

NOTICE

THIS POLICY IS ISSUED BY YOUR RISK RETENTION GROUP. YOUR RISK RETENTION GROUP MAY NOT BE SUBJECT TO ALL OF THE INSURANCE LAWS AND REGULATIONS OF YOUR STATE. STATE INSURANCE INSOLVENCY GUARANTY FUNDS ARE NOT AVAILABLE FOR YOUR RISK RETENTION GROUP.

**EXCESS EDUCATORS LEGAL LIABILITY INSURANCE POLICY**  
CLAIMS-MADE BASIS  
**DECLARATIONS**

Item A. **Educational Organization:**  
Address:

Item B. **Policy Period:** 00/00/0000 to 00/00/0000 12:01 A.M. at the address  
stated in Item A above.

Item C. **Limits of Liability:**  
\$ Each **Claim**  
\$ Aggregate per **Policy Period**

Item D. **Premium:** \$

Item E. **Date of First Coverage:** 00/00/0000 12:01 A.M. at the address stated in Item  
A above.

Item F. **Underlying Insurance Limit:** \$

Item G. **Applicable Initial Forms and Schedules:**

Policy Form	ELX 05-2021
ELX_SchC	ELX Schedule C

Item H. **Applicable Initial Endorsements:**

Item I. **Representative of Educational Organization:**

**BROKER COMMISSION DISCLOSURE**

As a member owned company, United Educators believes it is important to provide its policyholders, whose brokers receive compensation through commissions paid by United Educators, with the amount of those commissions:

Item J. **Broker Commission:** \$0  
Broker commission in Item J., if any is included in Item E., Premium.

This insurance is subject to the provisions, stipulations, conditions and exclusions contained in the policy form as well as other provisions, stipulations, conditions and exclusions as may be endorsed or added thereto (collectively hereinafter referred to as the "Policy").

Issued by: United Educators Insurance, a Reciprocal Risk Retention Group

**SPECIMEN**  
Authorized Representative

**United Educators Insurance, a Reciprocal Risk Retention Group**  
**Excess Educators Legal Liability Insurance Policy**  
**(Claims-Made Form)**

(The words "**we**," "**us**," and "**our**," when used in this Policy, refer to United Educators Insurance, a Reciprocal Risk Retention Group, the company issuing this Policy of insurance.)

In consideration of the payment of the premium, in reliance on the statements made and information furnished to **us** in the application and its attachments, and subject to the **Limit of Liability**, exclusions, definitions, conditions and other provisions of this Policy, **we** agree with the **Educational Organization** that:

#### **INSURING AGREEMENT**

1. **We** will pay on behalf of the **Insureds** that amount of **Loss** that exceeds the **Underlying Insurance Limit** up to the **Limit of Liability** as a result of a **Wrongful Act** anywhere for which a **Claim** is first made against an **Insured** during the **Policy Period** and reported to **us** as required by this Policy. This Policy applies excess of any **Underlying Insurance**.

#### **DEFINITIONS**

2. This Policy is subject to the following definitions:

**Child Molestation** means any actual or alleged sexual conduct with a minor.

**Claim** means written notice to an **Insured** of the intent to hold the **Insured** liable for the results of a **Wrongful Act**. *[For example, written notices may come in the form of letters from attorneys, demands for arbitration, lawsuits or complaints filed with the Equal Employment Opportunity Commission (EEOC), or equivalent state civil rights enforcement agency.]* **Claim** does not mean investigations, audits or requests for information from government entities or others, including but not limited to accrediting organizations, athletic associations and professional societies. A **Claim** is made at the time an **Insured** receives the first written notice of the **Claim**.

**Computer System** means any computer hardware, software or any components thereof that are or can be linked together through a network of two or more devices accessible through the Internet, internal network or connected with data storage or other peripheral devices (including, without limitation, telephones, wireless and other mobile devices), as well as any cloud computing or other resources operated by a third party service provider.

**Damages** means money compensation that an **Insured** becomes legally obligated to pay as a result of a **Wrongful Act** and includes settlements to which **we** have consented.

However, **Damages** does not include:

- a. any amount for which an **Insured** was already obligated at the time of a **Wrongful Act** including any amount that an **Insured** is obligated to pay under the terms of any contract or agreement, or would have been obligated to pay had that contract remained in effect;  
**Exception:** Paragraph a. of the Definition of **Damages** shall not apply to **Wrongful Acts** arising out of the denial of tenure to a tenure-track faculty member;
- b. the value of tuition or scholarships;
- c. taxes or fines;
- d. punitive or multiplied damages, or penalties imposed under any laws other than
  - (1) civil penalties awarded as compensation to an injured party and measured by actual damages; or
  - (2) where lawfully insurable, punitive or multiplied damages limited to \$1,000,000; or
- e. the cost of compliance with injunctive or other non-monetary relief.

