



Miscellaneous Professional

Liability Policy

Executive Risk Indemnity Inc.

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MISCELLANEOUS PROFESSIONAL LIABILITY POLICY

THIS IS A CLAIMS MADE POLICY WITH DEFENSE EXPENSES INCLUDED IN THE LIMITS OF LIABILITY. PLEASE READ THE ENTIRE POLICY CAREFULLY.

Subject to the applicable limits of liability and all of the terms and conditions of this Policy, Executive Risk Indemnity Inc. (the Company) and the Insured agree as follows:

I. INSURING AGREEMENT

The Company will pay on behalf of the **Insured Damages** which the **Insured** shall become legally obligated to pay and **Defense Expenses** as a result of any **Claim** first made against the **Insured** during the **Policy Period** and reported in writing to the Company during the **Policy Period** for a **Wrongful Act** first committed on or after the Retroactive Date stated in ITEM 7 of the Declarations. As part of and subject to the applicable limits of liability, the Company shall have the right and duty to defend any such **Claim**, even if the **Claim** is groundless.

II. DEFINITIONS

- (A) **"Claim"** means any civil action, suit, proceeding or demand by any person or entity seeking to hold the **Insured** responsible for monetary damages as a result of a **Wrongful Act** actually or allegedly committed by the **Insured** or by any other person for whose **Wrongful Acts** the **Insured** is legally responsible.
- (B) **"Damages"** means judgments or settlements negotiated with the approval of the Company; however, **Damages** shall not include:
- (1) fines, taxes, or penalties;
 - (2) fees or other charges of the **Insured**; or
 - (3) punitive or exemplary damages or the multiplied portion of any multiplied damage award, except where permitted by law **Damages** shall include, in an amount not exceeding the sum of \$25,000, the multiplied portion of a multiplied damages award or an award of punitive or exemplary damages, which sum shall be part of and not in addition to the applicable limits of liability.

- (C) **“Defense Expenses”** means reasonable expenses and legal fees incurred with the approval of the Company in the investigation, adjustment, defense or appeal of a **Claim** against the **Insured**; however, **Defense Expenses** shall not include salaries, overhead or benefit expenses or other fees and charges of the **Insured**.
- (D) **“Insured”** means the person or entity stated in ITEM 1 of the Declarations, and any natural person who was, is or shall become a director, officer, employee or partner thereof, but only while such person was, is or shall be acting within the scope of his or her duties as such.
- (E) **“Policy Period”** means the period from the inception date to the expiration date stated in ITEM 2 of the Declarations, or to any earlier cancelation date.
- (F) **“Professional Services”** means only services performed for others for a fee and which are listed in ITEM 6 of the Declarations.
- (G) **“Related Claims”** means collectively all **Claims** involving the same **Wrongful Act** or **Wrongful Acts** which are logically or causally connected by reason of any common fact, circumstance, situation, transaction, event or decision.
- (H) **“Wrongful Act”** means any actual or alleged act, error or omission committed solely in the performance of, or failure to perform **Professional Services**.

III. EXCLUSIONS

This Policy shall not apply to any **Claim**:

- (A) based on or directly or indirectly arising out of or resulting from any criminal, fraudulent, dishonest or discriminatory act or omission or any act, error or omission committed with knowledge of its wrongful nature or with intent to cause damage, or the gaining by the **Insured** of any personal profit, gain or advantage to which the **Insured** was not legally entitled; however, the Company shall reimburse the **Insured** for any **Defense Expenses** that would have been payable under this Policy if, upon final disposition of such **Claim**, such allegations have not been proven;
- (B) for non-pecuniary relief;
- (C) based on or directly or indirectly arising out of or resulting from any actual or alleged bodily injury to or sickness, disease or death of any person, or damage to or destruction of any tangible property, including the loss of use thereof;
- (D) based on or directly or indirectly arising out of or resulting from:

