



# Excess

Indemnity Policy

**Executive Risk Indemnity Inc.**

*Home Office:*

32 Loockerman Square, Suite L100  
Dover, Delaware 19901

*Administrative Offices/Mailing*

*Address:*

82 Hopmeadow Street  
Simsbury, Connecticut 06070-7683

**THIS IS A CLAIMS MADE POLICY WHICH APPLIES ONLY TO ANY CLAIM FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD. THE LIMITS OF LIABILITY AVAILABLE TO PAY DAMAGES OR SETTLEMENTS SHALL BE REDUCED AND MAY BE EXHAUSTED BY PAYMENT OF DEFENSE EXPENSES.**

## **EXECUTIVE RISK INDEMNITY INC.**

### **EXCESS INDEMNITY POLICY**

In consideration of the payment of the premium, and in reliance on all statements made and information furnished to Executive Risk Indemnity Inc. (hereinafter called the Company) and to the Insurer(s) of the Underlying Insurance, and subject to all of the terms, conditions and endorsements of this policy, the Company and the Insured agree as follows:

#### **I. INSURING AGREEMENT**

The Company shall provide the **Insured** with insurance excess of the **Underlying Insurance** stated in ITEM 4 of the Declarations for claims first made against the **Insured** during the **Policy Period**. Except as specifically set forth in the terms, conditions or endorsements of this policy, coverage hereunder shall apply in conformance with the terms, conditions and endorsements of the policy immediately underlying this policy, except that coverage hereunder shall attach only after all **Underlying Insurance** has been exhausted by actual payment of claims or losses thereunder.

#### **II. DEFINITIONS**

- (A) **"Defense Expenses"** means reasonable and necessary legal fees and expenses incurred in defense of claims; however, **Defense Expenses** shall not include salaries, wages, overhead or benefit expenses of the **Insured**.
- (B) **"Insured"** means the persons or organizations insured under the policy immediately underlying this policy.
- (C) **"Policy Period"** means the period from the inception date to the expiration date in ITEM 2 of the Declarations, or to any earlier cancellation date.
- (D) **"Primary Policy"** means the policy scheduled as such in ITEM 4 of the Declarations.
- (E) **"Underlying Insurance"** means all policies scheduled in ITEM 4 of the Declarations and any policies replacing them.

#### **III. MAINTENANCE OF UNDERLYING INSURANCE**

All of the **Underlying Insurance** scheduled in ITEM 4 of the Declarations shall be maintained during the **Policy Period** in full effect and affording coverage at least as broad as the **Primary Policy**, except for any reduction of the limits of liability available under the **Underlying Insurance** solely by reason of actual payment of claims or losses thereunder. Subject at all times to Section XII of this policy, this policy shall not be invalidated solely by reason of any failure of the **Insured** to comply with the foregoing, but under no circumstances shall the Company be liable under this policy earlier or to any greater extent than it would have been if the **Insured** had complied with this condition.

Without prejudice to any other rights of the Company, in the event of any actual or alleged failure by the **Insured** to give notice or to exercise any extensions under any **Underlying Insurance**, or misrepresentation or breach of warranty by the **Insured** with respect to any **Underlying Insurance**, the Company shall not be liable under this policy earlier or to any greater extent than it would have been in the absence of such actual or alleged failure, misrepresentation or breach.

No amendment to any **Underlying Insurance** during the **Policy Period** shall be effective in extending the coverage or limits of liability afforded by this policy unless the Company so agrees in writing.

#### IV. DEPLETION OF UNDERLYING LIMITS

In the event of the depletion of the limits of liability of the **Underlying Insurance** solely as the result of actual payment of claims or losses thereunder by the applicable insurers, this policy shall, subject to the Company's limits of liability and to the other terms, conditions and endorsements of this policy, continue to apply to claims or losses as excess insurance over the amount of insurance remaining under such **Underlying Insurance**.

In the event of the exhaustion of all of the limits of liability of such **Underlying Insurance** solely as the result of actual payment of claims or losses thereunder, the remaining limits available under this policy shall, subject to the Company's limits of liability and to the other terms, conditions and endorsements of this policy, continue for subsequent claims or losses as primary insurance. Under such circumstances, any retention or deductible specified in the **Primary Policy** shall also apply to this policy.

#### V. LIMITS OF LIABILITY

The amount or amounts stated in ITEM 3 of the Declarations are the limits of the Company's liability and shall be the maximum amount(s) payable, including **Defense Expenses**, by the Company under this policy. The limits of liability available to pay damages or settlements shall be reduced, and may be exhausted, by the payment of **Defense Expenses**.

#### VI. DEFENSE EXPENSES AND SETTLEMENTS

In the event a claim is made which involves the coverage afforded by this policy, no **Defense Expenses** shall be incurred without the Company's prior written consent, which consent shall not be unreasonably withheld.

The **Insured** shall not admit liability for or settle any claim for any amount that would involve the coverage afforded by this Policy without the Company's prior written consent.

## VII. CLAIM PARTICIPATION

The Company may, at its sole discretion, elect to participate in the investigation, settlement and/or defense of any claim against the **Insured** even if the **Underlying Insurance** has not been exhausted.

## VIII. SUBROGATION AND RECOVERIES

In the event of any payment under this policy, the Company shall be subrogated to all the **Insured's** rights of recovery against any person or organization, and the **Insured** shall execute and deliver all instruments and papers and do whatever else is necessary to secure such rights.

Any amount recovered after payment under this policy shall be apportioned in the inverse order of payment to the extent of actual payment. The expenses of all such recovery proceedings shall be apportioned in the same ratio as the recoveries.

## IX. NOTICE

The **Insured** shall give the Company notice in writing as soon as practicable of:

- (A) the cancelation of any **Underlying Insurance**, or
- (B) any claim or any situation that could give rise to a claim under any **Underlying Insurance**, or
- (C) any additional or return premiums charged or allowed in connection with any **Underlying Insurance**.

## X. ALTERATION

No change in or modification of this policy shall be effective unless made by endorsement signed by an authorized employee of the Company or any of its agents relating to this policy.

## XI. POLICY TERMINATION

This policy may be canceled by the **Insured** at any time either by surrender of this policy or by written notice stating when thereafter such cancelation is to be effective. This policy may also be canceled by the Company by delivering or mailing to the **Insured** by registered, certified or other first-class mail written notice stating when, not less than sixty (60) days thereafter, such cancelation shall become effective. The mailing of such notice

as aforesaid shall be sufficient proof of notice and this policy shall terminate at the date and hour specified in such notice.

If the period of limitation relating to the giving of notice is prohibited or made void by any law controlling the construction thereof, such period shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.

The Company shall refund the unearned premium computed at the customary short rate if the policy is canceled by the **Insured**. Under all other circumstances, any unearned premium shall be computed pro rata.

**XII. CANCELATION OF UNDERLYING INSURANCE**

This policy shall terminate immediately upon the cancelation of any one or more of the policies scheduled in ITEM 4 of the Declarations, whether canceled by the **Insured** or the applicable insurer. Notice of cancelation or non-renewal of any such policies duly given by any of the applicable insurers shall serve as notice of the cancelation or non-renewal of this policy by the Company.

**XIII. AUTHORIZATION AND NOTICES**

The person or entity named in ITEM 1 of the Declarations shall be the sole agent, and shall act on behalf, of the **Insured** 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 notice of cancelation of this Policy, the payment of premium and the receipt of any return premiums.

**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



President