For example, certain **Damages**, subject to all other terms and conditions of this Policy, may be covered by this Policy:

- *Back pay (under any statute providing for back pay);*
- *Front pay (if it meets the standards for awarding front pay by a court or governmental administrative body);*
- *Other economic damages resulting from covered **Claims**, except amounts owed under contract;*
- *Emotional distress resulting from discrimination against third parties except students;*
- *Willful damages under the federal Age Discrimination in Employment Act, FMLA or Equal Pay Act;*
- *Emotional distress arising out of a **Wrongful Employment Practice** involving an employee, former employee, or job applicant;*
- *Costs awarded by a court against an **Insured**;*
- *Attorneys' fees awarded pursuant to a statute providing fees to a prevailing party; or*
- *Prejudgment and postjudgment interest*

**Date of First Coverage** means the date and hour listed in Item F of the Declarations.

**Defense Costs** means costs and expenses incurred by **us** or with **our** prior approval in defense of **Claims** and includes the cost of arbitration, mediation or other alternative dispute resolution process to which the **Insured** must submit or has submitted with **our** consent. **Defense Costs** does not include the wages or salary of any employee of an **Insured**.

**Digital Data** means any record, data, research, or information of any kind, including but not limited to **Financial Information**, **Health Information** or **Identifying Information**, that is stored on a **Computer System**.

**Educational Organization** means the entity named as such in Item A of the Declarations.

**Employee Sexual Harassment** means unwelcome sexual requests for sexual favors, or other verbal or physical conduct of a sexual nature when such conduct has the purpose or effect of unreasonably interfering with performance by, or creating an intimidating, hostile, or offensive environment for an employee of an Included Entity.

**Extended Discovery Period** means the extended period of time, if granted pursuant to Section 23 herein, for reporting **Claims**, during the 12-month period after the end of the **Policy Period** but only for a **Wrongful Act** taking place within the **Policy Period**.

**Financial Information** means an individual or organization's non-public financial data, regardless of how or where it is stored, including but not limited to credit card numbers, credit ratings, bank account numbers, bank account balances, or any other monetary facts that are used in billing, credit assessment, financial aid determinations, business transactions, or other financial activities.

**Health Information** means any information concerning an individual that would be considered "protected health information" or "electronic protected health information" within the Health Insurance Portability and Accountability Act of 1996 (as amended) (HIPAA) or the Health Information Technology for Economic and Clinical Health Act (HITECH Act), and their implementing regulations, or protected health-related information under any similar federal, state, local or foreign law.

**Identifying Information** means any information, regardless of how or where it is stored, that could potentially be used to distinguish or trace an individual's identity either alone or when combined with other personal or identifying information, such as a person's full name, date of birth, social security number, place of birth, government issued identification number, or biometric records.

**Inception Date** means the first date and hour listed in Item B of the Declarations.

**Incident** means any circumstance that the **Insured** believes may give rise to a **Claim**.

**Included Entity** means:

- a. the **Educational Organization**;
- b. any not-for-profit organization or entity over which the governing body of the **Educational Organization** exerts effective control and that is named in, and whose accounts are included with or consolidated into, the financial statements submitted to **us** most recently by the **Educational Organization** prior to the rating of the premium for the **Policy Period**; however, no entity or affiliate or subsidiary of any entity that has not qualified as a not-for-profit entity under applicable provisions of the Internal Revenue Code is an **Included Entity**, and no person or entity is an **Insured** with respect to such entity, unless that entity is listed on Schedule A;
- c. any entity listed on Schedule A of this Policy; or
- d. any not-for-profit entity acquired or formed by or merged with an **Included Entity** during the **Policy Period** provided that
  - (1) the value of the sum of all assets (including, but not limited to, real estate, securities, assumed indebtedness and other consideration) expended, assumed or exchanged for any such acquisition, formation or merger does not exceed 5% of the total assets of the **Educational Organization** and its consolidated subsidiaries and affiliates as most recently reported to **us** for rating purposes prior to such **Policy Period**;
  - (2) the combined or consolidated operations and the acquired, formed or merged entity are not materially different from those of the **Included Entity** prior to the acquisition, formation or merger.
  - (3) coverage with respect to that newly formed, acquired or merged entity will begin on the date of acquisition, formation or merger, and there is no coverage for any entity acquired by or merged into the **Included Entity** or for any person with respect to that entity for **Wrongful Acts** committed prior to the date of acquisition or merger; and
- e. In addition to coverage provided in Item d. listed above, any newly formed, acquired or merged affiliates of the **Educational Organization**, shall be added as **Included Entities** to this Policy as of the effective date of their formation, incorporation or acquisition by the **Educational Organization**, provided
  - (1) they are reported to **us** within sixty (60) days of the date of their formation, incorporation or acquisition by the **Educational Organization** and
  - (2) are subsequently accepted for coverage by **us** and named on the Policy.

**Individual Insureds** means:

- a. past, present and future **Trustees**, governing board directors or **Officers** of an **Included Entity**; and
- b. at the option of the **Educational Organization**, any
  - 1) past, present and future employee, member of the faculty, student teacher, or teaching assistant of an **Included Entity**;
  - 2) member of a committee, including an Institutional Review Board (as recognized by the U.S. Food and Drug Administration and U.S. Department of Health and Human Services) of an **Included Entity**, or a representative to an education association of which the **Educational Organization** is a member;
  - 3) uncompensated volunteer worker performing services on behalf and with the express direction and authority of an **Included Entity**;
  - 4) student of the **Educational Organization** while serving in a supervised internship program in satisfaction of course requirements; or
  - 5) student of the **Educational Organization** while acting at the direction of, complying with policies and procedures governing conduct at, or performing services primarily for or on behalf of, the **Educational Organization**;

but only while acting within the scope of their duties or obligations in their respective capacities to an **Included Entity** as described in clause a. or b. above, and coverage for these individuals is subject always to all other terms and conditions of this Policy.

