

Educators Professional Liability Insurance Policy



LIBERTY INSURANCE UNDERWRITERS INC.

(A Stock Insurance Company, hereinafter the "Company")

EDUCATORS PROFESSIONAL LIABILITY INSURANCE POLICY

THIS IS A CLAIMS-MADE AND REPORTED POLICY. PLEASE READ IT CAREFULLY.

THE POLICY IS LIMITED TO LIABILITY FOR ONLY THOSE CLAIMS THAT ARE FIRST MADE AGAINST THE INSURED AND REPORTED TO THE COMPANY DURING THE POLICY PERIOD OR THE EXTENDED REPORTING PERIOD, IF APPLICABLE.

INSURING AGREEMENTS

The Company agrees with the **Insured**, in consideration of the payment of the premium and in reliance upon the statements in the Declarations and subject to the Limit of Liability, terms, conditions, exclusions, and endorsements of this policy, as follows:

I. COVERAGE

The Company will pay on behalf of the **Insured** all sums which the **Insured** shall become legally obligated to pay as **Damages** for any **Claims** both first made against the **Insured** and reported to the Company during the **Policy Period** or Extended Reporting Period, if applicable, but only if such **Claim** arises out of any negligent act, error, or omission of an **Insured** in the rendering of or failure to render any **Professional Service** and only if such **Professional Service** is performed or should have been performed:

- A. On or after the policy effective date shown on the Declarations; or
- B. At any time prior to the policy effective date shown on the Declarations if no **Insured** knew or could have reasonably foreseen that such negligent act, error or omission might be expected to be the basis of a **Claim** on the effective date of the first policy issued by the Company to the **Insured**.

The Company shall have the right and duty to defend any suit against the **Insured** seeking **Damages** to which this policy applies even if any of the allegations of the suit are groundless, false or fraudulent. However, the Company shall have no duty to defend the **Insured** against any **Claim** seeking loss to which this insurance does not apply.

Further:

- A. The amount the Company will pay for **Damages** is limited as described in Section III of this policy; and
- B. The Company's right and duty to defend ends when the Company has used up the applicable Limit of Liability in the payment of settlement(s) or judgment(s).

The Company shall select and assign defense counsel; however, the **Insured** may engage additional counsel, solely at its expense, to associate in the defense of any **Claim** covered hereunder. The Company shall also have the right to investigate any **Claim** and/or negotiate the settlement thereof, as it deems expedient, but the Company shall not commit the **Insured** to any settlement without its consent. If the **Insured** refuses to consent to any settlement recommended by the Company and elects to contest the **Claim** or continue any legal proceedings in connection with such **Claim**, then the Company shall be relieved of any further duty to defend the **Claim**, and the liability of the Company for **Damages** shall not exceed the amount for which the **Claim** could have been settled plus the amount of **Claim Expenses** incurred by the Company as of the date of such refusal. Furthermore, the **Insured** shall not assume any obligations, incur any costs, charges, or expenses or enter into any settlement without the

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Company's consent. **Claim Expenses** shall be part of, and not in addition to, the Limits of Liability specified in Item 3 of the Declarations.

II. PERSONS INSURED

The **Insured** is the individual(s) specified on item 1 of the Declarations as **Named Insured**.

III. LIMIT OF LIABILITY

Regardless of the number of **Insureds** under this policy or the number of **Claims** made, the Company's liability is limited as follows:

- A. The Limit of Liability stated in the Declarations as applicable to "each **Claim**" is the limit of the Company's liability for all **Damages** because of each **Claim** covered hereby. All **Claims** arising from the same or related negligent act, error, or omission shall be considered a single **Claim** for the purpose of this policy and shall be subject to the same Limit of Liability.

The Limit of Liability stated in the Declarations as "Aggregate" is, subject to the above provision respecting "each **Claim**", the total limit of the Company's liability under this policy for all **Damages**.

