



**Nonpublic Postsecondary Education Commission
2082 East Exchange Place, Suite 220
Tucker, Georgia 30084-5305
(770) 414-3300
Fax (770) 414-3309**

**Brian P. Kemp
Governor**

**Kirk Shook
Executive Director**

To: All Parties on the Nonpublic Postsecondary Education Commission's Policy Making Mailing List
All Interested Parties via Publication by the Nonpublic Postsecondary Education Commission

From: Georgia Nonpublic Postsecondary Education Commission
2082 E. Exchange Place, Suite 220
Tucker, GA 30084

Date: July 19, 2020

The Nonpublic Postsecondary Education Commission (NPEC) is continuing to take steps to update its currently promulgated policies to ensure that they are accurate and current. NPEC will hold its Quarterly Commission meeting on Monday, July 27, 2020 at 1pm via teleconference. At that meeting, the Commission intends to take the following steps.

The Commission will vote regarding ratifying the following policy:

Policy 16: Surety Bond and Letter of Credit Forms and Requirements

1. Pursuant to Code Section 20-3-250.8(a) Each nonpublic postsecondary educational institution desiring to operate or conduct postsecondary activities in this state shall make application to the commission, upon forms to be provided by the commission.

2. In accordance with O.C.G.A. 20-3-250.10, an initial or renewing applicant for authorization to operate must file with the executive director a good and sufficient surety bond in such sum as determined by subsection (b) of that Code section as may be amended from time to time. The bond is based on the gross tuition of the nonpublic postsecondary educational institution during the previous year or on the estimated gross tuition for the current year, whichever is larger. As of July 27, 2020, required bond amounts are as follows:

<u>Gross Tuition</u>	<u>Minimum Bond</u>
\$ 0.00 -- \$ 50,000.00.....	\$ 20,000.00
50,001.00 -- 100,000.00.....	30,000.00
100,001.00 -- 200,000.00.....	50,000.00
200,001.00 -- 300,000.00.....	75,000.00
300,001.00 -- 400,000.00.....	100,000.00
400,001.00 -- 500,000.00.....	150,000.00
500,001.00 and over.....	200,000.00

The required bond amounts are subject to change from time to time by statute. In the event of a conflict between the authorizing statute and this regulation, the statute shall control.

Pursuant to statute and this Policy, the bond must be provided to GNPEC in substantial conformance with the form attached hereto as Exhibit “A,” and incorporated herein by reference.

3. For situations where a nonpublic postsecondary educational institution is unable to secure a bond amount provided for by this subsection, a bank standby letter of credit secured from a federally insured financial institution shall be accepted in accordance with this Policy.

Pursuant to statute and this Policy, the standby letter of credit must be provided to GNPEC in substantial conformance with the form attached hereto as Exhibit “B,” and incorporated herein by reference.

4. These forms may be updated from time to time by the Commission to reflect revisions to statute and to make administrative revisions.

5. The Executive Director is authorized, in his sole discretion, to issue waivers regarding certain provisions within a bond or standby letter of credit, but does not have authority to issue waivers regarding the requirement that institutions post a bond or standby letter of credit.

6. An institution’s failure to maintain a surety bond or letter of credit as set forth herein will result in suspension and/or termination of its authorization to operate, in accordance with O.C.G.A. 20-3-250.10 and a determination by the Executive Director.

Exhibit A

**State of Georgia
Nonpublic Postsecondary Education Commission**

NONPUBLIC POSTSECONDARY EDUCATIONAL INSTITUTION BOND

Bond No. _____
(To be Assigned by Surety)

Know All Men By These Presents, that we _____
(Name of Principal - I.e. Name of Postsecondary Institution)

located at _____
(Address of Principal)

as Principal and _____, a corporation of the State of _____
(Name of Surety)

lawfully doing business in the State of Georgia, as Surety, are held and firmly bound unto the State of Georgia for the use and benefit of any person or governmental subdivision or trust fund of the State of Georgia which may suffer expense or damage through the breach of this bond in the penal sum of \$ _____ for which sum well and truly to be paid to the State of Georgia, its certain attorneys or assigns, any student or enrollee or his or her parent or guardian, or class thereof, said Principal and Surety bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

