



# Multimedia Liability

Insurance Policy

**Executive Risk Indemnity Inc.**

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**DEFENSE EXPENSES ARE INCLUDED IN THE LIMITS OF  
LIABILITY UNDER THIS POLICY. PLEASE READ  
THE ENTIRE POLICY CAREFULLY.**

**EXECUTIVE RISK INDEMNITY INC.**

**MULTIMEDIA LIABILITY INSURANCE POLICY**

**Subject to the applicable Limits of Liability and all of the terms and conditions of this Policy, Executive Risk Indemnity Inc. (the Underwriter) and the Insured agree as follows:**

**I. INSURING AGREEMENT**

The Underwriter will pay on behalf of the **Insured Loss** as a result of any **Claim** arising out of the **Insured's Media Activities**, provided that the **Media Activities** giving rise to the **Claim** occurred during the **Policy Period**.

**II. DEFINITIONS**

- (A) **"Application"** means the application attached to and forming part of this Policy, including any materials submitted in connection with such application, all of which are on file with the Underwriter and are part of this Policy, as if physically attached.
- (B) **"Claim"** means:
- (1) any written demand for the retraction of **Matter** published, disseminated or released by an **Insured**;
  - (2) any written notice received by an **Insured** that it is the intention of any person or entity to hold the **Insured** responsible for monetary damages or injunctive relief;
  - (3) any judicial, administrative or other proceeding against an **Insured**; or
  - (4) any written request to toll or waive a statute of limitations relating to a potential **Claim** against an **Insured**.
- (C) **"Company"** means the entity or individual named in ITEM 1 of the Declarations.
- (D) **"Covered Media"** means the publications, programs, broadcast or cable stations, or other communications listed in ITEM 5 of the Declarations, including any special editions of, supplements to, or on-line versions of such media. **Covered Media**

also includes publications, programs, broadcast or cable stations, or other communications created or acquired by the **Company** or any **Subsidiary** after the Inception Date in ITEM 2(a) of the Declarations, but only with respect to **Media Activities** occurring during the ninety (90) days following such creation or acquisition. There will be no coverage under this policy for **Media Activities** occurring after such ninety (90) day period unless the Underwriter and the Company have agreed to such coverage upon such terms, conditions, and limitations of coverage and such additional premium as the Underwriter may require.

- (E) “**Defense Expenses**” means reasonable legal fees and expenses incurred in the investigation, defense or appeal of any **Claim**, including the costs of appeal, attachment or similar bonds, provided that the Underwriter shall have no obligation to furnish any bond. **Defense Expenses** do not include any remuneration, salaries, wages, tips, expenses, overhead, or benefits expenses of any **Insured**, except with the prior written consent of the Underwriter.
- (F) “**First Inception Date**” means the Inception Date of the first Multimedia Liability Policy issued to the **Company** by the Underwriter or an affiliate of the Underwriter and continuously renewed thereafter.
- (G) “**Insured**” means:
- (1) the **Company** and any **Subsidiary**;
  - (2) any person who was, is or becomes a director, an officer, an employee, or a partner of the **Company** or any **Subsidiary**, but only with respect to **Claims** arising out of acts, errors or omissions within the scope of the duties of such director, officer, employee or partner; in the event of the death, incapacity or bankruptcy of an **Insured** described in this DEFINITION (G)(2), any **Claim** against the estate, heirs, legal representatives or assigns of such **Insured** will be deemed to be a **Claim** against such **Insured**; or
  - (3) any agent or independent contractor of the **Company** or any **Subsidiary**, including but not limited to stringers, freelancers and photographers, but only with respect to **Claims** arising out of **Media Activities** done for or at the direction of the **Company** or any **Subsidiary**, and only if and to the extent that the **Company** or any **Subsidiary**, after evaluating the merits of the **Claim**, has agreed in writing to include such agent or independent contractor as an **Insured** under this Policy.

