



Directors and Officers

Liability Insurance Policy Including Company Reimbursement

Executive Risk Indemnity Inc.

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

EXECUTIVE RISK INDEMNITY INC.

**DIRECTORS AND OFFICERS LIABILITY INSURANCE POLICY
INCLUDING COMPANY REIMBURSEMENT**

Executive Risk Indemnity Inc. (the “Underwriter”), the Insured Persons and the Company, subject to all of the terms, conditions and limitations of and any endorsements to this Policy, agree as follows:

I. INSURING AGREEMENTS

- (A) The Underwriter will pay on behalf of the **Insured Persons Loss** from **Claims** first made during the **Policy Period** against the **Insured Persons** for **Wrongful Acts**, except for **Loss** which the **Company** pays to or on behalf of the **Insured Persons** as indemnification.
- (B) The Underwriter will pay on behalf of the **Company Loss** from **Claims** first made during the **Policy Period** against the **Insured Persons** for **Wrongful Acts** which the **Company** pays to or on behalf of the **Insured Persons** as indemnification.

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 a part of the Policy, as if physically attached.
- (B) **“Claim”** means:
 - (1) any civil proceeding in a court of law or equity,
 - (2) any criminal proceeding in a court of law, and
 - (3) any administrative or regulatory proceeding commenced by the filing of a notice of charges, formal investigative order or similar document.
- (C) **“Company”** means the **Parent Corporation** and any **Subsidiary** created or acquired on or before the Inception Date or during the **Policy Period**.

- (D) **“Defense Expenses”** means reasonable legal fees and expenses incurred in the defense or appeal of a **Claim**. **Defense Expenses** will not include the **Company’s** overhead expenses or any salaries, wages, fees or benefits of its directors, officers or employees.
- (E) **“Insured Person”** means any past, present or future director or officer of the **Company**. 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**.
- (F) **“Loss”** means:
- (1) any monetary damages or settlements which an **Insured Person** is obligated to pay as a result of any **Claim** as defined in DEFINITION (B) (1), including but not limited to punitive or exemplary damages where insurable under applicable law, and
 - (2) any **Defense Expenses** which an **Insured Person** is obligated to pay as a result of any **Claim**;

provided, that the above amounts will be **Loss** only to the extent that they are in excess of any applicable retention and, further, that **Loss** will not include wages, fines, taxes or penalties, or the multiplied portion of any multiplied damage award or matters which are uninsurable under the law pursuant to which this Policy is construed.

- (G) **“Outside Capacity”** means service by an **Insured Person** as a director, officer, trustee, regent or governor of an **Outside Entity**, but only during such time that such service is at the specific written request of the **Company**.
- (H) **“Outside Entity”** means a corporation or organization other than the **Company** which is exempt from taxation under Section 501 (c) (3) of the Internal Revenue Code, as the same may be amended from time to time.
- (I) **“Parent Corporation”** means the entity named in ITEM 1 of the Declarations.
- (J) **“Policy Period”** means the period from the Inception Date to the Expiration Date in ITEM 2 of the Declarations or to any earlier cancelation date.
- (K) **“Related Claims”** means all **Claims** for **Wrongful Acts** 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.
- (L) **“Subsidiary”** means any corporation during any time in which the **Parent Corporation** 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.

(M) “**Wrongful Act**” means:

- (1) any actual or alleged act, error, omission, misstatement, misleading statement or breach of duty by an **Insured Person** in his or her capacity as a director or officer of the **Company**;
- (2) any matter asserted against an **Insured Person** solely by reason of his or her status as a director or officer of the **Company**; and
- (3) any actual or alleged act, error, omission, misstatement, misleading statement or breach of duty by an **Insured Person** in his or her **Outside Capacity**.

III. EXCLUSIONS

(A) Except for **Defense Expenses** payable in accordance with and subject to CONDITION (B), the Underwriter will 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 Person**; or
- (2) by the gaining by any **Insured Person** of any profit, remuneration or advantage to which such **Insured Person** is not legally entitled.

