or vacation plan.

## **31. EXTRA EXPENSE (applicable to Article I.B.)**

Extra Expense means the additional cost you incur to operate your business over and above the cost that you normally would have included to operate your business during

the same period had no accident occurred.

### **32. EQUIPMENT**

Equipment includes any District owned vehicle or mobile equipment not licensed for on-road use and used in the District's operations.

### **33. FAILURE TO FAITHFULLY PERFORM DUTIES AS PRESCRIBED BY LAW**

Failure to faithfully perform duties as prescribed by law, as used in Article II, means: conduct that, although not constituting fraud or theft, demonstrates a willful disregard for the interests of the District, combined with one or all of the following:

- a. a knowing violation of any law applicable to the proper performance of the duties required of the employee in his or her position;
- b. conduct knowingly contrary to established written procedures or policies of the Member District.

### **34. FIREARM**

Firearm means any gun, pistol, rifle or other device capable of expelling or propelling one or more projectiles by the action of an explosive, combustible propellant, or compressed air.

### **35. FLOOD**

Flood means flood; surface waters; rising waters; waves; tide; inland or tidal water; the release of water, the rising, overflowing or breaking of boundaries of natural or man-made bodies of water; or the spray therefrom; mudslide (i.e. mudflows) which are caused by flooding and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current; the collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding the cyclical levels which result in flooding; or sewer back-up resulting from any of the foregoing; regardless of any other cause or event contributing concurrently or in any other sequence of loss. However, physical damage by fire, explosion or sprinkler leakage resulting from Flood is not considered to be loss by Flood.

### **36. FRAUDULENT OR DISHONEST ACTS**

Fraudulent or dishonest acts, as used in Article II, means only fraudulent or dishonest acts committed by such employee with the manifest intent:

- a. to cause the District to sustain such loss; and
- b. to obtain financial benefit (other than salaries, commissions, fees, bonuses, promotions, awards, profit sharing, pension or other employee benefits earned in the normal course of employment) for the employee, or for any other person or organization intended by the employee to receive such benefit.

**37. FUNGUS**

Fungus includes, but is not limited to, any of the plants or organisms belonging to the major group fungi, lacking chlorophyll, and including molds, rusts, mildews, smuts and mushrooms.

**38. HAZARDOUS PROPERTIES**

Hazardous properties include radioactive, corrosive, reactive, toxic or explosive properties.

**39. HAZARDOUS SUBSTANCE (applicable to Article I.B.)**

Hazardous substance means any substance that is hazardous to health or has been declared to be hazardous to health by a governmental agency.

**40. INTEGRATE**

Integrate means to incorporate or include, as a matter of District policy, adopted and maintained at a District administrative level, members of different races, nationalities, ethnicities, or other protected groups, in membership or participation in all District units, facilities, or programs. Integrate includes District conduct intended to implement or carry out such District policy.

**41. INTERRUPTION OF SERVICE (applicable to Article I.B.)**

- a. Interruption of service means a failure or disruption of the normal supply of any of the Covered Services listed in b. below, when such failure or disruption is caused by an accident to covered equipment, subject to the conditions listed in c. through d. below.
- b. Covered Services are electrical power, waste disposal, air conditioning, refrigeration, heating, natural gas, compressed air, water, steam, internet access, telecommunications services, wide area networks and data transmission.
- c. The covered equipment must either be:



- i. owned by a company with whom the District has a contract to supply the District with one of the Covered Services; or
  - ii. used to supply the District with one of the Covered Services and located within one mile of a covered location.
- d. Interruption of service does not include any failure or disruption, whether or not arising from or involving an accident, in which a supplier could have continued to provide service to the location but chose for any reason to reduce or discontinue service.

**42. INTERRUPTION OF SUPPLY (applicable to Article I.B.)**

- a. Interruption of supply means a failure or disruption of the normal supply of any of the Covered Contingencies listed below, when such failure or disruption is caused by an accident to covered equipment that is located at a Contingent Business Income supplier or receiver location, the covered equipment must be owned by a supplier from whom the District has received the Covered Contingency for at least six months prior to the accident;
- b. Covered Contingency are raw materials, intermediate products, finished products, packaging material and product processing services.

**43. MEDIA (applicable to Article I.B.)**

Media means material on which data is recorded, such as magnetic tapes, hard disks, optical disks or floppy disks.

**44. MOLD**

Mold includes, but is not limited to, any superficial growth produced on damp or decaying organic matter or on living organisms, and fungi that produce molds.

**45. MONEY**

Money, means currency, coin, bank notes, unconcealed and precanceled postage and unused postage in postage meters, all owned by the District.