- (H) “**Loss**” means **Defense Expenses**, judgments, settlements and any damages (including punitive damages if insurable under applicable law), pre-judgment interest and post-judgment interest, which an **Insured** is legally obligated to pay as a result of a **Claim**; provided, that **Loss** does not include:
- (1) civil or criminal fines, sanctions, taxes or penalties, including those imposed by any federal, state, or local governmental body or by ASCAP, SESAC, BMI, or other similar licensing organizations;
  - (2) the multiplied portion of any multiplied damages award;
  - (3) matters which are uninsurable under the law pursuant to which this Policy is construed;
  - (4) the costs of compliance with, or any losses (other than **Defense Expenses**) incurred as a result of, an injunction or other equitable order or judgment; or
  - (5) the costs of recall, correction, reproduction, or reprinting of **Matter** or the costs of any services in connection therewith.

With regard to punitive damages, this insurance shall apply to the fullest extent permitted by law. Where the **Insured** determines, based on written opinion of counsel, that punitive damages are insurable under any applicable law, the Underwriter shall not challenge the **Insured’s** determination of insurability.

- (I) “**Matter**” means the content of any communication of any kind whatsoever, regardless of the nature or form of such **Matter** or the medium by which such **Matter** is communicated, including but not limited to language, data, facts, fiction, computer coding, music, photographs, images, advertisements, artistic expression, or visual or graphical materials.
- (J) “**Media Activities**” means, in connection with the **Covered Media**, any actual or alleged act, error, or omission committed in the course of, or arising out of:
- (1) the gathering, recording or collection of **Matter** for inclusion in the **Covered Media**, including but not limited to any actual or alleged:
    - (a) invasion or infringement of the right of privacy or publicity, including the torts of intrusion upon seclusion, publication of private facts, false light, or misappropriation of name or likeness;
    - (b) outrage, infliction of emotional distress or prima facie tort;
    - (c) false arrest, detention or imprisonment;

- (d) trespass, wrongful entry or eviction, eavesdropping, or other invasion of the right of private occupancy; or
- (e) copyright infringement, plagiarism, or misappropriation of property rights, information or ideas; or
- (2) the publication, dissemination or release of **Matter** in the **Covered Media**, by any form, method or medium of communication, including but not limited to any actual or alleged:
  - (a) libel, slander or any other form of defamation or harm to the character or reputation of any person or entity;
  - (b) invasion or infringement of the right of privacy or publicity, including the torts of intrusion upon seclusion, publication of private facts, false light, or misappropriation of name or likeness;
  - (c) outrage, infliction of emotional distress or prima facie tort;
  - (d) product disparagement, trade libel, dilution or infringement of title, slogan, trademark, trade name, service mark, or service name;
  - (e) copyright infringement, plagiarism, or misappropriation of property rights, information or ideas; or
  - (f) negligence in connection with the content of **Matter**, including but not limited to any **Claim** alleging harm to a person or entity who acted or failed to act in reliance upon such **Matter**; or
- (3) the publication, dissemination or release of **Matter** by any party with whom the **Insured** has entered into a written, oral or implied-in-fact indemnification or hold harmless agreement regarding **Claims** arising out of the publication, dissemination or release of such **Matter**.
- (K) “**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.
- (L) “**Related Claims**” means all **Claims** based on, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving the same or related (logically or causally) facts, circumstances, situations, transactions, events, or **Media Activities**, or the same or related (logically or causally) series of facts, circumstances, situations, transactions, events, or **Media Activities**.

- (M) “**Renewal Period**” means any continuous and unbroken period subsequent to the conclusion of the **Policy Period** during which the coverage under this Policy is renewed with the Underwriter or an affiliate of the Underwriter.
- (N) “**Subsidiary**” means any corporation created or acquired on or before the Inception Date in ITEM 2(a) of the Declarations, during any time in which the **Company** owns, directly or through one or more **Subsidiaries**, more than fifty percent (50%) of the outstanding securities representing the right to vote for the election of such corporation’s directors. **Subsidiary** also includes any such corporation created or acquired after the Inception Date in ITEM 2(a) of the Declarations, but only with respect to **Media Activities** occurring during the ninety (90) days following such creation or acquisition. There will be no coverage under this policy for **Media Activities** occurring after such ninety (90) day period unless the Underwriter has agreed to provide such coverage upon such terms, conditions and limitations of coverage and such additional premium, as it may require.