- B. The Company's liability for **Damages** resulting from "each **Claim**" is in excess of the Deductible amount stated in the Declarations.
- C. The application of any Extended Reporting Period shall not increase the Limit of Liability stated in the Declarations.

IV. POLICY PERIOD, TERRITORY

The insurance afforded by this policy applies to any negligent act, error or omission in the rendering of or failure to render **Professional Services** taking place anywhere in the world. The insurance afforded by this policy applies to any **Claims** both first made and reported to the Company during the **Policy Period** or Extended Reporting Period, if applicable, provided that the **Claim** is brought within the United States of America, its territories or possessions or Canada.

V. WHEN CLAIM IS TO BE CONSIDERED AS FIRST MADE

A **Claim** shall be deemed as being first made at the earlier of the following times:

- A. When the **Insured** first receives written notice from the claimant or its representative that a **Claim** has been made; or
- B. When the Company first receives written notice from the **Insured** or its representative of any specific circumstances involving a particular person or entity which may result in a **Claim**.

All **Claims** arising out of the same or related negligent act, error, or omission shall be considered as having been made at the time that the first such **Claim** is made, and shall be subject to the same Limit of Liability.

VI. EXCLUSIONS

This insurance does not apply to **Claims**:

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- A. Based on or arising from the actual or alleged rendering of or failure to render **Professional Services** by an **Insured** as an employee, owner, partner, stockholder, director or officer of any sole proprietorship, joint venture, partnership, corporation or other business enterprise, not defined as an **Insured**, except for **Professional Services** rendered by the **Insured** as a self-employed tutor or educational consultant;
- B. Based on or arising out of any dishonest, fraudulent, criminal or malicious act or omission or deliberate misrepresentation committed by, at the direction of, or with the knowledge of the **Insured**;
- C. Based on or arising out of services by the **Insured** as a psychologist, guidance counselor or in the practice of any other profession not included in the definition of **Professional Services**;
- D. Based on or arising out of bodily injury, sickness, disease, mental anguish, emotional distress, death, or from the loss of society, consortium, or services of any person, or damage to, destruction of, or loss of use of tangible property by any person or entity; except we will reimburse the **Insured** for **Damages** and/or **Claim Expenses** to a maximum of \$10,000 for **Claims** arising from assault and battery or corporal punishment which result from the performance of **Professional Services** by the **Insured**;
- E. Based on or arising out of any obligations under any workers' compensation, unemployment compensation, disability or pension benefits law, or any similar laws including but not limited to the Employee Retirement Security Act of 1974 and any amendments thereof;
- F. For, based on or arising out of wages, salaries, commissions, fees, bonuses, promotions, profit sharing, pensions or other employee benefits earned in the normal course of employment;
- G. Based on or arising out of liability of others assumed by the **Insured** under any contract or agreement, except that this exclusion shall not apply to liability the **Insured** would have in the absence of such contract or agreement;
- H. Arising out of discrimination on the basis of age, sex, race, religion, marital status, maternal origin or sexual preference by any **Insured**;

However, notwithstanding the foregoing exclusion, the **Insured** shall be protected under the terms of this policy as to any **Claim** upon which suit may be brought against him, for any such alleged behavior by an **Insured** unless a judgment or final adjudication adverse to the **Insured** shall establish that such behavior occurred as an element of the cause of action so adjudicated. The Company shall not be required to appeal a judgment or final adjudication adverse to the **Insured**;

- I. Based on or arising out of:
 - 1. sexual activity, molestation, assault, harassment, or abuse by an **Insured** or any employee of any **Insured**, or any volunteer or other person performing services for any **Insured**, whether such sexual activity, molestation, assault, harassment or abuse is committed intentionally, negligently, inadvertently, or with the belief by such **Insured**, employee, volunteer or other person, erroneous or otherwise, that the victim is consenting to sexual activity and has the legal and mental capacity to consent thereto;
 - 2. the employment or supervision of any person who engages in such sexual activity, molestation, assault, harassment or abuse; or
 - 3. the failure to protect any person from such sexual activity, molestation, assault, harassment or abuse.

