

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 FIDUCIARY LIABILITY POLICY
CLAIMS-MADE BASIS
DECLARATIONS

Item 1. **Educational Organization:**
Address:

Item 2. **Policy Period:** 00/00/0000 to 00/00/0000 12:01 A.M. at the address
stated in Item 1. above.

Item 3. **Limits of Liability:**
\$ Each **Claim**
\$ Aggregate per **Policy Period**

Item 4. **Date of First Coverage:** 00/00/0000 12:01 A.M. at the address stated in Item
1. above.

Item 5. **Underlying Insurance Limit:** \$

Item 6. Premium \$ Premium

Item 7. Applicable Initial Forms and Schedules:

Policy Form FDX 11-2016
Schedule of Underlying Insurance

Item 8. Applicable Initial Endorsements:

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 Fiduciary 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. For any **Claim** first made against an **Insured** during the **Policy Period** and reported to **us** as required by this Policy, **we** will pay on behalf of **Insureds**, that amount of **Loss** that exceeds the **Underlying Insurance Limit** up to the **Limit of Liability**. This Policy applies excess of any **Underlying Insurance**.

DEFINITIONS

2. This Policy is subject to the following definitions:

Administration means:

- (a) enrolling or failing to enroll employees, participants or beneficiaries;
 - (b) keeping records;
 - (c) giving advice (other than legal advice) or notice to employees, participants or beneficiaries; and
 - (d) interpreting rules, regulations, policies and procedures,
- of any **Plan**.

Claim means written notice to an **Insured** of the intent to hold the **Insured** liable for the results of a **Wrongful Act**. **Claim** does not mean investigations, audits or requests for information from government entities or others. A **Claim** is made at the time an **Insured** receives the first written notice of the **Claim**.

Covered Benefit Plan means:

- (a) any Employee Pension Benefit Plan or Employee Welfare Benefit Plan, as each are defined by **ERISA**, and including any qualified or non-qualified 403(b) plan, which is sponsored solely by the **Educational Organization** or jointly by the **Educational Organization** and a labor organization exclusively for the benefit of employees, Officers or Trustees of the **Educational Organization**, provided that such plan is administered or operated by a licensed entity not affiliated with or under the management, ownership or control of an **Insured**;
 - (b) any other employee benefit plan or program not subject to **ERISA**, including any fringe benefit or excess benefit plan which is sponsored solely by the **Educational Organization** exclusively for the benefit of employees, Officers or Trustees of the **Educational Organization**;
- which, as to both (a) and (b) above, existed on or before the **Date of First Coverage** or which is created or acquired after the **Date of First Coverage**, provided that such coverage applies only to **Wrongful Acts** which first occurred after the effective date of such creation or acquisition;
- (c) any Plan described in a. or b. above while such Plan is actively being developed, formed or proposed by the **Educational Organization** prior to such Plan's actual creation; or
 - (d) any **Scheduled Multi-employer Plan** or any other benefit or welfare plan specifically listed in the Schedule of **Covered Benefit Plans** of this Policy.

However, a **Covered Benefit Plan** does not include any stock ownership plan, stock subscription plan or **Excluded Multi-employer Plan**.

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;
- b. taxes or fines, other than the five percent or twenty percent civil penalties imposed upon an **Insured** as a fiduciary under Sections 502(i) or 502(l), respectively, of **ERISA**, or its amendments, for inadvertent violation of Section 406 of the Act;
- c. punitive or multiplied damages, or penalties imposed under any laws other than
 - (i) civil penalties awarded as compensation to an injured party and measured by actual damages; or
 - (ii) where lawfully insurable, punitive or multiplied damages limited to \$1,000,000; or
- d. the cost of compliance with injunctive or other non-monetary relief.

Date of First Coverage means the date and hour listed in Item 4. 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:

- a. the wages or salary of any employee of an **Insured**; or
- b. costs or expenses incurred prior to the time an **Incident** results in a **Claim**.

Educational Organization means the entity named as such in Item 1. of the Declarations.

ERISA means the Employee Retirement Income Security Act of 1974, as amended and the rules or regulations governing its implementation, including applicable sections of the Internal Revenue Code, and any similar common or statutory law anywhere in the world, and any rules or regulations promulgated under any such Acts or law.

Excluded Multi-employer Plan means:

- (a) any plan:
 1. which is maintained pursuant to one or more collective bargaining agreements between one or more employee organizations and more than one employer; and
 2. which shares a collective obligation to employees of more than one employer; or
- (b) any Multiple Employer Welfare Arrangement (MEWA) as defined in **ERISA**.

Excluded Multi-employer Plan does not include a "Governmental Plan" as defined in **ERISA**.

Executive means any officer, general counsel or head of human resources of the **Educational Organization**, or any natural person fiduciary of the **Covered Benefit Plan**.

Extended Discovery Period means the extended period of time, if granted, for reporting **Claims**, during the 12 month period after the end of the **Policy Period** but only for a **Wrongful Act** taking place before the end of the **Policy Period**.