### III. EXCLUSIONS

- (A) The Underwriter will not pay **Loss**, including **Defense Expenses**, for **Claims**:
- (1) based on or directly or indirectly arising out of or resulting from any fraudulent act or omission or willful violation of any criminal statute; or the gaining by any **Insured** of any profit, remuneration or advantage to which such **Insured** was not legally entitled; provided, however, that this EXCLUSION (A)(1) shall not apply unless such fraudulent act or omission, willful violation of statute, or gaining of profit, remuneration or advantage has been established by a final adjudication in any judicial or administrative proceeding or by admission of an **Insured**;
- (2) brought by any employee, former employee or prospective employee based on or directly or indirectly arising out of or resulting from the employment relationship or the nature, terms or conditions of employment, including but not limited to claims of discrimination, harassment, wrongful discharge, breach of contract, employment-related defamation, or workplace torts; or
- (3) for bodily injury or property damage, except for:
- (a) bodily injury arising exclusively out of emotional distress allegedly caused by any **Media Activities**; or
- (b) bodily injury or property damage resulting from a **Claim** of negligent publication as described in DEFINITION (J)(2)(f) of this Policy.

- (B) The Underwriter will not pay **Loss**, including **Defense Expenses**, for **Claims** 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;
  - (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;
  - (3) any actual or alleged violation of the Securities Act of 1933, the Securities Exchange Act of 1934, the Trust Indenture Act of 1939, the Investment Company Act of 1940, the Investment Advisers Act of 1940, any similar state "blue sky" statute, any rule or regulation promulgated under any of the foregoing, or any amendment to any of the foregoing or any provision of the common law imposing liability in connection with the offer, sale or purchase of securities;
  - (4) any actual or alleged infringement of any patent, contributing to the infringement of any patent, or inducing the infringement of any patent;
  - (5) any actual or alleged price fixing, restraint of trade or monopolization, or any actual or alleged violation of:
    - (a) the Federal Trade Commission Act, the Sherman Act, the Clayton Act, or any other federal or state statutory provision involving antitrust, monopoly, price fixing, price discrimination, predatory pricing, or restraint of trade activities; or
    - (b) any rules or regulations promulgated under or in connection with the statutes described in clause (a) above;
  - (6) any unauthorized access to, alteration of, or damage to any computer, computer program, computer network or computer database, including the infection of any of the foregoing with a computer virus; or

- (7) any actual or alleged delay, disruption or failure of any communication network, service, hardware or software, including but not limited to any **Claim** for lost profits or opportunities as a result of such delay, disruption or failure.
- (C) The Underwriter will not pay **Loss**, including **Defense Expenses**, for **Claims** based on or directly or indirectly arising out of or resulting from:
- (1) any act, error, omission, fact, circumstance, situation, transaction, event, or decision which, prior to the Inception Date, is the subject of any notice or **Claim** under any other policy of insurance, including but not limited to any policy of which this Policy is a renewal or replacement;
  - (2) any act, error, omission, fact, circumstance, situation, transaction, event, or decision underlying or alleged in any prior and/or pending litigation or administrative or regulatory proceeding as of the Inception Date in ITEM 2(a) of the Declarations;
  - (3) any intentional false advertising or unfair or deceptive trade practices with respect to the advertising or sales of the **Insured's** own products, publications or services; or
  - (4) any actual or alleged breach of any express or implied contract, agreement, warranty or guarantee, except that this EXCLUSION (C)(4) shall not apply to:
    - (a) any **Claim** for liability which the **Insured** would have incurred in the absence of such contract, agreement, warranty or guarantee; or
    - (b) any **Claim** alleging breach of contract or promissory estoppel relating to any alleged agreement between the **Insured** and the source of any **Matter** supplied to the **Insured** regarding the confidentiality to be afforded to such source or such **Matter**.

#### IV. CONDITIONS

(A) **Territory:**

This Policy applies to **Media Activities** occurring and **Claims** asserted against the **Insured** anywhere in the world. If judgment is rendered or settlement made in denominations other than United States dollars, payment under this Policy shall be made in United States dollars at the rate of exchange prevailing on the date such payment is made.



(B) **Notice of Claims:**

As a condition precedent to any right to payment or coverage under this Policy, the **Insured** must give written notice to the Underwriter at the address set forth in ITEM 7 of the Declarations of any **Claim**, with full details thereof, as soon as practicable after such **Claim** is first made.

