

40ActPLUSSM

Investment Advisers and Financial Services Providers
Directors and Officers Liability,
Including Employment Practices Liability, Coverage Part

Executive Risk Indemnity Inc.

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INVESTMENT ADVISERS AND FINANCIAL SERVICES PROVIDERS DIRECTORS AND OFFICERS LIABILITY, INCLUDING EMPLOYMENT PRACTICES LIABILITY, COVERAGE PART

NOTICE: THE COVERAGE AFFORDED UNDER THIS COVERAGE PART IS CLAIMS MADE COVERAGE, WHICH APPLIES ONLY TO "CLAIMS" FIRST MADE DURING THE "POLICY PERIOD," OR, IF PURCHASED, THE EXTENDED REPORTING PERIOD. THE LIMIT OF LIABILITY AVAILABLE TO PAY DAMAGES OR SETTLEMENTS UNDER THIS COVERAGE PART WILL BE REDUCED BY THE PAYMENT OF "DEFENSE EXPENSES," AND "DEFENSE EXPENSES" WILL BE APPLIED AGAINST THE RETENTION. THE COVERAGE AFFORDED UNDER THIS COVERAGE PART DIFFERS IN SOME RESPECTS FROM THAT AFFORDED UNDER OTHER POLICIES. PLEASE READ THE ENTIRE POLICY, INCLUDING THE GENERAL TERMS AND CONDITIONS AND THIS COVERAGE PART, CAREFULLY.

Subject to the limit of liability and to all of the terms, conditions and limitations of this Policy and any endorsements to this Policy, Executive Risk Indemnity Inc. (the "Underwriter") and the Insureds agree as follows:

I. INSURING AGREEMENTS

- (A) The Underwriter will pay on behalf of **Insured Persons Loss** from **Claims** first made against them during the **Policy Period** or, if applicable, the Extended Reporting Period, for **Wrongful Acts**, including **Employment Practices Wrongful Acts**, unless the **Company** pays such **Loss** to or on behalf of **Insured Persons** as indemnification.
- (B) The Underwriter will pay on behalf of the **Company Loss** from **Claims** first made against **Insured Persons** during the **Policy Period** or, if applicable, the Extended Reporting Period, for **Wrongful Acts**, including **Employment Practices Wrongful Acts**, if the **Company** pays such **Loss** to or on behalf of the **Insured Persons** as indemnification.
- (C) (Optional Coverage) If it is stated in the Declarations that coverage has been made available under this INSURING AGREEMENT (C), the Underwriter will pay on behalf of the **Company Loss** from **Claims** first made against the **Company** during the **Policy Period** or, if applicable, the Extended Reporting Period, for **Wrongful Acts**, including **Employment Practices Wrongful Acts**.

II. DEFINITIONS

- (A) “**Company**” means the **Named Insured** and any **Subsidiary** created or acquired on or before the Inception Date set forth in ITEM 2(a) of the Declarations.
- (B) “**Employment Practices Wrongful Act**” means any actual or alleged:
- (1) wrongful termination or constructive termination of the employment of, or demotion of or failure or refusal to hire or promote, any person;
 - (2) violation of any federal, state or local law (whether statutory or common law) prohibiting discrimination against any employee of, or applicant for employment with, the **Company**;
 - (3) workplace harassment (whether sexual or otherwise) adversely affecting any employee of, or applicant for employment with, the **Company**;
 - (4) retaliatory treatment against an employee of the **Company** on account of such employee's exercise or attempted exercise of his or her rights under law;
 - (5) negligent evaluation, negligent supervision, wrongful discipline, or wrongful deprivation of career opportunity; or
 - (6) breach of an implied contract or agreement arising out of any personnel manual or policy statement.
- (C) “**Insured**” means the **Company** and any **Insured Person**.
- (D) “**Insured Person**” means:
- (1) any past, present or future director, officer, trustee or member of the Board of Managers of the **Company**, or any other natural person who at any time holds a designated position or title at the **Company** with duties and responsibilities equivalent to those of a director, officer, trustee or member of the Board of Managers of the **Company**; and
 - (2) any past, present or future employee of the **Company**, but only if and to the extent that **Claims** are made against the employee for **Employment Practices Wrongful Acts**.