**Insureds** means the **Included Entities** and the **Individual Insureds**.

**Joint Venture** means a partnership agreement or joint operating agreement between an **Included Entity** and an entity that is not an **Included Entity** with respect to a common undertaking, enterprise or activity involving joint control.

**Limit of Liability** means the amounts stated in Item C of the Declarations and is the most **we** will pay for **Loss** respectively for each **Claim** and in the aggregate for all **Claims** first made during the **Policy Period**.

**Loss** means **Damages** and **Defense Costs**.

**Non-Employee Sexual Harassment** means unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature when such conduct has the purpose or effect of unreasonably interfering with performance by, or creating an intimidating, hostile, or offensive environment for a student or person other than an employee of an **Included Entity**.

**Officer** means any corporate officer of an **Included Entity** whether or not an employee; and any president, chancellor, provosts, treasurer, vice presidents, deans, or other comparable senior administrators of any **Included Entity**.

**Outside Entity** means an entity which is not an **Included Entity** and which is:

- a. a corporation, foundation or other entity exempt from income tax under Section 501(c)(3) of the Internal Revenue Code, or
- b. listed on Schedule Z of this Policy.

**Policy Period** means the period from the **Inception Date** until the earlier of the last date and hour listed in Item B of the Declarations or the date and hour of cancellation of this Policy.

**Professional Services** means acts that may be legally performed only by a person holding a professional license, regardless of whether the person is licensed or not; or any services for which an **Individual Insured** is compensated by any party other than an **Included Entity**.

**Reporting Officer** means a position equivalent to any of the below of the **Educational Organization**:

- a. President, Chancellor or Head of School;
- b. Provost or Chief Academic Officer;
- c. VP of Finance, Chief Financial Officer, VP of Administration, or Chief Business Officer;
- d. VP of Legal Affairs or General Counsel; or
- e. VP of Student Affairs.

**Secure Data** means any:

- a. **Identifying information**,
- b. **Financial Information**,
- c. **Health Information**, or
- d. **Digital Data**.

**Sexual Misconduct** means any actual or alleged **Employee Sexual Harassment**, **Non-Employee Sexual Harassment**, **Child Molestation**, or any other sexual assault, sexual abuse, or wrongful sexual conduct.

**Student Discipline Process** means the policy, practice or procedure of training, response, investigation, handling, resolution or adjudication of allegations against a student, including without limitation **Sexual Misconduct**, regardless of whether it is handled in a formal Title IX process.

**Trustee** means any past, present or future member of the Board of Regents, Board of Trustees, Board of Governors or Board of Directors of the **Educational Organization** and includes the estates, heirs, legal representatives or assigns of any deceased, incompetent, insolvent or bankrupt

member of the above, and spouses or domestic partners of any of the above to the extent they are involved in **Claims** solely because of their status as spouses or domestic partners.

**Underlying Insurance** means any policy of insurance specified in Schedule C of this Policy.

**Underlying Insurance Limit** means the amount specified in Item H. of the Declarations. This amount applies separately and always to each **Claim** covered by this Policy whether or not **Underlying Insurance** is available to the **Insured**. The **Underlying Insurance Limit** amount shall be satisfied with respect to a **Claim** when the amount stated in Item H. of the Declarations is exceeded by:

- a. **Damages**, when **Defense Costs** are outside the liability limits of the **Underlying Insurance**, or
- b. **Damages** and **Defense Costs**, if **Defense Costs** are within the limits of the **Underlying Insurance** or if no **Underlying Insurance** applies.

**Wrongful Act** means any actual or alleged error, omission, act, misstatement, neglect or breach of duty in the discharge of duties to or on behalf of an **Included Entity**.

*[For example, for covered **Damages** and subject to all other terms and conditions of this Policy, following are **Wrongful Acts** that may be covered by this Policy:*

- *unlawful discrimination or violation of civil rights; **Employee Sexual Harassment**; wrongful termination of employment;*
- *failure to hire or promote, denial or removal of tenure; constructive discharge; breach of an individual employment contract;*
- *failure to properly manage charitable trust services;*
- *breach of fiduciary duty arising out of the management of an endowment;*
- *peer review not arising out of the performance of medical services;*
- *unlawful discrimination in the terms and conditions of employment;*
- *failure to grant due process; educational malpractice or failure to educate, negligent instruction, failure to supervise, inadequate or negligent academic guidance or counseling, improper or inappropriate academic placement or discipline;*
- *invasion of privacy or humiliation;*
- *infringement of copyright, trademark or patent;*
- *plagiarism or idea misappropriation; or*
- *oral or written publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services, including any such publication to the Internet, in a book, newspaper or other publication of the **Educational Organization**, or broadcast over, a radio, cable or television station owned or operated by the **Educational Organization**.]*

**Wrongful Employment Practice** means a **Wrongful Act** arising out of the employment relationship.

## **UNDERLYING INSURANCE LIMIT AND ORDER OF PAYMENTS**

3. When the **Wrongful Acts** alleged by an individual are related so that they reasonably constitute one course of conduct, they shall be considered to give rise to a single **Claim** and only one **Underlying Insurance Limit** must be satisfied. **Wrongful Acts** alleged by different individuals shall be considered to give rise to separate **Claims** and separate **Underlying Insurance Limits** must be satisfied for each individual's **Claim**.