Whereas, the above bounden Principal, a "postsecondary educational institution" as that term is defined in the 'Nonpublic Postsecondary Educational Institutions Act of 1990,' O.C.G.A. § 20-3-2.50.1, et. seq. (GA Laws 1990, pp. 1166-1200; 1991, pp. 687-691, 980-981), desires to operate its institution at the above-stated location as authorized by and in conformity with the provisions of said Act and all rules and regulations promulgated by the Nonpublic Postsecondary Education Commission thereunder, and

Whereas, said "Nonpublic Postsecondary Educational Institutions Act of 1990" requires the filing of a blanket bond in the penal sum of \$ _____ (as determined by the formula in O.C.G.A. § 20-3-250.10 (b)) before a 'Certificate of Authorization' can be issued to the institution.

Now, Therefore, The Condition Of This Obligation is that if neither the Nonpublic Postsecondary Educational Institutions Act of 1990 nor any rule or regulation adopted pursuant thereto shall be violated by the institution or any of its officers, agents, or employees, or if the parties shall promptly pay all damages or expenses which the State, or any governmental subdivision thereof, or any person may sustain resulting from any such violation, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

1. The aggregate liability of the Surety shall not exceed the sum amount of the required bond on all breaches of the condition of the bond by the institution and its officers, agents, or employees, nor shall the penal sum of the bond be considered cumulative from year to year.
2. 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 or sent by registered mail to the Nonpublic Postsecondary Education Commission at least thirty (30) 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 thirty (30) day period.
3. Without limiting the effect of any other provision herein which is not in conflict therewith, this bond is to be construed as a statutory bond under the provision of O.C.G.A. § 20-3-250.1, et. seq., the Nonpublic Postsecondary Educational Institutions Act of 1990.
4. This obligation shall be effective beginning _____, 20____ and ending _____, 20____.

Signed and sealed this _____ day of _____, 20____

Attest

(Seal)
By _____

Attest

(Seal)
By _____

Exhibit B

**STATE OF GEORGIA
GEORGIA NONPUBLIC POSTSECONDARY EDUCATION COMMISSION
IRREVOCABLE STANDBY LETTER OF CREDIT**

[Insert name, address, and telephone number of issuing bank]
To Beneficiary:

State of Georgia
Georgia Nonpublic Postsecondary Education Commission
2082 E Exchange Pl # 220
Tucker, GA 30084

Date: _____
Institution: _____
Amount: _____
Expiration Date: _____

Dear Sir or Madam:

We establish our Irrevocable Standby Letter of Credit, Identification Number: _____ ("Letter of Credit") in favor of the State of Georgia and the Georgia Nonpublic Postsecondary Education Commission ("GNPEC"), ("Beneficiary") for the account of [Name of Institution] ("Institution") in the amount of [U.S. Dollars], available by your draft (or drafts drawn on us) at sight accompanied by:

- (a) The original of this Letter of Credit, together with any executed amendments to same; and
- (b) A statement of the Executive Director of GNPEC certifying the following:
 1. A person or governmental subdivision or trust fund of the State of Georgia has suffered loss or damage as a result of any act or practice which is in violation of the Nonpublic Postsecondary Educational Institutions Act of 1990, O.C.G.A. § 20-3-250.1, et seq. or the rules and regulations of GNPEC; and
 2. The amount of loss or damage incurred by such person or governmental subdivision or trust fund as determined by the Executive Director of GNPEC in his or her sole discretion, and confirmation of the amount of loss or damage which has been paid by the Institution (if any).

Without limiting the effect of any provision herein which is not in conflict therewith, this Letter of Credit shall be interpreted as a statutory "bank standby letter of credit" in accordance with O.C.G.A. § 20-3-250.10(b).

We acknowledge and agree that the amount of this Letter of Credit is determined in accordance with the formula set forth in O.C.G.A. § 20-3-250.10(b).

