

## COMMONWEALTH OF VIRGINIA

## DEPARTMENT OF EDUCATION

**APPENDIX C**

**PROVISIONS FOR GUARANTY INSTRUMENT REQUIREMENTS**

This packet contains the forms required for certification to license a private school for students

with disabilities in Virginia under Title 22.1, Chapter 16, Section 22.1-319 through

22.1-335 of the Code of Virginia (2004) as amended and the *Regulations Governing*

*the Operation of Private Day Schools for Students with Disabilities* adopted by the Board of

Education (2004).

Three types of guaranty instruments are recognized as meeting this requirement:

1. Surety bond;
2. Irrevocable letter of credit; or
3. Certificate of deposit.

The school is free to select which of the permitted methods it will utilize. Regardless of which is

chosen, the use of either the actual forms contained in this packet or documents conforming

exactly to their language is required for certification.

## seal

## COMMONWEALTH OF VIRGINIA

## DEPARTMENT OF EDUCATION

**PRIVATE SCHOOLS FOR STUDENTS WITH DISABILITES**

**SURETY BOND**

KNOW ALL MEN BY THESE PRESENTS, That we \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ located at

(Name of Principal)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ as Principal, and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ a corporation, partnership,

  (Address of Principal)

or sole proprietor in the State of\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Lawfully doing business in the State of Virginia, as Surety, are bound unto the State of Virginia for the benefit and  protection of the students of said Principal, in penal sum of\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Dollars ($\_\_\_\_\_\_\_\_\_\_) for which sum well and truly to be paid to the State of Virginia its certain attorneys or assign, said Principal and Surety bind themselves jointly and severally,  our heirs, executors, administrators, successors, and assigns, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT, Whereas, the above bounden Private School for Students with Disabilities, as that term is used in Section 22.1-319 of the Code of Virginia (1950) as amended, desires to operate its school at the place set forth above in the manner required by its express contract with its students, known as the student enrollment agreement. It is a condition of the grant of a license to operate to the Principal by the State Board of Education that the form and contents of the student enrollment agreement and the method of collecting and refunding tuition by the above bounden Principal be and is filed with The Board of Education as provided by the Acts of Assembly 2004, Chapter 16, Title 22.1-321, as amended.

NOW, THEREFORE, If upon and after the issuance of a license to operate expiring \_\_\_\_\_\_\_\_\_\_ for a Private School for Students with Disabilities pursuant to the express provisions of all student enrollment agreements with its students, and the provisions of all the laws of this State and the rules and regulations promulgated by the State Board of Education, then this obligation shall be void; otherwise, to remain in full force and effect.

AND THE Obligors, jointly and severally, for themselves, their heirs, executors, administrators, successors and assigns, do agree with the State of Virginia, for the benefit and protection of the students of said Principal, that upon violation of any contract with any student which, *inter alia,* may arise as a result of the suspension, revocation, or any other termination of the license to operate aforesaid under the provisions of the Acts of Assembly 2004, the State of Virginia may maintain action against this bond for its own benefit or for the benefit of such students

PROVIDED, HOWEVER, THE Surety shall not be liable in the aggregate for more than the penal sum of the bond, nor shall the penal sum of the bond be considered cumulative from year to year, and

PROVIDED, HOWEVER, THE Surety shall have the right to cancel this bond at any time by a written notice, stating when the cancellation shall take effect, and served on or sent by registered mail to The State Board of Education, at least ninety (90) days prior to the date that the cancellation becomes effective, but said Surety so filing said notice shall not be discharged from any liability already accrued under this bond or which shall accrue hereunder before the expiration of said ninety (90) day period. Any person who sustains a material loss covered by this Bond shall have the right in his own name to commerce and maintain an action against the Principal and Surety on the such Bond for the recovery of the amount of the material loss resulting from such injuries, or any of them, together with court costs, including a reasonable attorney's fee fixed by the court, but the aggregate liability of the Surety shall in no event exceed the penal sum of the Bond. This obligation shall be effective concurrently with the "License to Operate," covering the fiscal year ending June 30\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