**Exception:** Only a single **Underlying Insurance Limit** must be satisfied when (i) a class action administrative or judicial proceeding is pending, or (ii) it is established that a pattern or practice of discrimination or an **Insured's** institutional policy, practice or procedure affects more than one individual seeking to hold the **Insured** liable for the results of a **Wrongful Act**.

4. The **Educational Organization** agrees that in the event of a covered **Loss** that, in aggregate, exceeds the **Limit of Liability** of this Policy, we shall:

- a. first pay such **Loss** on behalf of any covered **Individual Insureds** listed in part a. of that Definition;
  - b. then with respect to whatever remaining amount of **Limit of Liability** is available after payment of such **Loss**, pay any remainder on behalf of the **Educational Organization**.
- Nothing in this Paragraph shall be construed to increase the **Limit of Liability** available under this Policy.

## PAYMENT OF LOSS

5. **We** will pay **Loss** on behalf of an **Insured** as soon as practicable after:
  - a. the **Insured's** liability has been established by judgment after actual trial or by written agreement to which **we** have consented; and
  - b. **We** determine that the **Loss** as a result of the **Claim** in question exceeds the **Underlying Insurance Limit** amount.

## LIMIT OF LIABILITY

6. Regardless of the number of **Insureds**, parties who sustain injuries, or **Claims** made on account of one or more **Wrongful Acts**, **our** liability for **Loss** arising out of one **Claim** is limited to the amount stated in Item C of the Declarations as applicable to "Each **Claim**" (except to the extent that the Aggregate per **Policy Period** has been exhausted by payment of **Loss**); and **our** liability for all **Loss** arising out of all **Claims** first made during the **Policy Period** is limited to the amount stated in Item C of the Declarations as "Aggregate per **Policy Period**."
7. After the **Limit of Liability** has been exhausted by the payment of **Loss**, **we** shall have no further obligation to any **Insured**.

## DEFENSE AND SETTLEMENT

8. **We** have no duty to defend any **Insured** and **we** shall not be called upon to assume charge of the investigation, settlement or defense of any suit brought or legal proceedings instituted against any **Insured**, but **we** shall have the right and be given the opportunity, to be associated at **our** own expense with the **Insured** or the **Insured's** underlying insurers, or both, in the defense and control of **Claims**, or the trial of any suits or other legal proceedings, relative to any **Claim** that, in **our** opinion, may create liability for **us** under the terms of this Policy, in which event the **Insured** shall fully cooperate with **us** in the defense of that **Claim**. For any **Claim** reported to **us** according to paragraph 16 of this Policy, the **Insureds** must cooperate with **us** and with any claims administrator **we** designate in the investigation, defense or settlement of **Claims**.
9. If more than one **Insured** is involved in any **Claim**, **we** may decline to approve separate counsel for the **Insureds** unless there is a material conflict of interest among them. Notwithstanding any other provision of this Policy, where there is a material conflict of interest among **Insureds** involved in a **Claim**, **we** shall have the right to appoint or approve separate counsel to defend the **Individual Insureds** in that **Claim**. As a condition precedent to their rights under this Policy with respect to the **Claim**, the **Individual Insureds** shall fully cooperate with **us**.
10. **Defense Costs** paid by the **Insured** as part of any deductible amount or self-insured retention amount that the **Insured** must pay pursuant to **Underlying Insurance** are hereby consented to by **us**; however, no **Defense Costs** are consented to by **us** with respect to any **Claim** for which there is no **Underlying Insurance**. The **Insured** shall incur no other **Defense Costs** with respect to a particular **Claim** without **our** express consent, including any such costs incurred prior to written notice to **us** of a **Claim** and **our** approval of defense counsel, and any such unapproved **Defense Costs** will not count towards the **Underlying Insurance Limit** and **we** will not be liable for any such costs.

11. The **Insureds** shall immediately notify **us** of any settlement demand, and no settlement offer shall be made or settlement agreed to by an **Insured** without **our** prior consent. **We** will not be liable to pay **Loss** for any settlement amount offered or agreed to without **our** prior consent.
12. **We** will not settle any **Claim** without the agreement of the **Insured**. If the **Insureds** refuse to consent to a reasonable settlement **we** recommend that is acceptable to a claimant, **our** liability for **Loss** for that **Claim** is limited to the amount of **Damages** for which the **Claim** could have been settled and **Defense Costs** incurred by **us** or with **our** consent up to the date of such refusal.
13. **We** may appeal any judgment on behalf of the **Insureds**, but **we** are not obligated to do so. If **we** appeal any judgment, **we** will do so at **our** own cost and the **Insureds** agree to cooperate with **us** in that appeal. If **we** elect not to appeal, the **Insureds** may appeal at their own cost, but **our** liability for **Loss** shall not exceed the amount for which **we** were liable prior to such appeal.
14. If a single **Claim** involves both covered and uncovered elements, the **Insureds** and **we** agree to use **our** best efforts to determine a fair and proper allocation of **Loss** between the covered and non-covered elements of the **Claim**, taking into account the relative exposure presented by each element. **We** will be obligated to pay only that portion of **Loss** allocated to covered elements of **Claims** against **Insureds**. If the **Insureds** and **we** are unable to agree upon an allocation, **we** shall advance that portion of **Loss** which the parties agree is not in dispute until a different allocation is negotiated or judicially determined.