**46. NUCLEAR FACILITY**

Nuclear facility means:

- a. any nuclear reactor;

- b. any equipment or device designed or used for (1) separating the isotopes of uranium or plutonium, (2) processing or utilizing spent fuel or (3) handling, processing or packaging waste;
- c. any equipment or device used for the processing, fabricating or alloying of special nuclear material if at any time the total amount of such material in the custody of the District at the premises where such equipment or device is located consists of or contains more than 25 grams plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;
- d. any structure, basin, excavation, premises or place prepared or used for the storage or disposal of waste and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations.

**47. NUCLEAR MATERIAL**

Nuclear material means source material, special nuclear material or by-product material.

**48. OCCURRENCE**

Occurrence means any loss, accident, event, exposure, or repeated exposure to conditions or related conditions which (a) results in personal injury, bodily injury or property damage neither expected nor intended from the standpoint of the District, or (b) results in direct physical damage to tangible property due to a covered peril and which is neither expected nor intended by the District. All exposure to substantially similar conditions occurring during the term of this Agreement shall be deemed one occurrence. The term occurrence does not include loss of use of real property, equipment or fixtures.

**49. ONE ACCIDENT (applicable to Article I.B.)**

One Accident means all accidents occurring at the same time from the same event. If an accident causes other accidents, all will be considered one accident.

**50. ORDINARY PAYROLL (applicable to Article I.B.)**

Ordinary payroll means the Payroll Expenses associated with all employees other than the executives, department managers and employees under contract. Payroll Expenses means all payroll, employee benefits directly related to payroll, FICA payments the District pays, union dues the District pay and workers' compensation premiums. Ordinary payroll does not include pensions or director's fees.

**51. OTHER PROPERTY**

Other property, as used in Article II, means any tangible property of the District, other than money and securities, that has intrinsic value.

**52. PERIOD OF RESTORATION (applicable to Article I.B.)**

Period of restoration means the period of time that begins at the time of the accident and continues until the earlier of:

- a. the date the physical damage to covered equipment is repaired or replaced; or
- b. the date on which such damage could have been repaired or replaced with the exercise of due diligence and dispatch, plus the number of days, if any, shown in the Declarations for Extended Period of restoration.

**53. PERISHABLE GOODS (applicable to Article I.B.)**

Perishable goods means any covered property subject to deterioration or impairment as a result of a change of conditions, including but not limited to temperature, humidity or pressure.

**54. PERSONAL INJURY**

Personal injury means mental injury, mental anguish, humiliation, shock, sickness, disease, or disability, arising from or relating to claims of false arrest, false imprisonment, wrongful eviction, wrongful detention, malicious prosecution, invasion of privacy, libel, slander or defamation of character, piracy and any infringement of copyright or intellectual property, abuse of process, wrongful corporal punishment, or disparagement of property.

**55. POLLUTANT**

Pollutant means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapors, soot, fumes, acids, alkalis, chemicals, fuels, liquids or gases and waste.

**56. POTENTIAL INCOME**

Potential income, means any income or revenue expected by the District, including interest and dividends, but potential income does not mean loss of funding or grants from a governmental or private entity or foundation or person because of an employee's fraudulent or dishonest act or the failure of an employee to faithfully perform duties as prescribed by law.

**57. PRODUCTION MACHINERY (applicable to Article I.B.)**

Production machinery means any machine or apparatus that processes or produces a product intended for eventual sale. This includes all component parts of such machine or apparatus and any other equipment used exclusively with such machine or apparatus.

**58. PROPERTY DAMAGE**

Property damage means:

- a. physical injury to tangible property, including all resulting loss of use of that property; or
- b. loss of use of tangible property that is not physically injured.

**59. PROPERTY OF THE DISTRICT**

Property of the District means:

- a. up to the extent of the District's insurable interest, all real and personal property owned by the District and buildings and fixtures attached to land;
- b. up to the extent of the District's insurable interest, property the District holds on consignment or agrees to insure by any written contractual agreement normal to its operation.

**60. SECURITIES**

Securities, means Federal Food Stamps; express, postal and bank money orders; postal notes; debentures; scrip; checks; warrants; transfers; coupons; demand and time drafts; bills of exchange; acceptances; promissory notes; certificates of deposit; certificates of stock; bonds; car trust certificates; interim receipts and certificates; warehouse receipts; bills of lading and all other instruments of a similar nature including mortgages upon real estate or upon chattels and upon interests therein, and assignments of such mortgages and instruments, all owned by the District.

**61. SERIES OF RELATED WRONGFUL EMPLOYMENT PRACTICES**

Series of related wrongful employment practices means Wrongful employment practices which have as a common nexus any fact, circumstance, situation, event, transaction or series of facts, circumstances, situations, events or transactions.

**62. SEXUAL ABUSE**

Sexual abuse means any actual, attempted or alleged criminal sexual touching, contact, or display of the body of or to a person by another person, or persons acting in concert, which causes physical and/or mental injuries. Sexual abuse includes: sexual molestation, sexual assault, sexual exploitation or sexual injury. Sexual abuse does not include sexual harassment.