SIGNED, SEALED AND DATED This\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

Witness:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_   \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (L.S)

 *(Principal)*

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (L.S)

 *(Surety)*

Bond\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (L.S)

 *(Attorney-in-fact)*

of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20 \_\_\_\_\_



## COMMONWEALTH OF VIRGINIA

## DEPARTMENT OF EDUCATION

**PRIVATE SCHOOLS FOR STUDENTS WITH DISABILITES**

**SURETY BOND**

**ACKNOWLEDGEMENT OF PRINCIPAL**

STATE OF  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_   of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

I, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ a Notary Public in and for the Private School

aforesaid, in the State of Virginia, do certify that\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ whose name is

signed to the above bond, bearing date on the\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ day of\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

personally appeared before me in my \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_aforesaid, and acknowledged

the same. I further certify that my term of office expires on the\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Day of

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ , 20 \_\_\_\_\_\_\_   Given under my hand this \_\_\_\_\_\_\_\_\_\_ Day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20 \_\_\_\_\_\_.

**AFFIDAVIT AND ACKNOWLEDGEMENT OF SURETY**

STATE OF  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

to Wit: I, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ a Notary Public in and for

the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ aforesaid, in the State aforesaid, do certify that \_\_\_\_\_\_\_\_\_\_\_\_\_\_

personally appeared before me in my \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_aforesaid and

made oath that he is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ of the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_that he is duly

authorized to execute the foregoing bond by virtue of certain power of said company,

dated \_\_\_\_\_\_\_\_\_and recorded in the Clerk's office of the\_\_\_\_\_\_\_\_ of\_\_\_\_\_\_\_\_\_\_

in Deed Book No.\_\_\_\_\_\_\_\_, Page \_\_\_\_\_, that said power of attorney has not been revoked; that

the said company has complied with all requirements of law regulating the admission of such

companies to transact business in the State of Virginia that it has paid-up cash capital of not

less than $250,000; that the paid-up capital, plus the surplus and undivided profits of said

company  is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, that the penalty of the foregoing bond is not in excess of per centum of said sum; that the said company is not by said bond incurring in the aggregate, on behalf or on account of the principal names in said bond, a liability for an amount larger than

one-fifth of its paid-up capital, plus its surplus and undivided profits; the said company is solvent and fully able to meet promptly all of its obligations, and said  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_thereupon, in the name and on behalf or the said company, acknowledged the foregoing writing as its act and

deed.

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

***(Date*) (*Signature of Authorized Official)***

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ *(Title)***

**Sworn to and subscribed before me this \_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_ 20\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**My Commission expires \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

## **IRREVOCABLE LETTER OF CREDIT**

Number\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date of Issuance  \_\_\_\_\_\_\_\_\_\_\_\_

Superintendent of Public Instruction

Virginia Department of Education

P.O. Box 2120

Richmond, VA 23218-2120

Dear Sir/Madam:

We, the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(name and address of issuing institution) hereby establish, at the request of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (customer), our IRREVOCABLE LETTER OF CREDIT, number\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_in favor of the Commonwealth of Virginia Department of Education, in the amount of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_dollars ($\_\_\_\_\_\_\_\_\_\_).This IRREVOCABLE LETTER OF CREDIT is issued as a condition of your granting the customer a "License to Operate" a private school for students with disabilities, pursuant to Title 22.1, Chapter 16, Section 22.1-319 through 22.1-333 of the Code of Virginia (2004) as amended.