## EXCLUSIONS

15. This policy does not apply to, and **we** will not be liable for **Loss** arising out of or related to:
  - a. any matter, fact or circumstance that, prior to the **Date of First Coverage**, was the subject of prior litigation, court order, settlement agreement, or notice to an insurer that attaches coverage for that **Claim** under any other policy for which this Policy is a renewal or replacement of;
  - b. any circumstance that any **Reporting Officer**, prior to the **Date of First Coverage**, had any reasonable basis to believe might lead to a **Claim**;  
**Exception:** This exclusion shall not apply to any **Claim** first made more than three years after the **Date of First Coverage**;
  - c. any **Wrongful Act** committed by any **Insured** with the knowledge that it was unlawful or with the intent to harm or injure if a judgment or final adjudication establishes such knowledge or intent (the knowledge or intent of an **Individual Insured** shall not be imputed to any other **Insured**, except that the knowledge or intent of a **Reporting Officer** acting in his or her official capacity shall be imputed to the **Included Entity**);
  - d. the gaining of any illegal or unjust profit, remuneration or economic advantage, or the violation of any antitrust or unfair trade practices laws if a judgment or final adjudication establishes such gain or violation;
  - e. except as otherwise provided by endorsement to this Policy, the administration of any employee benefit plan or any violation of the responsibilities, obligations or duties imposed by the Employee Retirement Income Security Act (ERISA) or any similar statute, regulation, ordinance, order or edict of any jurisdiction or political subdivision (whether or not in the United States);
  - f. any **Claim** brought against an **Insured** by or on behalf of an **Included Entity** or any entity that is a subsidiary of, under the control of, under common management or control with, or that manages or controls, an **Included Entity**; or any **Claim** by or on behalf of a **Joint Venture** or any owner, partner or participant in a **Joint Venture**;
  - g. performing or failing to perform any **Professional Services** other than:
    - (i) the education or teaching of students;
    - (ii) accounting services performed for the **Educational Organization** by an accountant who is an employee of the **Educational Organization**;
    - (iii) legal services performed by an attorney who is an employee of the **Educational Organization** while functioning as counsel to the **Educational Organization**;
    - (iv) charitable trust management performed for or on behalf of the **Educational Organization** by an employee of the **Educational Organization**; or



- (v) notary services performed by an employee of the **Educational Organization**;
- h. bodily injury, death, mental injury or emotional distress, shock, sickness, disease or disability from any cause including but not limited to assault and battery, **Sexual Misconduct**, or any negligence such as negligent hiring, training, retention, supervision or referral of employees, or negligent supervision of students;
  - Exception:** This exclusion shall not apply to mental injury or emotional distress:
    - (i) caused by or alleged to be caused by a **Wrongful Employment Practice** against an employee, former employee or job applicant, including **Employee Sexual Harassment**; or
    - (ii) sexual harassment or other unlawful discrimination against any individual other than a student of the **Educational Organization**;
- i. physical injury to or destruction of tangible property or **Secure Data**, including loss of use if the loss of use results from the physical injury or destruction of the tangible property or **Secure Data**, loss of use of or diminished value of tangible property or **Secure Data** that has not been physically injured or destroyed, and consequential damage or evacuation loss resulting from any actual or threatened physical injury or destruction of tangible property or **Secure Data**;
- j. assault or battery;
- k. the formation, interpretation, or actual or alleged breach of any contract or agreement, whether written, oral or implied in fact or law;
  - Exception:** This exclusion shall not apply to **Claims** arising out of either an individual employment contract or a contract with a student for educational services;
- l. any violation of a collective bargaining agreement or of the National Labor Relations Act or any other similar law, statute, ordinance or regulation that governs labor-management relations;
- m. storage, disposal, discharge, dispersal, release, growth, or escape of bacteria, fungi (which includes, but is not limited to, any form or type of mold, mushroom, or mildew), spores (which includes any reproductive body produced by or arising out of fungi), smoke, vapors, soot, fumes, acids, alkalis, toxic substances, chemicals, liquids, gases, waste materials or other irritants, contaminants or pollutants of any kind into or upon land, in or into any building, or into the atmosphere or any watercourse or body of water whether above ground or underground, or in any other place; removal of or failure to remove asbestos or materials containing asbestos, lead or radon; radioactive materials or radioactive contamination; electromagnetic fields; or the failure to test for, cleanup, mitigate, protect or warn against, or monitor any of the above under any circumstances;
  - Exception:** This exclusion shall not apply to retaliation against any person for exercising any rights or duties under any law, statute or regulation to test for, cleanup, mitigate, protect or warn against or monitor any of these;
- n. any **Insured** serving or having served as a member of the board of trustees or board of directors, or as an officer of any entity other than an **Included Entity**;
  - Exception:** This exclusion does not apply to an **Insured** with respect to service as a director, trustee or officer of an **Outside Entity**, but this Exception:
    - (1) applies only if the **Individual Insured** serves in such capacity at the direction or request of the **Educational Organization** or if service in such capacity is or was part of the duties regularly assigned to the **Individual Insured** by an **Included Entity** and only to the extent that an **Individual Insured** is indemnified by an **Included Entity** for that service;
    - (2) does not extend to any **Outside Entity** or to any person other than an **Individual Insured**;
    - (3) is specifically excess of any indemnity or insurance (other than that provided by an **Included Entity**) available to an **Insured** by reason of service to an **Outside Entity**, including any indemnity or insurance available from or provided by the **Outside Entity**;
    - (4) does not extend to **Loss** on account of any **Claim** for a **Wrongful Act** prior to or subsequent to the dates during which the **Individual Insured** qualified for coverage under clause (1) above; and
    - (5) does not extend to **Loss** related to or arising out of any **Claim** brought against an **Insured** by or on behalf of the **Outside Entity** or any director, trustee, officer or employee of that **Outside Entity**;
- o. any violation of the Fair Labor Standards Act or any other law, regulation or statute that regulates the wages or hours of employment;