(C) **Defense of Claims:**

- (1) With respect to each **Claim** for which coverage is afforded under this Policy, the **Insured** shall have the option to defend such **Claim** itself or to assign the duty to defend such **Claim** to the Underwriter.
- (2) Unless the **Insured** notifies the Underwriter of its election to assign the duty to defend a **Claim** to the Underwriter pursuant to CONDITION (C)(3) below, the **Insured** shall have the duty to defend such **Claim**. The **Insured** may retain counsel from the list of Panel Counsel supplied by the Underwriter, or may retain qualified counsel of its own choosing with the Underwriter's prior consent, such consent not to be unreasonably withheld. The Underwriter will, upon written request, pay on a current basis **Defense Expenses** for which this Policy provides coverage.
- (3) The **Insured** may elect to assign the duty to defend any **Claim** to the Underwriter by so notifying the Underwriter in writing. Such notice must be received by the Underwriter within a reasonable time after such **Claim** is first made, but in no event later than ten (10) days from the date on which a complaint or other legal process is served on the **Insured**. Upon receiving such notification, the Underwriter shall have the duty to defend such **Claim** as part of and subject to the applicable Limit of Liability stated in ITEM 3 of the Declarations.
- (4) Except for **Defense Expenses** paid on a current basis pursuant to CONDITIONS (C)(2) and (C)(3) above, the Underwriter will pay **Loss** only upon the final disposition of a **Claim**.

(D) **Retraction Demands and Settlement of Claims:**

- (1) The **Insured** shall retain sole discretion regarding whether and under what circumstances to issue a retraction of **Matter** previously communicated, distributed or released by the **Insured**.
- (2) No **Insured** may admit any liability for, make any settlement offer with respect to, or settle any **Claim** in excess of the applicable retention without the Underwriter's written consent.

- (3) The **Insured** shall promptly communicate to the Underwriter all offers to settle **Claims** covered by this Policy. The Underwriter, however, has no right to settle **Claims** under this Policy without the consent of the **Insured**, and the Underwriter's duty to defend and to pay **Loss** (including **Defense Expenses**) shall not be limited by the **Insured's** refusal to accept any offer to settle a **Claim**.

(E) **Limits of Liability and Retentions:**

- (1) Regardless of the number of **Claims**, the number of person(s) or entity(ies) included within the definition of **Insured**, or the number of claimants who make **Claims** against the **Insured**:
  - (a) the amount stated in ITEM 3(a) of the Declarations shall be the maximum limit of liability of the Underwriter for all **Loss** (including **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;
  - (b) the amount stated in ITEM 3(b) of the Declarations shall be the maximum aggregate limit of liability of the Underwriter for all **Loss** (including **Defense Expenses**) payable under this Policy.
- (2) The retention stated in ITEM 4(a) of the Declarations shall apply separately to each **Claim** or **Related Claims** and shall apply to all **Loss** (including **Defense Expenses**).
- (3) **Defense Expenses** shall be part of and not in addition to the applicable limits of liability stated in ITEM 3 of the Declarations, and payment thereof by the Underwriter shall reduce and may exhaust the applicable limits of liability under this Policy.
- (4) The obligations of the Underwriter to pay **Loss** and to defend or continue to defend any **Claim** against the **Insured** shall only be in excess of the applicable retention stated in ITEM 4 of the Declarations, which amount shall be borne by the **Insured** at the **Insured's** own expense. The Underwriter shall have no obligation whatsoever, either to the **Insured** or any other person or entity, to pay all or any portion of the applicable retention on behalf of the **Insured**. The Underwriter shall, however, at its sole discretion, have the right and option to do so, in which event the **Insured** will repay the Underwriter any amounts so paid.

- (5) The Underwriter shall not be obligated to pay any **Loss** (including **Defense Expenses**), or to defend or continue to defend any **Claim** after the applicable limit of liability has been exhausted.

(F) **Other Insurance:**

All **Loss** payable under this Policy will be specifically excess of and will not contribute with other valid insurance (whether collectible or not), including but not limited to any other insurance under which there is a duty to defend, unless such other insurance is specifically stated to be in excess of this Policy. This Policy will not be subject to the terms of any other insurance.