Healthcare Exchange means any health insurance exchange established to facilitate the purchase of health insurance under the Patient Protection and Affordable Care Act.

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

Individual Insureds means:

- (a) any past, present and future Trustees, governing board directors or Officers of the **Educational Organization**;
- (b) any past, present or future natural person fiduciary of the **Covered Benefit Plan**, while in such person's capacity as a fiduciary of the **Covered Benefit Plan**;

including the estates, heirs, legal representatives or assigns of deceased, incompetent, insolvent or bankrupt fiduciaries of the **Covered Benefit Plan**, trustees, governing board directors, or officers; and spouses or domestic partners of governing board directors or trustees to the extent that they are involved in **Claims** solely because of their status as spouses or domestic partners,

(c) any past, present or future natural person employee of the **Educational Organization** but only while acting within the scope of duties or obligations in the **Administration** of a **Plan**; and

(d) any other natural person specifically named as an **Individual Insured** on the Schedule of **Individual Insureds** of this Policy,

No independent contractor is an **Individual Insured**, unless scheduled by name on the Schedule of **Individual Insureds**.

Insured means the **Educational Organization**, any **Covered Benefit Plan** and any **Individual Insured**.

Limit of Liability means the amounts stated in Item 3. 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**.

Policy Period means the period from the first date and hour listed in Item 2. of the until the earlier of the last date and hour listed in Item 2. of the Declarations or the date and hour of cancellation of this Policy.

Plan means:

(a) any **Covered Benefit Plan**;

(b) any government-mandated insurance program for, workers compensation, unemployment, social security or disability benefits for employees;

(c) any **Healthcare Exchange**; and

(d) any "Governmental Plan" as defined by **ERISA**.

Related Claims means all **Claims** for **Wrongful Acts** based upon, arising from, or in consequence of the same or related facts, circumstances, situations, transactions or events or related series of facts, circumstances, situations, transactions or events.

Scheduled Multi-employer Plan means any plan listed on the **Schedule of Covered Benefit Plans** which is sponsored by more than one employer, including the **Educational Organization**, provided the plan is not an **Excluded Multi-employer Plan**.

Underlying Insurance means the policy, endorsement or coverage part of insurance provided by underlying insurers at the full limits specified as underlying limits, all as specifically listed and described in the Schedule of Underlying Insurance of this Policy.

Underlying Insurance Limit means the amount specified in Item 5. 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 5. 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:

- a. any breach of the responsibilities, obligations or duties imposed by **ERISA** upon fiduciaries of a **Covered Benefit Plan** in their capacity as such fiduciaries;
- b. any other matter claimed against an **Insured** solely by reason of the **Insured's** service as a fiduciary of any **Covered Benefit Plan**; or
- c. any negligent act, error or omission in the **Administration** of any **Plan** committed, attempted, or allegedly committed by an **Insured** in the **Insured's** capacity as such.

Wrongful Employment Practice means:

- a. wrongful failure to hire, retain or promote;
- b. wrongful discrimination in the terms or conditions of employment, including sexual harassment;
- c. wrongful demotion, termination of employment, or discipline;
- d. failure to grant due process;
- e. the granting or removal of tenure; or
- f. defamation or retaliation,

by the **Educational Organization** in its capacity as employer or by any person for whose conduct or misconduct the **Educational Organization** in its capacity as an employer is liable.

UNDERLYING INSURANCE LIMIT AND RELATED CLAIMS

3. The **Underlying Insurance Limit** amount that applies to each **Claim** is the amount specified in Item 5. of the Declarations.
4. All **Related Claims** shall be treated as a single **Claim** first made on the date the earliest of such **Related Claims** was first made. Nothing in this Paragraph shall be construed to increase the **Limit of Liability** available under this Policy.

LIMIT OF LIABILITY

5. Regardless of the number of **Insureds**, parties who sustain injuries, or **Claims** made on account of one or more **Wrongful Acts**,
 - a. **our** liability for **Loss** arising out of one **Claim** is limited to the amount stated in Item 3. 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**);
 - b. and **our** liability for all **Loss** arising out of all **Claims** first made in the **Policy Period** is limited to the amount stated in Item 3. of the Declarations as "Aggregate per **Policy Period**."
6. 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

7. **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 14. of this Policy, the **Insureds** must cooperate with **us** and with any claims administrator **we** designate in the investigation, defense or settlement of **Claims**.
8. **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.

9. 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.
10. 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.
11. **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.
12. 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 **Damages** 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 **Damages** 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 **Damages** which the parties agree is not in dispute until a different allocation is negotiated or judicially determined.