- Exception:** This exclusion shall not apply to 1) the Equal Pay Act, or 2) any retaliation for exercising any rights or duties under any such law, statute or regulation;
- p. any demand for the return of funds or gifts brought by or on behalf of a government agency or other entity or person, or any actual or alleged violation of the False Claims Act or similar laws;  
**Exception:** This exclusion shall not apply to retaliation against any person for exercising any rights or duties under the False Claims Act or similar laws;
- q. (i) any actual or threatened alteration, appropriation, dissemination, duplication, imitation, impairment, misuse, release, reproduction, theft, or unauthorized encryption through ransomware of **Secure Data**; or  
(ii) any actual or alleged failure to comply with the provisions of any federal, state, local or foreign statute or regulation that requires an entity collecting or storing information that constitutes **Secure Data**, or any entity that has provided information that constitutes **Secure Data** to a third party, to provide notice of any actual or potential unauthorized access by others to such **Secure Data**;  
**Exception:** This exclusion shall not apply to a **Claim** brought under the Family Educational Rights and Privacy Act of 1974;
- r. any unauthorized use, access to, or failure or violation of any **Computer System**, or any other device or instrument used in the communication, receipt, or transmission of electronic data; or
- s. any **Claim** made by any person who has or alleges to have sustained an injury from **Sexual Misconduct**;  
**Exception:** This exclusion shall not apply to any **Claim** made by any person who has or alleges to have sustained an injury from **Employee Sexual Harassment**.

#### NOTICE OF CLAIMS AND WRONGFUL ACTS

16. As a condition precedent to an **Insured's** rights under this Policy, the **Insured** or the **Educational Organization**:
- a. must give **us** written notice of any **Claim** as soon as reasonably practicable
- (i) that, in the reasonable judgment of the **Insured**, is likely to result in **Loss** that will exceed the total Limit of Liability of the **Underlying Insurance**, or
  - (ii) that is a likely class action or putative class action suit, or
  - (iii) at the time the **Insured** and the **Underlying Insurance** have incurred **Loss** of 25 percent of the Limit of Liability of the **Underlying Insurance** for that **Claim**, or,
  - (iv) when the **Underlying Insurance** does not apply to that **Claim**, as soon as reasonably practicable, and
- b. promptly and fully give **us** such information with regard to that **Claim** as **we** may reasonably require.

If this Policy is not renewed, then (subject always to the preceding sentence) the **Insured** or the **Educational Organization** must give **us** written notice of any **Claim** no later than 60 days after the end of the **Policy Period** or, if all conditions of Paragraph 23. have been satisfied, no later than the end of the 12 month period after the end of the **Policy Period**.

17. If during the **Policy Period** an **Insured** first becomes aware of any **Incident**, and gives **us** written notice of that **Incident** prior to the end of the **Policy Period**, including the nature of the **Incident**, the name of potentially damaged parties, and the manner in which the **Insured** first became aware of the **Incident**, then any **Claim** subsequently made arising out of that **Incident** will be deemed to have been made during the **Policy Period**.
18. All notices of **Claims** under Paragraph 16., or **Incidents** under Paragraph 17., shall be reported in writing to: Claims Department, United Educators Insurance, 7700 Wisconsin Avenue, Suite 500, Bethesda, MD 20814-3556, Fax 301-907-0303, or at [newclaims@ue.org](mailto:newclaims@ue.org) or through [www.ue.org](http://www.ue.org). If a **Claim** is submitted electronically, **we** will send an electronic confirmation.

#### INDEMNIFICATION OF INDIVIDUAL INSURED

19. The **Educational Organization** agrees to indemnify **Individual Insureds** to the full extent permitted by applicable law.