(G) **Cooperation and Subrogation:**

- (1) Except as specifically provided in CONDITION (H) below, in the event of a **Claim**, the **Insured** will provide the Underwriter with all information, assistance and cooperation as the Underwriter may reasonably request. The **Insured** shall, upon the Underwriter's request, attend hearings, trials and depositions and shall assist in securing and giving evidence and obtaining the attendance of witnesses.

- (2) Except as specifically provided in CONDITION (H) below, the **Insured** will do nothing that may prejudice the defense of a **Claim** or the Underwriter's position or potential or actual rights of recovery in connection with a **Claim**.

- (3) In the event of payment under this Policy, the Underwriter 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 Underwriter effectively to pursue and enforce such rights and to bring suit in the name of the **Insured**.

(H) **Confidential Sources and Other Matter:**

The **Insured's** rights under this Policy shall not be prejudiced by the **Insured's** refusal to reveal the identity of a confidential source or to produce reporter's notes or any other documents or information obtained by the **Insured** in the course of the **Insured's Media Activities** with respect to which the **Insured** has asserted a claim of reporter's privilege or other applicable First Amendment, statutory or common-law privilege relating to the protection of newsgathering activities.

(I) **Date of Occurrence; Continuity of Coverage:**

- (1) In the event of a **Claim** (or **Related Claims**) arising out of a series of **Media Activities**, the **Media Activities** shall be deemed to have occurred on the date of the first publication, dissemination or release of the **Matter** giving rise to such **Claim** (or **Related Claims**); or, if there was no such publication, dissemination or release during the **Policy Period** or any **Renewal Period**, then on the date of the earliest act, error or omission giving rise to such **Claim** (or **Related Claims**).
- (2) In the event that the date on which the **Media Activities** are deemed to have occurred under CONDITIONS (I)(1) above is prior to the **First Inception Date**, and in the event that there is no coverage for such **Claim** under any other policy of insurance, then such **Media Activities** shall be deemed to have occurred on the date of the first publication, dissemination or release of the **Matter** giving rise to the **Claim** (or **Related Claims**) subsequent to the **First Inception Date**; or, if there was no such publication, dissemination or release, then on the date of the first act, error or omission giving rise to such **Claim** (or **Related Claims**) subsequent to the **First Inception Date**.
- (3) Notwithstanding any other provision in this CONDITION (I), the Underwriter shall not be responsible for that portion of any **Loss** fairly attributable to **Media Activities** occurring prior to the **First Inception Date** or subsequent to the conclusion of the **Policy Period** or any **Renewal Period**.

(J) **Cancellation:**

- (1) The Underwriter may not cancel this Policy except for failure to pay a premium when due, in which case twenty (20) days' written notice will be given.
- (2) The **Company** may cancel this Policy by mailing to the Underwriter written notice stating when, thereafter, but not later than the Expiration Date set forth in ITEM 2(b) of the Declarations, such cancellation will be effective. In

such event, the earned premium will 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.

(3) The Underwriter will not be required to renew this Policy upon its expiration.

(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 Underwriter and are a part of this Policy, as if physically attached, constitutes the entire agreement existing between the **Insured** and the Underwriter 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 these representations, and that such particulars and statements, which are deemed to be incorporated into and constitute a part of this Policy, are the basis of this Policy and are material to the Underwriter's acceptance of this risk. No knowledge or information possessed by any **Insured** will be imputed to any other **Insured** except for material facts or information known to the person or persons who signed the **Application**. In the event that any of the particulars or statements in the **Application** are untrue, this Policy will be void with respect to any **Insured** who knew of such untruth or to whom such knowledge is imputed.

(M) **No Action against Underwriter; Bankruptcy of Insured:**

(1) No action shall be taken against the Underwriter 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 Underwriter.

(2) No person or entity shall have any right under this Policy to join the Underwriter as a party to any **Claim** against the **Insured** to determine the liability of the **Insured**, nor shall the Underwriter 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 Underwriter of any of its obligations hereunder.

(N) **Authorization and Notices:**

The **Company** 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, and paying premium and receiving any return premium.

(O) **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 estop the Underwriter 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 of any cause of action against the Underwriter 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 Underwriter's written consent.

(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 Underwriter 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 Underwriter.**

*Henry A Aubert*

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Secretary

*RETAMER*

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President