



Directors, Officers and Trustees Liability Insurance Including

Non-Profit Organization

Reimbursement Policy

Executive Risk Indemnity Inc.

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**THIS IS A CLAIMS MADE INDEMNITY POLICY WITH
EXPENSES INCLUDED IN THE LIMIT OF LIABILITY.
PLEASE READ THE ENTIRE POLICY CAREFULLY.**

EXECUTIVE RISK INDEMNITY INC.

**DIRECTORS, OFFICERS AND TRUSTEES LIABILITY INSURANCE
INCLUDING NON-PROFIT ORGANIZATION REIMBURSEMENT POLICY**

Executive Risk Indemnity Inc. (the "Underwriter"), the Insured Persons and the Insured Entity, subject to all of the terms, conditions and limitations of this Policy, agree as follows:

I. INSURING AGREEMENTS

- (A) The Underwriter will pay on behalf of the **Insured Persons Loss** from **Claims** first made against them during the **Policy Period**, except for **Loss** which the **Insured Entity** pays to or on behalf of the **Insured Persons** as indemnification.
- (B) The Underwriter will pay on behalf of the **Insured Entity Loss** from **Claims** first made against the **Insured Persons** during the **Policy Period** which the **Insured Entity** pays to or on behalf of the **Insured Persons** as indemnification.
- (C) [OPTIONAL COVERAGE] If there is a premium charge in ITEM 5(b) of the Declarations, the Underwriter will pay on behalf of the **Insured Entity Loss** from **Claims** first made against it during the **Policy Period**.

II. DEFINITIONS

Whenever used in this Policy:

- (A) "**Application**" means the application attached to and forming part of this Policy, including any materials submitted therewith, which are on file with the Underwriter and are a part of the Policy, as if physically attached;
- (B) "**Claim**" means (1) written notice received by an **Insured** that any person or entity intends to hold any **Insured** responsible for a **Wrongful Act**, or (2) a legal, injunctive or administrative proceeding against an **Insured Person** solely by reason of his or her status as such;

- (C) **"Defense Expenses"** means reasonable legal fees and expenses incurred by an **Insured** in defense of a **Claim**, except that **Defense Expenses** shall not include remuneration, overhead or benefit expenses associated with any **Insured**;
- (D) **"Insured"** means the **Insured Entity** and any **Insured Person**;
- (E) **"Insured Entity"** means the **Parent Organization** and any **Subsidiary** as of the Inception Date, plus (1) any non-profit **Subsidiary** created or acquired during the **Policy Period** and (2), if the Underwriter agrees to provide such coverage under IV. Condition (G), any for-profit **Subsidiary** created or acquired during the **Policy Period**;
- (F) **"Insured Person"** means any past, present or future director, officer, trustee, employee, volunteer, or any member of the staff, faculty or any duly constituted committee of the **Insured Entity**; and, in the event of the death, incapacity or bankruptcy of an **Insured Person**, the estate, heirs, legal representatives or assigns of such individual;
- (G) **"Loss"** means any amount, including **Defense Expenses**, in excess of the applicable retention and not exceeding the Limit of Liability which an **Insured** is obligated to pay as a result of a **Claim**, except that **Loss** shall not include punitive or exemplary damages, the multiplied portion of any multiplied damage award, fines, taxes or penalties, and matters which are uninsurable under the law pursuant to which this Policy shall be construed;
- (H) **"Parent Organization"** means the non-profit organization named in ITEM 1 of the Declarations;
- (I) **"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. Any extension of coverage under IV. Condition (E) shall be part of and not in addition to the **Policy Period**;
- (J) **"Subsidiary"** means any entity of which the **Parent Organization** has or controls the right to elect or appoint more than fifty percent (50%) of the directors or trustees;
- (K) **"Wrongful Act"** means any actual or alleged error, omission, misstatement, misleading statement or breach of duty (1) by an **Insured Person** solely in his or her capacity as such, or while serving as a director or trustee of any other non-profit entity at the express written direction of the **Insured Entity**; or (2) with respect to coverage under Insuring Agreement C, by the **Insured Entity**.

III. EXCLUSIONS

(A) Except for **Defense Expenses**, the Underwriter shall not pay **Loss** for **Claims** brought about or contributed to in fact (1) by any dishonest or fraudulent act or omission or any willful violation of any statute, rule or law by any **Insured** or (2) by any **Insured** gaining any profit, remuneration or advantage to which such **Insured** was not legally entitled. For the purposes of determining the applicability of this III. Exclusion (A), no **Wrongful Act** of any **Insured Person** shall be imputed to any other **Insured Person**. Further, each **Insured** agrees that, if it is finally established that the Underwriter has no liability to an **Insured** for **Loss** in connection with any **Claim** by reason of this III. Exclusion (A), such **Insured** will repay the Underwriter upon demand all **Defense Expenses** paid on behalf of such **Insured** in connection with such **Claim**.