- (1) any actual, alleged or threatened exposure to, or generation, storage, transportation, discharge, emission, release, dispersal, escape, treatment, removal or disposal of any smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials (including materials which are intended to be or have been recycled, reconditioned or reclaimed) or other irritants, pollutants or contaminants, or
 - (2) any regulation, order, direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize any of the foregoing, or any action taken in contemplation or anticipation of any such regulation, order, direction or request;
- (E) by or on behalf of any person or entity included within the definition of **Insured** against any other person or entity included within the definition of **Insured**;
- (F) based on or directly or indirectly arising out of or resulting from the performance of or failure to perform **Professional Services** for:
- (1) the **Insured**, or
 - (2) any entity owned or controlled by any person or entity included within the definition of **Insured**, or
 - (3) any person or entity which owns or controls any entity included within the definition of **Insured**, or
 - (4) any entity which is under common ownership or control with any entity included within the definition of **Insured**, or
 - (5) any entity of which any person included within the definition of **Insured** is a director, officer, partner or principal shareholder;
- (G) based on or directly or indirectly arising out of or resulting from any act, error, omission, fact, circumstance, situation, transaction, event or decision which is the subject of any notice or claim under any prior policy; or any other act, error, or omission, whenever occurring, which is logically or causally connected by reason of any common fact, circumstance, situation, transaction, event or decision, with any act, error or omission which is the subject of such notice or such claim.

IV. CONDITIONS

(A) Territory:

This Policy applies only to **Wrongful Acts** committed, and to **Claims** made against the **Insured**, in the United States of America, its territories or possessions, or Canada.

(B) Notice:

(1) As a condition precedent to any right to coverage afforded by this Policy, the **Insured** must give written notice to the Company of any **Claim** as soon as practicable after such **Claim** is first made and, subject to Section IV (C) below, during the **Policy Period** or Extended Reporting Period, if applicable.

(2) If the **Insured** becomes aware of any circumstances which may subsequently give rise to a **Claim** against the **Insured** and, during the **Policy Period** or, if applicable, the Extended Reporting Period, gives the Company written notice of

(1) the nature and date of the specific **Wrongful Act**, and

(2) the names of potential claimants, and

(3) the injury or consequences which have or might result therefrom, and

(4) the manner in which the **Insured** first became aware of the potential for a **Claim** therefrom, then any **Claim** subsequently made against the **Insured** arising out of such **Wrongful Act** shall be deemed to have been made during the **Policy Period** or, if applicable, the Extended Reporting Period.

(C) Additional Time to Report Certain Claims:

If a **Claim** is first made against the **Insured** during the last fourteen (14) calendar days of the **Policy Period**, such **Claim** will be deemed to have been reported to the Company during the **Policy Period** if:

(1) the **Insured** makes reasonable efforts to report such **Claim** immediately, and

- (2) the **Insured** gives the Company written notice of such **Claim** no later than fourteen (14) calendar days after the **Policy Period**.

(D) **Date of Related Claims:**

Related Claims shall be deemed to have been first made at the earlier of the following times:

- (1) at the time the earliest of the **Related Claims** was first made, or
- (2) at the earliest time at which notice was given under any policy of insurance of any act, error, omission, fact, circumstance, situation, transaction, event or decision underlying any of the **Related Claims**.

(E) **Defense and Settlement of Claims:**

The **Insured** shall not admit any liability for or settle any **Claim** or incur any costs, charges or expenses without the written consent of the Company. The Company shall have the right to make investigations and conduct negotiations and, with the written consent of the **Insured**, enter into such settlement of any **Claim** that the Company deems appropriate. If the **Insured** shall refuse to consent to a settlement acceptable to the claimant in accordance with the Company's recommendation, the **Insured** shall thereafter negotiate or defend such **Claim** at the **Insured's** own expense independently of the Company, and, subject to the applicable limits of liability of this Policy, the Company's liability for such **Claim** shall not exceed the amount for which such **Claim** could have been settled plus **Defense Expenses** incurred with the Company's consent up to the date the **Insured** refused to settle such **Claim**.