The undersigned certifies to Beneficiary that the bank is a federally insured financial institution (FDIC no.: _____).

We acknowledge and agree that Beneficiary may make partial and multiple drawings on this Letter of Credit and that drafts drawn in compliance with the terms herein will be duly honored upon due presentation at our offices on or before the expiration date of this Letter of Credit. All drafts must be marked as follows: _____
[Insert Bank's instructions; Example: Drawn under Bank Standby Letter of Credit No. _____]
_____.

The expiration date of this Letter of Credit shall be deemed automatically extended, without amendment, for one (1) year from the expiration date hereof and from any future expiration date unless, at least sixty (60) days prior to any expiration date, we send notification to GNPEC to its address indicated herein in writing by certified mail, return receipt requested, UPS or FEDEX that the expiration date of this Letter of Credit will not be extended beyond its current expiration date. We agree to notify GNPEC in writing sent via certified mail, return receipt requested, UPS or FEDEX if Institution fails to take any necessary action which is required to renew or extend this Letter of Credit within sixty (60) days of its expiration. Upon any such notice described herein, Beneficiary may make a draft, up to the then current expiration date, at sight accompanied by:

1. A statement signed by GNPEC's Executive Director, stating: "The undersigned, being the Executive Director of GNPEC, a beneficiary of Letter of Credit No. _____, hereby certifies that GNPEC is in receipt of a written notice from _____ Bank that the expiration date of the aforementioned Letter of Credit will not extend beyond its current expiration date and GNPEC has not received a replacement letter of credit or other acceptable security."
2. This original Letter of Credit, together with any executed amendments to same.

We agree to provide Beneficiary immediate notice of the (1) the insolvency or bankruptcy of the our bank or (2) any violations of regulatory requirements that could result in suspension or revocation of the bank's charter or license to conduct business. The bank also shall give immediate notice, if the bank, for any reason, becomes unable to fulfill its obligation under the Letter of Credit.

Except as expressly stated herein, this undertaking is not subject to any agreement, condition, or qualification. Our obligation under this Letter of Credit is the individual obligation of our bank, and is no way contingent upon our bank's reimbursement from the Institution.

This Letter of Credit is subject to International Standby Practices (ISP98) and shall be governed by Georgia law. In the event of a conflict between ISP98 and Georgia law, Georgia law shall control.

Sincerely,

[NAME OF BANK]

By: _____

Name: _____

Its: _____

Accepted by:

STATE OF GEORGIA
GEORGIA NONPUBLIC POSTSECONDARY EDUCATION COMMISSION

By: _____

Name: _____

Its: _____

Approved as to form:

INSTITUTION

By: _____

Name: _____

Its: _____

Interested persons may submit written comments to Kirk Shook, Executive Director, Georgia Nonpublic Postsecondary Education Commission, 2082 East Exchange Place, Suite 220, Tucker, Georgia 30084-5305, info@gnpec.ga.gov. All written comments must be received by 9:00 a.m. on Monday, July 27, 2020. Interested persons may also participate in the proposed policy making by presenting comments orally at a public hearing to commence at 1:00 p.m. on July 27, 2020 via teleconference at the Quarterly Commission Meeting.

Oral presentations at the hearing may be limited to five (5) minutes per person in order to afford all interested persons an opportunity to be heard. If you have a physical impairment and require assistance or have any questions regarding this notice, please contact the Nonpublic Postsecondary Education Commission.

Based upon full consideration of all written and oral comments regarding the above matters, the Commission may reject or adopt the proposed policies or may make changes to the proposed policies.

The Commission intends to consider these matters at a Quarterly Commission Meeting at 1:00 p.m. on July 27, 2020 via teleconference. Public Call-In instructions are as follows:

(646) 558-8656

Meeting ID: 178 063 254

Password: 702303

Direct all written correspondence to:

Kirk Shook, Executive Director
Georgia Nonpublic Postsecondary Education Commission
2082 East Exchange Place, Suite 220
Tucker, Georgia 30084-5305
info@gnpec.ga.gov