However, notwithstanding the foregoing exclusion, the **Insured** shall be protected under the terms of this policy as to any **Claim** upon which suit may be brought against him, for any such alleged behavior by an **Insured** unless a judgment or final adjudication adverse to the **Insured** shall establish that such behavior

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occurred as an element of the cause of action so adjudicated. The Company shall not be required to appeal a judgment or final adjudication adverse to the **Insured**;

- J. Based on or arising from collective bargaining or other union activities by an **Insured**; or
- K. Based on or arising out of any actual or alleged violation of any state or federal anti-trust, price fixing, restraint of trade, copyright or deceptive trade practice law, rule or regulation.

VII. DEFINITIONS

When used in this policy (including endorsements forming a part hereto):

“**Claims**” means any demand for money or services, or the filing of suit or the institution of any arbitration proceedings or alternative dispute resolution naming an **Insured** and alleging a covered negligent act, error, or omission relating to the rendering of or failure to render **Professional Services**. **Claim** does not include proceedings seeking injunctive or other non-pecuniary relief.

“**Claim Expenses**” means that part of **Damages** consisting of reasonable costs, charges, fees (including but not limited to attorney’s fees and expert’s fees) and expenses (other than regular and overtime wages, salaries or fees of any director, trustee, officer or employee of the Company or the **Insured**) incurred in defending and investigating a **Claim** and the premium for appeal, attachment or similar bonds. Notwithstanding the above, **Claim Expenses** shall include up to \$250 for loss of earnings to each **Insured** for each day or part of a day of his attendance at the Company’s request at a trial, hearing or arbitration proceeding involving a civil suit against such **Insured** for covered **Damages**, but the amount so payable for any one or series of trials, hearings or arbitration proceedings arising out of the same incident shall in no event exceed \$5,000.

“**Damages**” means the total amount that the **Insured** is legally obligated to pay on account of each **Claim** and for all **Claims** made against them for which coverage applies, including, but not limited to, damages, judgments, settlements, awards, costs and **Claim Expenses**. **Damages** do not include:

1. fines or penalties imposed by law, including but not limited to punitive or exemplary damages, or the multiple portion of any multiplied damage award;
2. matters uninsurable under the law pursuant to which this policy is construed; or
3. any amount which the **Insured** is absolved from paying by reason of any covenant, agreement, or court order.

“**Educational Institution**” means a school district, college or university, state department of education, or other institution which has as its primary purpose the instruction of students.

“**Insured**” means any person or organization qualifying as an **Insured** in the PERSONS INSURED provision of this policy. This policy applies separately to each **Insured** against whom a **Claim** is made, except with respect to the Company’s Limit of Liability.

“**Policy Period**” means, whenever used in this policy, the period from the inception date of this policy to its expiration date as set forth in the Declarations or its earlier termination date, if any.

“**Professional Services**” means the activities of the **Insured** in the course of his or her professional duties as a teacher, faculty member (including department or division chairman), librarian, research scholar, colleague, or member of an instructional staff, who is an employee of an **Educational Institution**, and includes activities of the member in connection with the dismissal, suspension, disciplinary sanction or layoff of a tenured or non-tenured faculty member prior to the expiration of a term appointment; the non-reappointment of a probationary faculty member; or, in connection with judgments, relating to the salary, promotion, rank, leaves of absence, work assignments, resignation or other professional rights, duties and responsibilities of fellow employees, of the

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employing institution; or any acts or omissions of any **Insured** or any other person for whose acts the **Insured** is legally liable subject to the exclusions of this policy; or acts or omissions of any **Insured** in connection with work performed for a disciplinary society or education association in furtherance of his or her professional responsibilities. **Professional Services** shall also include activities of the **Insured**: (a) as a self-employed educational consultant or tutor, if performed on a part-time basis; and (b) in the publication of research papers or similar materials, but only if pecuniary compensation is not received by the **Insured** or any other party for such activities. **Professional Services** also includes any act, error, or omission by an **Insured** in his or her capacity as an employee of an **Educational Institution** if same results in an allegation of:

1. false arrest, wrongful detention, or imprisonment, or malicious prosecution;
2. wrongful entry or eviction, or other invasion of the right of private occupancy; or
3. libel or slander, including, but not limited to allegation of any publication, dissemination, or utterance constituting the offenses of libel, defamation, disparagement, or utterances in the course of or related to advertising, broadcasting, or telecasting activities conducted by or on behalf of the **Named Insured**.