The IRREVOCABLE LETTER OF CREDIT is valid until midnight \_\_\_\_\_\_\_\_\_\_\_\_\_(date) provided, however, that this *Letter of Credit* will be automatically extended without amendment for one (1) year from the present or any future expiration date *thereof*, unless ninety (90) days

prior to any such expiration date we elect not to renew this *Letter of Credit* for such additional

one (1) year period. An annual renewal notice will be submitted to you. The notice required

hereunder will be deemed to have been given when received by you. Funds under this *Letter of Credit* are available to you upon presentation to us of your written demand for payment, referring to the number of this *Letter of Credit* and accompanied by your statement that the Department of Education has declared that the security established by the customer as a condition to being granted a "*License to Operate"* has been forfeited.

We hereby agree to honor any and all demands for payment made in compliance with the terms

of this *Letter of Credit,* up to the sum stated above. Payment hereunder shall be by our check payable in U.S. *Currency*, to the order of the Commonwealth of Virginia, Department of Education, at your address stated above.

We warrant that the issuance of this *Letter of Credit* will not constitute a violation of any statute or regulation which limits the aggregate amount of liabilities which we may incur at any one time from the issuance of letters of credit and acceptances. We agree that by making demand for payment hereunder, neither you, nor the Department of Education, nor the Commonwealth of Virginia makes any warranties to us, either expressed or implied.

This Letter of Credit Shall be governed by the “Uniform Customs and Practices for Documentary Credits, 1993 Revision, International Chamber of Commerce, Publication No. 500 (the UCP) and to the extent not inconsistent with the UCP, by the laws of the Commonwealth of Virginia”.

Thank you,

Insert Name

Insert Title



## COMMONWEALTH OF VIRGINIA

## DEPARTMENT OF EDUCATION

P.O. BOX 2120

RICHMOND, VA 23218-2120

**PRIVATE SCHOOLS FOR STUDENTS WITH DISABILITIES**

**CERTIFICATE OF DEPOSIT**

KNOW ALL MEN BY THESE PRESENTS, that the undersigned \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, as Obligor *(Private day school for students* *with disabilities)*, is held and firmly bound unto the Commonwealth of Virginia in the penal sum of \_\_\_\_\_\_\_\_\_\_\_\_Dollars ($\_\_\_\_\_\_\_\_\_\_). This obligation is secured by and is to be satisfied out of one or more *Certificates of Deposit* as describe herein below:

Certificate Number   \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Issuing Bank \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Address \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

The *Certificate of Deposit* described above is payable to the "Commonwealth Of Virginia",

with the interest payable to the obligor. It is automatically renewed at the end of its

term. The issuing financial institution is protected by the Federal Deposit

Insurance Corporation (FDIC). The *Certificates of Deposit* will be kept in the custody of

the Department of Education until its release by the Department of Education. It shall be

forfeitable if the conditions of this obligation are not met.

THE CONDITIONS IF THE OBLIGATION ARE SUCH, that whereas the above named

obligor did on the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_\_,  file with the Virginia Department of Education an application to secure a " License to *Operate"* a private school for students with disabilities under Title 22.1, Chapter 16,Sections 22.1-319 through 22.1-335 of the Code of Virginia (1950), as amended. The obligor will undertake operations in accordance with the code of this Commonwealth and the regulations of the Board of Education. The *"Certificate of Deposit"* is subject to forfeiture pursuant to conditions stated in the code and regulations. The *"Certificate of* *Deposit"* will be returned to the obligor, should said application be rejected. Now if the conditions in the code and regulations which allow for forfeiture of the *Certificate of Deposit* do not occur and if the obligor shall faithfully perform all the requirements of Title 22.1, Chapter 16, Sections 22.1-319 through 22.1-335 of the Code of Virginia (2004), as amended, and shall comply with the Regulations Governing the Operation of Private Schools for Students with Disabilities adopted by the Board of Education (2004) and all amendments thereto, then this obligation shall be null and void; otherwise it shall remain in full force and effect. This obligation shall continue until midnight, June 30, 20\_\_\_\_, unless it is renewed between the obligor and the Department of Education or until it is released by the Department of Education. Application for renewal or release of the obligations of this *Certificate of Deposit* must made to the Department