(F) **Limits of Liability and Deductibles:**

- (1) Regardless of the number of **Claims**, the number of persons or entities included with the definition of **Insured**, or the number of claimants who make **Claim** against the **Insured**:
 - (a) the amount stated in ITEM 3(a) of the Declarations shall be the maximum limit of liability of the Company for all **Damages** and **Defense Expenses** resulting from each **Claim** or **Related Claims** made against the **Insured**, which amount shall be part of and not in addition to the amount stated in ITEM 3(b) of the Declarations, and
 - (b) the amount stated in ITEM 3(b) of the Declarations shall be the maximum aggregate limit of liability of the Company for all **Damages** and **Defense Expenses** resulting from all **Claims** under this Policy, and

- (c) the deductible stated in ITEM 4 of the Declarations shall apply separately to each **Claim** or **Related Claims** and shall also apply to either **Damages** or **Defense Expenses** or both.
- (2) **Defense Expenses** shall be part of and not in addition to the applicable limits of liability, and payment of **Defense Expenses** by the Company shall reduce, and may exhaust, the applicable limits of liability.
- (3) The obligations of the Company to pay **Damages** and to defend any **Claim** seeking **Damages** from the **Insured** or pay **Defense Expenses** shall only be in excess of the deductible, which amount shall be borne by the **Insured** at the **Insured's** own expense. The Company shall have no obligation whatsoever, either to the **Insured** or to any other person or entity, to pay all or any portion of the deductible amount on behalf of the **Insured**. The Company shall, however, at its sole discretion, have the right and option to do so, in which event the **Insured** will repay the Company any amounts so paid.
- (4) The Company shall not be obligated to pay any **Damages** or to defend or continue to defend any **Claim** after the applicable limit of liability has been exhausted by the payment of **Damages** or **Defense Expenses** or both.

(G) **Extended Reporting Period:**

- (1) If this Policy is not renewed for any reason or is canceled for any reason other than for non-payment of premium, the **Insured** shall have the right to purchase an extension of the coverage granted by this Policy for a period of one (1) year after the effective date of such cancellation or non-renewal (an Extended Reporting Period), but only with respect to any **Wrongful Act** committed before the effective date of such cancellation or non-renewal and otherwise covered by this Policy. The premium for this Extended Reporting Period shall be seventy-five percent (75%) of the premium set forth in ITEM 5 of the Declarations, as the same may be amended from time to time, and must be paid within thirty (30) days after the effective date of cancellation or non-renewal. Such additional premium shall be deemed fully earned immediately upon the inception of the Extended Reporting Period.
- (2) The Company's limits of liability during the Extended Reporting Period shall be part of, and not in addition to, the Company's limits of liability stated in ITEM 3 of the Declarations.

(H) **Other Insurance:**

This policy shall be specifically excess over, and shall not contribute with, any other valid and collectible insurance, whether such other insurance is stated to be primary, contributing, excess (except insurance specifically in excess of this Policy), contingent or otherwise.

(I) **Cooperation and Subrogation:**

- (1) In the event of a **Claim**, or after giving the Company notice of circumstances which may subsequently give rise to a **Claim**, the **Insured** will provide the Company with all information, assistance and cooperation as the Company may reasonably request. The **Insured** shall, upon the Company's request, assist in making settlements and the conduct of actions, suits or proceedings. The **Insured** shall attend hearings, trials and depositions and shall assist in securing and giving evidence and obtaining the attendance of witnesses.
- (2) The **Insured** will do nothing that may prejudice the Company's position or the Company's potential or actual rights of recovery in the event of a **Claim**.
- (3) In the event of payment under this policy, the Company shall be subrogated to, and entitled to an assignment of all of the rights of recovery therefor of the **Insured**. The **Insured** shall execute all papers and shall do everything that may be necessary to secure such rights, including the execution of such documents as may be necessary to enable the Company effectively to pursue and enforce such rights and to bring suit in the name of the **Insured**.