VIII. CONDITIONS

A. PREMIUM

All premiums for this policy shall be computed in accordance with the Company's rules, rates, rating plans, premiums and minimum premiums applicable to this policy. The **Insured** shall maintain records of the information necessary for premium computation and shall send copies of such records to the Company at such times as the Company may direct.

B. ASSISTANCE AND COOPERATION OF INSURED IN THE EVENT OF CLAIM OR SUIT

Upon the **Insured** becoming aware of any act, error, or omission in the rendering of or failure to render **Professional Services** which could reasonably be expected to be the basis of a **Claim** covered hereby, written notice shall be given by the **Insured**, or its representative, to the Company together with the fullest information obtainable.

If a **Claim** is made against the **Insured**, the **Insured** shall immediately forward to the Company every demand, notice, summons or other process received by the **Insured** or the **Insured's** representative. The **Insured** shall cooperate with the Company and, upon the Company's request, assist in making settlements in the conduct of suits and in enforcing any right of contribution or indemnity against any person or organization who may be liable to the **Insured** because of **Damages** with respect to which this policy applies. The **Insured** shall attend hearings and trials, and assist in securing and giving evidence and obtaining the attendance of witnesses. The **Insured** shall not, except at the **Insured's** own cost, voluntarily make any payments, assume any obligation or incur any expense.

C. ASSIGNMENT

The interest of the **Named Insured** is not assignable. If any **Insured** shall die or be adjudged incompetent, this policy shall thereupon terminate for such person but shall cover the **Insured's** legal representative as the **Insured** with respect to liability previously incurred and covered by this policy. Pro-rata return premium will be computed from the date of termination.

D. ACTION AGAINST THE COMPANY

No action shall lie against the Company unless, as a condition precedent thereto, there shall have been full compliance with all of the terms of this policy, but not until the amount of the **Insured's** obligation to pay

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shall have been finally determined either by judgment against the **Insured** after actual trial or by written agreement of the **Insured**, the claimant and the Company.

E. CONFORMITY TO STATUTE

Notwithstanding anything contained herein to the contrary, in the event that any terms or conditions of this policy conflict with any law applicable to the coverage afforded hereunder, the terms of this policy shall be amended to conform to such laws or laws.

F. OTHER INSURANCE

If there is other valid insurance (whether primary, excess, contingent or self-insurance) or other right of indemnity against a **Claim** covered by this policy, the insurance provided hereunder shall be deemed excess insurance over and above the applicable limit of all other insurance, self-insurance and any rights of indemnity. This policy is written as specific excess of coverage available under any Extended Reporting Period or similar period in any prior policy or policies.

When this insurance is excess, the Company shall have no duty under this policy to defend any **Claim** that any other insurer or self-insurer has a duty to defend. If such other insurer or self-insurer refuses to defend such **Claim**, the Company shall be entitled to the **Insured's** rights against all such other insurers or self-insurers for any **Claim Expenses** incurred by the Company.

When both this insurance and other insurance or self-insurance apply to the **Claim** on the same basis, whether primary, excess or contingent, the Company shall not be liable under this policy for a greater proportion of the **Damages** and **Claim Expenses** than such proportion that the applicable Limit of Liability under this policy bears to the total applicable Limit of Liability of all valid and collectible insurance against such **Claims**. Subject to the foregoing, if a loss occurs involving two or more policies, each of which provides that its insurance shall be excess, each will contribute pro-rata.