**63. SEXUAL HARASSMENT**

Sexual harassment means actual or alleged unwelcome sexual advances, requests for sexual favors or other verbal or physical conduct of a sexual nature directed to an employee of the District when:

- a. submission to such conduct is made either explicitly or implicitly a term and condition of such employee's employment; or
- b. submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such employee; or
- c. such conduct has the purpose or effect of unreasonably interfering with such employee's work performance or creating an intimidating, hostile or offensive work environment.

**64. SOURCE MATERIAL, SPECIAL NUCLEAR MATERIAL, and BY-PRODUCT MATERIAL**

Source material, special nuclear material, and by-product material have the meanings given them in the Atomic Energy Act of 1954 or in any law ambulatory thereof.

**65. SPENT FUEL**

Spent fuel means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a nuclear reactor.

**66. SPOILAGE (applicable to Article I.B.)**

Spoilage means any detrimental change in state. This includes but is not limited to thawing of frozen goods, warming of refrigerated goods, freezing of fresh goods, solidification of liquid or molten material and chemical reactions to material in process.

**67. SPORE**

Spore means any dormant or reproductive body produced by or arising or emanating out of any fungus, mold, mildew, plant, organism or microorganism.

**68. SUIT**

Suit means any civil judicial proceeding alleging damages because of bodily injury, property damage, personal injury, wrongful acts, or wrongful employment practices to which this Agreement applies. The term suit does not include hearings, claims or actions pending before the Equal Employment Opportunity Commission, the Washington Human Rights Commission or other similar administrative body.

**69. THEFT**

Theft includes trick and device.

**70. ULTIMATE NET LOSS**

When used in Articles I.A. and II, Ultimate net loss, means the loss sustained by the District after making deductions for all recoveries and salvages.

When used in Articles III and IV, Ultimate net loss means the total sum which the District becomes legally obligated to pay as damages by reason of covered claims, either through adjudication or compromise, including hospital, medical and funeral charges and all sums paid as salaries, wages, compensation, fees, costs, contributions on attachment or appeal bonds, interest, expenses for doctors, lawyers, nurses, and investigators and other persons and for litigation, settlement, adjustment and investigation of claims and suits which are paid as a consequence of any occurrence covered hereunder, excluding only the salaries of the District's permanent employees, after making proper deductions for all recoveries and salvages. Any fees, charges and expenses of WSRMP to administer the claims are specifically excluded.

**71. UNMANNED AIRCRAFT SYSTEM**

Unmanned Aircraft System (UAS) means an aircraft weighing between .55 and 55 pounds, without a human pilot aboard, that is operated remotely by a human operator or autonomously by onboard computers.

**72. VEHICLE (applicable to Article I.B.)**

Vehicle means any machine or apparatus that is used for transportation or moves under its own power. Vehicle includes, but is not limited to, car, truck, bus, trailer, train, aircraft, watercraft, forklift, bulldozer, tractor or harvester. However, any property that is stationary, permanently installed at a covered location and that receives electrical from an external power source will not be considered a vehicle.

**73. VOLUNTEER**

Volunteer means a person, not a District employee, who, while acting under the direction of District personnel, works for the benefit of the District and is not paid by any source for such work.

**74. WASTE**

Waste means materials to be recycled, reconditioned, reclaimed, discarded, or disposed of in any way. Without limiting the generality of the foregoing, waste shall also include any waste material (1) containing by-product material and (2) resulting from the operation by any person or organization of any nuclear facility.

**75. WRONGFUL ACT**

Wrongful act means any actual or alleged error, misstatement, misleading act or statement, or any omission committed solely in the course of performance of duties for the District. The term wrongful act includes a series of related acts giving rise to a suit, claim, or damages. The term Wrongful act does not include a wrongful employment practice or series of related wrongful employment practices as those terms are defined in Article VII.

**76. WRONGFUL EMPLOYMENT TERMINATION**

Wrongful employment termination means termination, actual or constructive, of an employment relationship in a manner which is against the law and wrongful, or in breach of an implied agreement to continue employment. Wrongful employment termination damages shall not include damages determined to be owing under a written or express contract of employment or obligation to make payments in the event of the termination of employment.

**77. WRONGFUL EMPLOYMENT PRACTICE**

Wrongful employment practice means any or all of the following:

- a. Wrongful employment termination by a District;
- b. Discrimination of an employee by a District;
- c. Sexual harassment of an employee by a District; or
- d. Any employment related decision in violation of state or federal laws or statutes;

including any actual or alleged libel, slander, or other defamation, invasion of privacy, mental anguish, infliction of emotional distress, loss of consortium, and any negligent

hiring, supervision, promotion, retention, or discharge in connection with (a) through (d) above, but only if arising from an employment relationship with the District.

**End of Article VII**





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