(B) The Underwriter shall not pay **Loss**, including **Defense Expenses**, for **Claims**:

- (1) for any actual or alleged bodily injury, sickness, mental anguish, emotional distress, disease or death of any person, or damage to or destruction of any tangible property including loss of use thereof;
- (2) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any actual or alleged generation, storage, transportation, discharge, dispersal, escape, treatment, removal or disposal of any pollutant or contaminant, including without limitation waste, infectious or otherwise, and medical and pharmaceutical supplies;
- (3) by or at the behest of the **Insured Entity**, except that this exclusion shall not apply to any derivative action brought totally independently of, and without the solicitation, assistance, participation or intervention of, any of the **Insureds**;
- (4) based on, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any fact, circumstance or situation (a) underlying or alleged in any prior and/or pending litigation as of the Inception Date, or (b) which has been the subject of any notice given before the Inception Date under any policy of insurance;
- (5) for any actual or alleged violations of the Employee Retirement Income Security Act of 1974 or any regulations promulgated thereunder, or of any similar provisions of any federal, state or local law or regulation;
- (6) against any **Subsidiary** and its **Insured Persons** in such capacity for any **Wrongful Act** occurring before the date such entity became a **Subsidiary**.

IV. CONDITIONS

(A) **NO DUTY TO DEFEND; ADVANCEMENT OF DEFENSE EXPENSES:**

- (1) It shall be the duty of the **Insureds** and not the duty of the Underwriter to defend **Claims**. No **Defense Expenses** shall be incurred and no settlement of any **Claim** shall be made without the Underwriter's consent, such consent not to be unreasonably withheld.
- (2) The Underwriter shall, upon written request by an **Insured**, pay on a current basis **Defense Expenses** which are otherwise payable under this Policy, except to the extent that such **Defense Expenses** are being paid under the terms of any other policy or policies of insurance.

(B) **OTHER INSURANCE; OTHER INDEMNIFICATION:**

This Policy shall be excess of and not contribute with (1) other existing insurance, including but not limited to any insurance under which there is a duty to defend, unless such other insurance is specifically in excess of this Policy, and (2) indemnification to which an **Insured** is entitled from any entity other than the **Insured Entity**. This Policy shall not be subject to the terms of any other insurance.

(C) **LIMIT OF LIABILITY; RETENTION; PAYMENT OF LOSS:**

- (1) The amount stated in ITEM 3 of the Declarations shall be the maximum aggregate Limit of Liability of the Underwriter under the Policy for all **Loss** resulting from all **Claims** made during the **Policy Period**, regardless of the time of payment by the Underwriter. **Defense Expenses** shall be part of and not in addition to such Limit of Liability, and payment of **Defense Expenses** by the Underwriter shall reduce such Limit of Liability.
- (2) All **Claims** based on, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving the same or related facts, circumstances, situations, transactions or events or the same or related series of facts, circumstances, situations, transactions or events shall be deemed to be a single **Claim** made at the time the earliest such **Claim** is made. A **Claim** shall be deemed made when the Underwriter is notified under IV. Condition (F), or when such **Claim** is first made or asserted against an **Insured**, whichever occurs first.
- (3) If **Loss** from a **Claim** is covered under more than one Insuring Agreement, the applicable retention stated in ITEM 4 of the Declarations shall be applied separately to that part of the **Loss** covered by each Insuring Agreement, and the sum of such retentions shall be the retention applicable to such **Claim**. The total retention shall not exceed the largest retention stated in ITEM 4 of the Declarations. For purposes of determining the applicable retentions, **Loss** applicable to Insuring Clause B includes that for which indemnification by the **Insured Entity** is legally

permissible, whether or not actual indemnification is made, except where such indemnification is not made by the **Insured Entity** solely by reason of its financial insolvency.

- (4) Except for the payment of **Defense Expenses** as provided in IV. Condition (A)(2), the Underwriter shall pay or reimburse **Loss** only upon the final disposition of any **Claim**.

(D) COOPERATION; SUBROGATION:

In the event of a **Claim**, the **Insureds** will provide the Underwriter with all information, assistance and cooperation that the Underwriter reasonably requests, and will do nothing that may prejudice the Underwriter's position or potential or actual rights of recovery. In the event of payment, the Underwriter shall be subrogated to all of the rights of recovery of the **Insureds**, who shall execute all papers and do everything necessary to secure such rights, including the execution of any documents necessary to enable the Underwriter effectively to bring suit in their name.

(E) DISCOVERY PERIOD:

If the Policy is canceled for any reason other than non-payment of premium or is not renewed by the Underwriter or the **Parent Organization**, the **Insureds** shall have the right to an extension of the coverage granted by this Policy for a period of 365 days after the date such cancellation or non-renewal takes effect (the "Termination Date"), but only with respect to any **Wrongful Act** before the Termination Date. The premium for such extension of coverage shall be forty percent (40%) of the total premium set forth in ITEM 5(c) of the Declarations, and must be paid within 30 days of the Termination Date. Such extension of coverage shall be part of and not in addition to the **Policy Period**, and the Underwriter's aggregate Limit of Liability in respect of all **Claims** made during the **Policy Period**, including such extension of coverage, shall not exceed the available Limit of Liability set forth in ITEM 3 of the Declarations.