G. SUBROGATION

In the event of any payment under this policy, the Company shall be subrogated to all the **Insured's** rights of recovery therefore against any person, organization, or entity. The **Insured** shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The **Insured** shall do nothing after any loss to prejudice such rights.

H. CHANGES

The terms of this policy shall not be waived or changed except by endorsement issued to form a part of this policy.

I. BANKRUPTCY OR INSOLVENCY OF INSURED

Bankruptcy or insolvency of the **Insured** or of the **Insured's** estate shall not relieve the Company of any of its obligations hereunder.

J. CANCELLATION

This insurance may be canceled on the customary short-rate basis by the **Named Insured** at any time by written notice or by surrender of this policy to the Company or its authorized representative and the Company shall refund the paid premium less the earned portion thereof within thirty (30) days of the latter of the

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effective date of the cancellation or the date of delivery of the **Named Insured's** notice of intent to cancel. This insurance may also be canceled by the Company or by its authorized representative on its behalf, by sending to all **Named Insured(s)**, by first-class, registered or certified mail, at the address of the **Named Insured** last known to the Company or its authorized agent, not less than ninety (90) days' written notice stating the specific reason for such cancellation and when the cancellation shall be effective. In such case, the Company shall refund the paid premium less the earned portion thereof within ten (10) business days after the effective date of cancellation, subject always to the retention by the Company of any minimum premium stipulated herein (or proportion thereof previously agreed upon) in the event of cancellation either by the Company or the **Named Insured**. In case of non-payment of premium only thirty (30) days' written notice of cancellation must be given by the Company. Proof of mailing will be sufficient proof of notice.

Cancellation by the Company shall only be effective if based on one or more of the following reasons:

1. Nonpayment of premium;
2. The policy was obtained through material misrepresentation;
3. Violation of any term or condition of this policy;
4. The risk originally accepted has measurably increased; or
5. Loss by the Company of reinsurance which provided coverage for all or substantial part of the risk insured.

K. NONRENEWAL

The Company will renew this policy unless written notice of the Company's intent not to renew stating the specific reasons for nonrenewal is mailed to the **Named Insured** not less than sixty (60) days before the policy expires.

Any notice of nonrenewal will be mailed by first-class registered or certified mail to the **Named Insured** at the last mailing address known to the Company. Proof of mailing will be sufficient proof of notice.

L. DEDUCTIBLE

The **Insured's** obligation to pay the Deductible amount as a result of any single **Claim** shall not exceed the amount stated in the Declarations as the Deductible for "each **Claim**." The Company's obligation to pay **Damages** on behalf of the **Insured** resulting from a **Claim** is in excess of the Deductible amount stated in the Declarations. The **Insured** shall pay **Damages** for each **Claim** equal to the amount of the Deductible.

M. INSPECTION AND AUDIT

The Company shall be permitted to inspect the **Insured's** premises and operations and to examine and audit the **Insured's** books and records at any time during the **Policy Period** and any extension thereof and within three (3) years after the final termination of this policy as far as the books and records relate to the premium or the subject matter of this insurance.

N. DECLARATIONS AND APPLICATIONS

By acceptance of this policy, the **Insured** agrees that the statements in the Declarations and Application are the **Insured's** agreements and representations, that this policy is issued in reliance upon the truth of such representations, and that this policy embodies all agreements existing between the **Insured** and the Company and relating to this insurance.