EXCLUSIONS

13. This policy does not apply to, and **we** will not be liable for **Loss** related to or arising out of:
 - 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 **Executive**, 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;
Exception: This exclusion shall not apply to:
 - (a) **Defense Costs**;
 - (b) any other **Individual Insured** who has not committed that **Wrongful Act**; or
 - (c) the **Educational Organization**, provided that the **Wrongful Act** was not committed by an **Executive**, acting in his or her official capacity;
 - d. the gaining of any illegal or unjust profit, remuneration or economic advantage by any **Insured**, or the violation by any **Insured** of any antitrust or unfair trade practices laws;
 - e. any **Wrongful Employment Practice**;
 - f. bodily injury, death, mental injury or emotional distress, shock, sickness, disease or disability;
Exception: This exclusion shall not apply to mental injury or emotional distress arising out of any actual or alleged negligent act, error or omission in the **Administration** of any **Plan**;
 - g. physical injury to or destruction of tangible property (which, for all purposes of this exclusion, shall include electronic data) including loss of use if the loss of use results from the physical injury or destruction of the property, loss of use of or diminished value of tangible property 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;
 - h. the liability of others assumed by the **Insureds** under any contract or agreement, either oral or written, except to the extent that the **Insureds** would have been liable in the absence of the contract or agreement or unless the liability was assumed in accordance with or under the agreement or declaration of trust pursuant to which the **Covered Benefit Plan** was established;

- i. 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;
- j. any **Claim** made against any **Insured** arising out of the failure of any **Insured** to comply with any law governing workers' compensation, unemployment, social security or disability benefits or any similar law;
 - Exception:** This exclusion shall not apply to the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA"), or amendments thereto;
- k. the failure to collect from employers contributions owed to a **Covered Benefit Plan**;
 - Exception:** This exclusion shall not apply:
 - (1) to the **Defense Costs** of any such **Claims**; or
 - (2) if the failure is due to the negligence of an **Insured**;
- l. the return of any contributions to any employer if amounts are or could be chargeable to a **Covered Benefit Plan**;
 - Exception:** This exclusion shall not apply to the **Defense Costs** of any such **Claims**;
- m. benefits due or to become due under the terms of a **Covered Benefit Plan**
 - Exception:** This Exclusion does not apply to the extent that recovery for the benefits is based upon a covered **Wrongful Act** and the benefits are payable as a personal obligation of an **Individual Insured**;
- n. any actual or alleged violation of the False Claims Act or similar laws; or
- o. **Wrongful Acts** committed or alleged to have been committed by a subsidiary or affiliate of the **Educational Organization** or any **Individual Insured** of such entity, during any time when such entity was not a subsidiary or affiliate of the **Educational Organization**.

NOTICE OF CLAIMS AND WRONGFUL ACTS

14. As a condition precedent to the rights of the **Insureds** under this Policy, the **Insureds** must, as soon as practicable, provide written notice to **us** of any **Claim** or suit that reasonably may or could involve this Policy, or whenever a **Claim** or suit is required to be reported to the Underlying Insurer as a condition of **Underlying Insurance**; promptly forward to **us** copies of any written **Claim**, demand, notice, summons, complaint or other process received by the **Insured** or its representatives or agents; and cooperate with **us** in the investigation and defense of that **Claim**.

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 21. have been satisfied, no later than the end of the **Extended Discovery Period** after the end of the **Policy Period**.

15. 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** or **Extended Discovery Period**, if applicable, 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**.
16. All notices of **Claims** under Paragraph 14., or **Incidents** under Paragraph 15., shall be reported in writing to: Claims Department, United Educators Insurance, 7700 Wisconsin Avenue, Suite 500, Bethesda, MD 20814, Fax 301-907-0303, or at newclaims@ue.org or through www.ue.org. If a **Claim** is submitted electronically, **we** will send an electronic confirmation.

CANCELLATION AND NONRENEWAL

17. The **Educational Organization** may cancel this Policy for all **Insureds** by surrendering it to **us** or by written notice to **us** by certified mail at the address in Paragraph 16. stating when not less than 10 days thereafter the cancellation shall be effective. **We** may cancel this Policy only:
 - a. in event any payment of premium is not made when due and payable; 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** stating when, not less than 10 days thereafter, such cancellation shall be effective.
18. 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.
19. 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** will give the **Educational Organization** written notice at least 60 days before the end of the **Policy Period**.
20. 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**.

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

21. 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

22. 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

23. 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

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

CURRENCY

25. 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.

UNDERLYING INSURANCE

26. The **Insureds** agree to keep **Underlying Insurance** or comparable replacements in force during the **Policy Period** with no alteration in the limits, provisions, conditions or endorsements. Failure of the **Insureds** to comply with this condition will not invalidate this Policy but **we** shall only be liable for **Loss** to the same extent and under the same provisions that would have applied if the **Insureds** had maintained such **Underlying Insurance** in full force and effect.
27. This Policy shall not apply as a replacement or guarantor of any such **Underlying Insurance**. The insolvency of an Underlying Insurer or its inability or failure to perform its obligations shall not increase **our** liability under this Policy and **we** will only be liable for the payment of loss to the same extent **we** would have been if the Underlying Insurer had performed its obligations.

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 14. and 15., 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. 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

31. 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**.

ALTERATION AND ASSIGNMENT

32. 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

33. 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

34. 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