(J) **Cancellation:**

- (1) The Company may cancel this Policy by delivering or mailing to the **Insured** by registered, certified or other first class mail written notice stating when, not less than thirty (30) days thereafter, such cancellation shall be effective.
- (2) The **Insured** may cancel this Policy by surrendering this Policy or by mailing or delivering to the Company notice stating when thereafter such cancellation shall be effective.
- (3) The mailing of notice as aforesaid shall be sufficient proof of notice. If this Policy is canceled by the Company, the earned premium shall be computed pro rata. If this Policy is canceled by the **Insured**, the earned premium shall be computed in accordance with the customary short rate table and procedure. Premium adjustment may be made either at the time

cancelation is effective or as soon as practicable after cancelation becomes effective, but payment or tender of unearned premium is not a condition of cancelation.

(K) **Entire Agreement:**

The **Insured** agrees that this Policy, including any endorsements and the application attached to and forming part of this Policy, and including any materials submitted in connection with such application, which are on file with the Company and are a part of this Policy, as if physically attached, constitutes the entire agreement existing between the **Insured** and the Company or any of its agents relating to this insurance.

(L) **Representations:**

The **Insured** represents that the particulars and statements contained in the application and all materials submitted in connection therewith are true, accurate and complete, and agrees that this Policy is issued in reliance on the truth of that representation, and that such particulars and statements, which are incorporated into and constitute a part of this Policy, are the basis of this Policy and are material to the Company's acceptance of this risk.

(M) **No Action Against Company; Bankruptcy of Insured:**

- (1) No action shall be taken against the Company unless, as conditions precedent thereto, there shall have been full compliance with all of the terms of this Policy and the amount of the obligation of the **Insured** to pay shall have been finally determined either by judgment against the **Insured** after adjudicatory proceedings, or by written agreement of the **Insured**, the claimant and the Company.
- (2) No person or entity shall have any right under this Policy to join the Company as a party to any **Claim** against the **Insured** to determine the liability of the **Insured**, nor shall the Company be impleaded by the **Insured** or the **Insured's** legal representative in any such **Claim**.
- (3) Bankruptcy or insolvency of the **Insured** or of the **Insured's** estate shall not relieve the Company of any of its obligations hereunder.

(N) **Authorization and Notices:**

The person or entity stated in ITEM 1 of the Declarations shall be the sole agent, and shall act on behalf of all **Insureds** with respect to all matters under this Policy, including but not limited to giving and receiving notices and other communications, effecting or accepting any endorsements to or cancelation of

this Policy, the payment of premium and the receipt of any return premiums, and the purchase of any Extended Reporting Period.

(O) **Changes:**

Notice to any agent or knowledge possessed by any agent or other person acting on behalf of the Company shall not effect a waiver or change in any part of this Policy or estop the Company from asserting any right under its terms, conditions and limitations; nor shall the terms, conditions and limitations of this Policy be waived or changed except by written endorsement issued to form a part of this Policy.

(P) **No Transfer or Assignment of Insured's Interest:**

No transfer or assignment of interest under this Policy or any cause of action against the Company arising out of its performance of, or alleged failure to perform in accordance with the terms and conditions of this Policy shall be effective without the Company's written consent; however, in the event of the death, incapacity or bankruptcy of any person or entity within the definition of **Insured**, a **Claim** against the estate, heirs, legal representatives or assigns or the **Insured** for a **Wrongful Act** by such **Insured** shall be considered a **Claim** against the **Insured**.

(Q) **Headings:**

The descriptions in the headings and sub-headings of this Policy are solely for convenience, and form no part of the terms and conditions of the Policy.

In Witness Whereof, the Company has caused this Policy to be executed by its authorized officers, but this Policy shall not be valid unless countersigned on the Declarations page by a duly authorized representative of the Company.

Henry A. Aubert
Secretary

REJ...
President