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O. EXTENDED REPORTING PERIOD OPTION:

1. CANCELLATION/NON-RENEWAL

In the case of cancellation or non-renewal of this policy by the **Named Insured** or the Company for any reason (other than nonpayment of premium):

1. this policy will automatically be extended for a period of sixty (60) days from the date of such cancellation or non-renewal, but only for **Professional Services** committed on or after any applicable retroactive date and prior to the effective date of such cancellation or non-renewal ("Automatic Extended Reporting Period"); and
2. the **Named Insured** shall have the right, upon payment of the respective additional premium set forth below, to an extension of the coverage granted by this policy for the respective period set forth below:
 - a. 90% of the full annual premium for this policy, for a period of twelve (12) months commencing at the end of the Automatic Extended Reporting Period;
 - b. 135% of the full annual premium for this policy, for a period of twenty-four (24) months commencing at the end of the Automatic Extended Reporting Period;
 - c. 150% of the full annual premium for this policy, for a period of thirty-six (36) months commencing at the end of the Automatic Extended Reporting Period;
 - d. 175% of the full annual premium for this policy, for a period of sixty (60) months commencing at the end of the Automatic Extended Reporting Period;
 - e. 200% of the full annual premium for this policy, for a period of ninety-six (96) months commencing at the end of the Automatic Extended Reporting Period;
 - f. 225% of the full annual premium for this policy, for an unlimited period commencing at the end of the Automatic Extended Reporting Period,but only for **Professional Services** committed on or after any applicable retroactive date and prior to the effective date of such cancellation or non-renewal ("Supplemental Extended Reporting Period").

This right to purchase a Supplemental Extended Reporting Period shall terminate, however, unless written notice of such election, together with the additional premium, is received by the Company or its authorized agent from the **Insured** within sixty (60) days after the effective date of cancellation or non-renewal.

2. RETIREE PROVISION

If during the **Policy Period** an **Insured** individual shall retire from performing **Professional Services**, and the **Named Insured** shall have been continuously insured by the Company under a claims-made policy for at least five (5) years prior to such retirement, such **Insured** individual shall have the right to have an endorsement issued at no cost, in which to give written notice to the Company of **Claims** first made during this Extended Reporting Period against such **Insured** individual for the rendering of or failure to render any **Professional Service** prior to such **Insured** individual's retirement, and subject to the terms, conditions, exclusions and endorsements of this policy. This right shall terminate, however, unless written notice of election is received by the Company or its authorized agent from or on behalf of such **Insured** individual within sixty (60) days after the effective date of retirement. The Company shall have no duty to notify an **Insured** individual of his or her rights under this Retiree Provision.

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3. EXTENDED REPORTING PERIOD OPTION – TERMS

At the commencement of any Extended Reporting Period option, the entire premium for such Extended Reporting Period option shall be deemed earned, and the Company shall not be liable to return to the **Named Insured** any portion of the premium for the Extended Reporting Period. The cost of the Extended Reporting Period option is based on the rates and rules in effect at the time the policy was issued or last renewed.

The fact that the period during which a **Claim** must be first made against the **Insured** under this policy is extended by virtue of any Extended Reporting Period option shall not in any way increase the Limit of Liability of this policy. The Limit of Liability available under any Extended Reporting Period option shall be part of, and not in addition to, the Limit of Liability available under the last policy issued to the **Insured**.

P. LIBERALIZATION CLAUSE

If the Company adopts any revision that would broaden the coverage under the policy without additional premium at any time during the **Policy Period**, the broadened coverage will immediately apply to this policy.

Q. PUNITIVE OR EXEMPLARY DAMAGES

Punitive and exemplary damages are excluded by this policy. However, if a covered **Claim** is brought against an **Insured** that seeks both compensatory, and punitive or exemplary damages, then the Company will nevertheless defend such **Claim** and waive its right to reimbursement for those **Claim Expenses** associated with the defense of the punitive or exemplary damages charge.

R. COMPANY REIMBURSEMENT

Except with respect to Subsection Q., PUNITIVE OR EXEMPLARY DAMAGES, above, with respect any covered **Claim** that contains an allegation for loss to which this policy does not apply, the Company reserves the right to seek reimbursement for any **Claim Expenses** incurred relative to such loss.

IN WITNESS WHEREOF, the Company has caused this policy to be signed by its president and secretary, but this policy shall not be valid unless the Declarations are countersigned, when necessary, by a duly authorized representative of the Company.

President

Secretary