#### **CANCELLATION AND NONRENEWAL**

20. The **Educational Organization** may cancel this Policy for itself and all other **Insureds** by surrendering it to **us** or by written notice to **us** by certified mail at the address in Paragraph 18. stating when (not less than 10 days thereafter) the cancellation will become effective. **We** may cancel this Policy only:
- a. in the event any payment of premium is not made when due and payable, stating when, not less than 10 days thereafter, such cancellation will become effective; or
  - b. If the **Underlying Insurance** is cancelled, stating when, not less than 30 days thereafter, such cancellation will become effective,
- by mailing written notice by certified mail to the **Educational Organization** at the last mailing address known by **us**.
21. The time of surrender or the effective date and hour of cancellation stated in the notice shall become the end of the **Policy Period**. If the **Educational Organization** cancels this Policy, earned premium will be calculated in accordance with the customary short rate table and procedure. Premium adjustment will be made as soon as practicable after cancellation becomes effective, but payment or tender of unearned premium is not a condition of cancellation.
22. If **we** elect not to renew coverage provided by this Policy at then current standard terms and conditions (a change or increase in premium is not a change of terms and conditions) at the end of the **Policy Period**, **we** shall give the **Educational Organization** written notice at least 60 days before the end of the **Policy Period**.
- a. In the event that **we** learn of a change in the insurability of the risk that **we** deem material within 60 days or less before the end of this Policy and **we** are not then willing to renew at the current standard terms and conditions, **we** will notify the **Educational Organization** of this determination as soon as practicable, and **we** will also advise the **Educational Organization** whether **we** are willing to renew on different terms and conditions before the end of this **Policy Period**.
  - b. Under such circumstances, **we** may but are not required to offer the **Educational Organization** the opportunity to purchase a 60-day extension to the expiring Policy. Although this accommodation by **us** would be meant to give the **Educational Organization** that purchases a 60-day extension additional time to make decisions, this extension of the **Policy Period** shall under no circumstances create any additional Policy limits or increase the **Limits of Liability** available to the **Insureds**.

If offered by **us**, the **Educational Organization** may exercise this option by electing in writing before the end of the current **Policy Period** to pay to **us** an additional prorated portion of the current Policy's premium. Payment of the additional premium must be made no later than 10 days following the end of the original **Policy Period**.

#### **EXTENDED DISCOVERY PERIOD**

23. If **we** are unable to agree with the **Educational Organization** to a renewal at the end of the **Policy Period**, the **Educational Organization** shall have the right, upon payment of additional premium of 100% of the annual premium of this Policy, to an **Extended Discovery Period** for the coverage granted by this Policy; but
- a. the right to an **Extended Discovery Period** must be exercised by notice to **us** in writing and payment of the additional premium must be made no later than 10 days following the end of the **Policy Period**;
  - b. any **Claim** first made during the **Extended Discovery Period** will be treated as a **Claim** first made during the **Policy Period** and is subject to the **Limit of Liability** and **Underlying Insurance Limit** amounts applicable to the **Policy Period**;

- c. this Policy does not cover any **Claim** that is covered in whole or in part by any policy of insurance that replaces this Policy or that succeeds this Policy in time; and
- d. the additional premium will be considered fully earned on the first day of the **Extended Discovery Period**.

## GOVERNING LAW AND INTERPRETATION

24. This Policy shall be governed by and construed in accordance with the internal laws of the State of New York, without regard to principles of conflicts of laws thereunder, except the substantive law of New York shall not be used to supplant or override (1) the provisions of this agreement regarding payment of punitive damages; (2) the provisions of this agreement addressing the award, rate or accrual date of prejudgment interest; and/or (3) the requirement that the provisions, stipulations, exclusions and conditions of this Policy be construed in an evenhanded fashion between the **Insureds** and **us**. Where the language of this Policy is deemed to be ambiguous or otherwise unclear, the issue shall be resolved in the manner most consistent with the relevant provisions, stipulations, exclusions and conditions without regard to authorship of the language and without any presumption or arbitrary interpretation or construction in favor of either the **Insureds** or **us**.

## DISPUTE RESOLUTION

25. Any and all disputes arising out of or related to this agreement or the parties' performance hereunder shall be submitted first to mediation before a mutually-acceptable mediator. The parties shall: (1) mediate in good faith; (2) exchange all documents which each believes to be relevant and material to the issue(s) in dispute; (3) exchange written position papers stating their position on the dispute(s) and outlining the subject matter and substance of the anticipated testimony of persons having personal knowledge of the facts underlying the dispute(s); and (4) engage and cooperate in such further discovery as the parties agree or mediator suggests may be necessary to facilitate effective mediation. Mediator, venue, and related costs shall be shared equally by the parties.

Should the mediation required by this section fail to resolve the parties' dispute within four months of the initial mediation session, the parties agree to submit their dispute to a confidential, binding arbitration held according to the JAMS Comprehensive Arbitration Rules & Procedures in effect as of June 1, 2021 (the "Rules"), each party to bear (1) their own attorneys' fees and costs and (2) the fees and costs of their party-appointed arbitrator; and an equal share of the fees and expenses of the Chairperson and of the other expenses of the arbitration except for fees subject to paragraph 31(c) of the Rules.

Unless the parties consent in writing to a lesser number, the arbitration panel shall consist of three (3) arbitrators, the first to be appointed by the **Educational Organization** on behalf of the **Insureds**, the second to be appointed by **us**, and the third (the "Chairperson") to be appointed by the two (2) arbitrators so appointed. The Chairperson shall either (1) have a minimum of 10 years' experience working in the insurance industry or (2) have handled a minimum of 5 insurance-related arbitrations or trials. The seat of the arbitration shall be Bethesda, Maryland; but the arbitration panel may, for the convenience of the parties and without changing the locale of the final arbitration hearing, meet or take evidence at any place or places.