(F) NOTICE OF CLAIM OR CIRCUMSTANCES:

- (1) If during the **Policy Period** any **Claim** is made, as a condition precedent to their right to payment, the **Insureds** shall give the Underwriter written notice by certified mail of such **Claim** as soon as practicable after such **Claim** is first made.
- (2) If during the **Policy Period** an **Insured** first becomes aware of any circumstances which may subsequently give rise to a **Claim** against any **Insured** and, as soon as practicable thereafter but before the expiration or cancellation of the Policy, gives the Underwriter written notice by certified mail of such circumstances with full particulars of the specific **Wrongful**

Act involved, then any **Claim** subsequently made against an **Insured** arising out of such **Wrongful Act** shall be deemed made during the **Policy Period**.

(G) **ADJUSTMENTS:**

If after the Inception Date the **Insured Entity** acquires or assumes all or substantially all of the equity, assets or liabilities of, or merges with, any for-profit entity, or creates a for-profit **Subsidiary**, there shall be no coverage under this Policy for **Loss** in connection with any **Claim** for **Wrongful Acts** arising out of or in any way relating to the entity, assets or liabilities acquired, assumed, merged with or created, unless (1) the Underwriter receives from the **Insured Entity** full details of such transaction or event and (2) the Underwriter, at its sole discretion, agrees by written endorsement to provide such coverage upon such terms, conditions and limitations as it may require.

(H) **REPRESENTATIONS; SEVERABILITY:**

The **Insureds** represent that the particulars and statements contained in the **Application** are true and agree that: (1) those particulars and statements are the basis of this Policy and are to be considered as incorporated into and constituting a part of this Policy; (2) those particulars and statements are material to the acceptance of the risk assumed by the Underwriter; and (3) this Policy is issued in reliance upon the truth of such representations. The **Application** shall be construed as a separate application for coverage by each of the **Insureds**. Except for material facts or circumstances known to the person or persons who signed the **Application**, no statement in the **Application** or knowledge or information possessed by an **Insured** shall be imputed to any other **Insured** for the purpose of determining the availability of coverage.

(I) **NO ACTION AGAINST THE UNDERWRITER:**

- (1) No action shall be taken against the Underwriter unless, as a condition precedent thereto, there has been full compliance with all of the terms of this Policy and until the amount of the **Insureds** obligation to pay shall have been finally determined either by judgment against the **Insureds** after adjudicatory proceedings, or by written agreement of the **Insureds**, the claimant and the Underwriter.
- (2) No person or organization shall have any right under this Policy to join the Underwriter as a party to any **Claim** against an **Insured** to determine the liability of such **Insured**; nor shall the Underwriter be impleaded by an **Insured** or his, her or its legal representative in any such **Claim**. Bankruptcy or insolvency of any of the **Insureds** or of any of their estates shall not relieve the Underwriter of any of its obligations under this Policy.

(J) **AUTHORIZATION AND NOTICES:**

The **Insureds** agree that the **Parent Organization** shall act on their behalf with respect to receiving all notices and any return premiums from the Underwriter.

(K) **CHANGES:**

Notice to any agent or knowledge possessed by any agent or other person acting on behalf of the Underwriter shall not effect a waiver or change in any part of this Policy or stop the Underwriter from asserting any right under the terms, conditions and limitations of this Policy. The terms, conditions and limitations of this Policy can only be waived or changed by written endorsement.

(L) **ASSIGNMENT:**

Assignment of interest under this Policy shall not bind the Underwriter without its consent.

(M) **CANCELLATION:**

(1) The Underwriter may not cancel this Policy except for failure to pay a premium when due, in which case 10 days written notice will be given.

(2) The **Parent Organization** may cancel this Policy only by mailing the Underwriter written notice stating when such cancellation shall be effective. In such event, 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 cancellation is effective or as soon as practicable after cancellation becomes effective, but payment or tender of unearned premium is not a condition of cancellation. The Underwriter shall not be required to renew this Policy upon its expiration.

(N) **EXHAUSTION:**

If the Limit of Liability is exhausted by the payment of **Loss**, including **Defense Expenses**, all obligations of the Underwriter under this Policy shall be completely fulfilled and extinguished, and the Underwriter shall have no further obligations of any kind or nature whatsoever under this Policy.

(O) **ACCEPTANCE:**

The **Insureds** agree that this Policy, including the **Application** and any endorsements, constitutes the entire agreement between them and the Underwriter or any of its agents relating to this insurance.

(P) **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 coverage.

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. Aulick

Secretary



Co-Chairman