In the event of the death, incapacity or bankruptcy of an **Insured Person**, any **Claim** against the estate, heirs, legal representatives or assigns of such **Insured Person** for a **Wrongful Act** of such **Insured Person** will be deemed to be a **Claim** against such **Insured Person**.

(E) **“Securities Activity Wrongful Act”** means:

- (1) any actual or alleged violation of the Investment Company Act of 1940, Investment Advisers Act of 1940, the Securities Act of 1933 or the Securities and Exchange Act of 1934, or
- (2) any actual or alleged act, error, omission, misstatement, misleading statement or breach of duty, but only in connection with a purchase or sale, or an offer to purchase or sell, securities.

(F) **“Wrongful Act”** means:

- (1) any actual or alleged act, error, omission, misstatement, misleading statement or breach of fiduciary or other duty by an **Insured Person** in his or her capacity as an **Insured Person**;
- (2) any matter asserted against an **Insured Person** solely by reason of his or her status as such;
- (3) any **Employment Practices Wrongful Act** by an **Insured Person** in his or her capacity as an **Insured Person**;
- (4) any **Securities Activity Wrongful Act** by an **Insured Person** in his or her capacity as an **Insured Person**; and
- (5) any **Employment Practices Wrongful Act, Securities Activity Wrongful Act**, or any other actual or alleged act, error, omission, misstatement, misleading statement or breach of duty by the **Company**; provided, that this DEFINITION (F)(5) will only apply if it is stated in the Declarations that coverage has been made available under INSURING AGREEMENT (C).

III. EXCLUSIONS

This Coverage Part does not apply to any **Claim**:

(A) brought about or contributed to in fact by:

- (1) any dishonest, fraudulent or criminal act or omission by an **Insured**; or
- (2) any willful or intentional violation of any statute, rule or law by an **Insured**; or

- (3) the gaining of any profit, remuneration or advantage by an **Insured** to which the **Insured** was not legally entitled;

provided, that this EXCLUSION (A) shall only apply to an **Insured** if it is established that the **Insured** participated in or acquiesced in the dishonest, fraudulent or criminal act or omission, the willful or intentional violation, or the gaining of profit, remuneration or advantage.

- (B) based on or directly or indirectly arising out of or resulting from:

- (1) any **Wrongful Act** or any matter, fact, circumstance, transaction, or event which has been the subject of, or which is logically or causally connected to, any **Claim** made or notice given under any policy of insurance prior to the Inception Date set forth in ITEM 2(a) of the Declarations; or
- (2) any **Wrongful Act** or any matter, fact, circumstance, transaction, or event which was described in the **Application** or in any application for a policy of which this Policy is a renewal or replacement; or
- (3) any civil, criminal, administrative or arbitration proceeding as to which any **Insured** has received written notice prior to the Inception Date set forth in ITEM 2(a) of the Declarations, or any matter, fact, circumstance, transaction or event underlying or alleged in such proceeding;

- (C) 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 actual or alleged nuclear reaction, nuclear radiation, radioactive contamination, or radioactive substance;
- (3) 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;

- (D) for any actual or alleged invasion of privacy, malicious use or abuse of process, malicious prosecution, wrongful entry or eviction, false arrest, false imprisonment, assault or battery;