To the extent any dispute arises regarding any privileged information or documents, the Panel shall determine whether an *in camera* review is necessary. If the Panel decides that such a review is necessary, the privileged information or documents shall be referred to *in camera* inspection by a special master selected by the majority of the arbitrators for such decisions, rather than being decided *in camera* by the arbitrators. The special master must be an attorney who has acted as a special master deciding privilege issues under state or federal law of the United States, or a retired jurist of any federal trial or appellate court of the United States.

The award of the arbitration panel may be, alternatively or cumulatively, for money damages, an order requiring the performance of obligations under this Policy, or any other appropriate order or remedy.

The award shall not allocate arbitration fees or Chairperson compensation, costs or expenses in any manner except for equally between the parties. The decision of a majority of the arbitration panel shall be final and binding except to the extent otherwise provided in the Federal Arbitration Act.

For purposes of entering judgment upon any award by the arbitration panel, **we** and the **Insureds** submit to the jurisdiction of the State and Federal District Courts located in the State of Maryland.

**We** and the **Insureds** agree that prejudgment interest shall be calculated at the prime rate plus one percent and shall begin to accrue on the first date either party requested mediation.

#### COMPLIANCE WITH APPLICABLE UNITED STATES SANCTIONS

26. This insurance does not apply when **we** are prohibited from providing insurance by virtue of any United States laws or regulations.

#### CURRENCY

27. All premiums, **Limit of Liability**, **Underlying Insurance Limits**, **Loss**, and all other monetary amounts used in this Policy are expressed and payable in United States currency.

#### OTHER INSURANCE

28. This Policy shall at all times be excess over any other valid and collectible insurance (including any insurance naming the **Insured** as "additional insured") available to the **Insured** other than insurance that is expressly and specifically excess of the limits of this Policy, and nothing in this Policy shall be construed to require this Policy to contribute with, or subject this Policy to the conditions of any other insurance. **We** will not pay any **Defense Costs** incurred in connection with any **Claim** that another insurer has a duty to defend.

#### REPRESENTATION AND SEVERABILITY

29. Except as respects:
- the giving of notice of **Claim** or **Incident** pursuant to Paragraphs 16. and 17.,
  - giving of notice to exercise the Discovery Period and payment of additional premium under Paragraph 23., and
  - The order of payments provisions in Paragraph 5.,
- the **Educational Organization** agrees to act on behalf of all **Insureds** with respect to all matters under this Policy, including without limitation payment of premium, negotiation of the terms of renewal, the adjustment, settlement and payment of **Claims**, resolution of disputes, allocation of the proceeds of this Policy, the giving and receiving of notice of cancellation, the giving of notice to persons whom the **Educational Organization** chooses to not make an **Individual Insured**, and the receiving of any return premiums that may become due. The **Insureds** agree that the **Educational Organization** shall act on their behalf. Notice to the **Educational Organization** at the last mailing address known by **us** shall constitute notice to all **Insureds**.
30. Solely with regard to the **Trustees**:
- the statements and representations in the Application for Insurance will be deemed to be a separate application for each **Trustee** and no fact pertaining to or knowledge possessed by any **Trustee** or **Officer** shall be imputed to any other **Trustee** for the purpose of determining whether coverage is available, and
  - subject to all other terms and conditions of this Policy, this coverage shall not be rescinded by **us** for any reason whatsoever.

## MAINTENANCE OF UNDERLYING INSURANCE

31. The **Educational Organization** agrees to keep the **Underlying Insurance** or equivalent replacements in force during the **Policy Period** with no alteration in the limits, terms, conditions, or endorsements. Failure of the **Educational Organization** to comply with this condition will not invalidate this Policy but **we** will only be liable for the payment of **Loss** to the same extent **we** would have been if the **Educational Organization** had maintained the **Underlying Insurance** in force.
32. In the event that any provision of this Policy shall be declared to be or deemed invalid or unenforceable under any applicable law, such invalidity or unenforceability shall not affect the remaining portion of this Policy.

## SUBROGATION

33. In the event of any payment under this Policy, **we** shall be subrogated to all rights of recovery of any **Insured** against any person or organization, and the **Insureds** agree to execute and deliver such instruments and papers as necessary to secure such rights and to do nothing to prejudice such rights after the **Wrongful Act**. **We** agree to waive any right of recovery **we** may have against any person or organization when the **Educational Organization** has agreed to such waiver prior to a **Wrongful Act**.

## ALTERATION AND ASSIGNMENT

34. No change in, modification of, or assignment of interest under this Policy will be effective except when made by a written endorsement to this Policy that is signed by **our** authorized representative.

## UNINTENDED ERRORS AND OMISSIONS

35. Unless information is subject to a specific supplementary warranty application required by **us**, the failure of the **Insureds** to properly disclose all application information at the time of application for coverage for this Policy shall not prejudice the **Insureds** with respect to this insurance, provided such failure or omission is not intentional.

## HEADINGS

36. The descriptions in the headings and subheadings of this Policy are inserted solely for convenience and do not constitute any part of the terms or conditions of this Policy.

**IN WITNESS WHEREOF**, United Educators Insurance, a Reciprocal Risk Retention Group has caused this Policy to be signed by its President.

**SPECIMEN**

\_\_\_\_\_  
President