- (E) for any bodily injury, emotional distress, mental anguish, sickness, disease or death of any person, or loss of consortium, support, companionship or services of any kind resulting therefrom; provided, that this EXCLUSION (E) will not apply to allegations of emotional distress or mental anguish if and only to the extent that they are made as part of a **Claim** for an **Employment Practices Wrongful Act**;
- (F) for damage to, destruction of, loss of, or loss of use of, tangible property;
- (G) for libel, slander, or oral or written publication of defamatory or disparaging material; provided, that this EXCLUSION (G) will not apply to allegations of libel, slander, or oral or written publication of defamatory or disparaging material if and only to the extent that they are made as part of a **Claim** for an **Employment Practices Wrongful Act**;
- (H) for an **Insured's** liability under any contract or agreement, regardless of whether such liability is direct or assumed; provided, that this EXCLUSION (H) will not apply to any **Claim** against the **Company** for an **Employment Practices Wrongful Act** if (i) it is stated in the Declarations that coverage has been made available under INSURING AGREEMENT (C), and (ii) liability would attach to the **Company** even in the absence of the contract or agreement; provided further, that in no event will coverage be available for any salary, wages, or other employment-related benefits which the **Company** is obligated to pay to any employee under a written contract either to commence or continue employment or to make any payment in the event of a termination of employment;
- (I) brought by or on behalf of, or in the name or right of, any **Insured**; provided, that this EXCLUSION (I) will not apply to:
 - (1) any **Claim** by an **Insured Person** in the form of a crossclaim, third party claim or other claim for contribution or indemnity which is part of or results directly from a **Claim** which is not otherwise excluded by the terms of this Policy; or
 - (2) any derivative action by a security holder of the **Company** on behalf of, or in the name or right of, the **Company**, if such action is brought and maintained independently of, and without the solicitation, assistance, participation or intervention of, the **Insured**;
 - (3) any **Claim** for an **Employment Practices Wrongful Act**;

- (J) based on or directly or indirectly arising out of or resulting from the service by any **Insured Person** as a director, officer or employee of:
- (1) any entity other than the **Company**, even if such service is directed or requested by the **Company**; or
 - (2) any entity acquired by the **Company**, whether by merger, consolidation, or otherwise, at any time prior to the **Company's** acquisition of such entity;
- (K) for relief under the Fair Labor Standards Act, the National Labor Relations Act, the Worker Adjustment and Retraining Notification Act, the Consolidated Omnibus Budget Reconciliation Act of 1985, the Occupational Safety and Health Act, any workers' compensation, unemployment insurance, social security, or disability benefits law, other similar provisions of any federal, state or local statutory or common law or any rules or regulations promulgated under any of the foregoing;
- (L) against any **Subsidiary** or other entity acquired by the **Company**, whether by merger, consolidation or otherwise, or against any **Insured Person** of such **Subsidiary** or other entity in his or her capacity as such for any **Wrongful Act**, including any **Employment Practices Wrongful Act**, committed during any time in which such entity is not a **Subsidiary** or at any time before the **Company's** acquisition of such entity; or
- (M) based on or directly or indirectly arising out of or resulting from any actual or alleged violation of the Employee Retirement Income Security Act of 1974 or any regulations promulgated thereunder or relating thereto, or of any similar provisions of international, federal, state or local statutory or common law.

IV. **CONDITIONS**

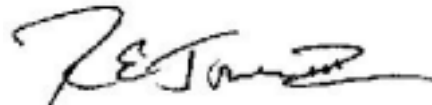
(A) **Presumption of Indemnification; Applicable Retention:**

- (1) The certificate of incorporation, charter, articles of association or other organizational documents of the **Named Insured** and each **Subsidiary**, including bylaws and resolutions, will be deemed to have been adopted or amended to provide indemnification to **Insured Persons** to the fullest extent permitted by law.

- (2) Regardless of whether **Loss** in connection with any **Claim** against **Insured Persons** is payable under INSURING AGREEMENT (A) or (B), the retention set forth in ITEM 4 of the Declarations applicable to this Coverage Part will apply to any **Loss** as to which indemnification by the **Named Insured, Company** or any **Subsidiary** is legally permissible, whether or not actual indemnification is made, unless such indemnification is not made by the **Named Insured, Company** or **Subsidiary** solely by reason of financial insolvency.

In witness whereof, the Underwriter has caused this Policy to be executed on the Declarations Page.

Henry A. Aubil
Secretary


President