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

- (1) 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; or
- (2) 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 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;

except that this EXCLUSION (B) will not apply to those portions of any **Claim** that (i) allege that **Wrongful Acts** resulted in any actual or alleged violation of the Securities Act of 1933, the Securities Exchange Act of 1934, any state “blue sky” law, or any other federal, state or local securities law or any rule or regulation promulgated under any of the foregoing, or (ii) are a derivative action by or on behalf of, or in the name or right of, the **Company** brought by a security holder of the **Company**, and brought and maintained independently of, and without the solicitation, assistance, participation or intervention of, the **Company** or any **Insured Person**.

(C) The Underwriter will not pay **Loss**, including **Defense Expenses**, for **Claims** based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving:

- (1) any fact, circumstance, situation, transaction, event or **Wrongful Act** 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;
- (2) any fact, circumstance, situation, transaction, event or **Wrongful Act** which, before the Inception Date in ITEM 2 (a) of the Declarations, was the subject of any notice given under any other policy of directors and officers liability or other similar insurance;
- (3) any actual or alleged violation of the Employee Retirement Income Security Act of 1974 or any regulations promulgated thereunder or of any similar law or regulation; or
- (4) the service by any **Insured Person** as a director or officer of:
 - (a) any entity other than the **Company** or an **Outside Entity**, even if directed or requested by the **Company** to serve as a director, officer or employee of such other entity, or
 - (b) any entity acquired by the **Company**, whether by merger, consolidation or otherwise, at any time prior to the **Company's** acquisition of such entity.

(D) The Underwriter will not pay **Loss**, including **Defense Expenses**, for **Claims**:

- (1) by or on behalf of, or in the name or right of, the **Company** or any **Insured Person**, except that this exclusion will not apply to:
 - (a) any derivative action by or on behalf of, or in the name or right of, the **Company** brought by a security holder of the **Company**, and brought and maintained independently of, and without the solicitation, assistance, participation or intervention of, the **Company** or any **Insured Person**;
 - (b) any **Claim** in the form of a crossclaim, third party claim or other claim for contribution or indemnity by an **Insured Person** which is part of or results directly from a **Claim** which is not otherwise excluded by the terms of this Policy, or
 - (c) any **Claim** for the actual or alleged wrongful termination of an **Insured Person**;
- (2) by or on behalf of, or in the name or right of, any **Outside Entity** against an **Insured Person** for a **Wrongful Act** in his or her **Outside Capacity** with respect to such **Outside Entity**; or
- (3) against the **Insured Persons** of any **Subsidiary** in their capacities as such for any **Wrongful Act** committed during any time in which such entity is not a **Subsidiary**.

No conduct of any **Insured Person** will be imputed to any other **Insured Person** to determine the application of any of the above EXCLUSIONS.

IV. CONDITIONS

(A) Notice; Timing and Interrelationship of Claims:

- (1) As a condition precedent to any right to payment in respect of any **Claim**, including any **Claim** for a **Wrongful Act** of which notice was previously given under CONDITION (A) (2), the **Company** or the **Insured Persons** must give the Underwriter written notice of such **Claim**, with full details, as soon as practicable after it is first made. A **Claim** is first made when it is commenced by the filing of a complaint, notice of charges, formal investigative order or similar document, or by the return of an indictment, against an **Insured Person**.
- (2) If, during the **Policy Period**, the **Company** or the **Insured Persons** first become aware of a **Wrongful Act** which may subsequently give rise to a **Claim** against the **Insured Persons**, and the **Company** or the **Insured Persons**:
 - (a) give the Underwriter written notice of such **Wrongful Act**, including a description of the **Wrongful Act** in question, the identities of the potential claimants, the consequences which have resulted or may result from such **Wrongful Act**, the damages which may result from such **Wrongful Act** and the circumstances by which the **Company** or the **Insured Persons** first became aware of such **Wrongful Act**, and
 - (b) request coverage under this Policy for any subsequently resulting **Claim** for such **Wrongful Act**;then the Underwriter will treat any such subsequently resulting **Claim** as if it had been first made during the **Policy Period**.
- (3) All notices under CONDITIONS (A) (1) and (2) must be sent by certified mail to the address set forth in ITEM 8 of the Declarations.
- (4) All **Related Claims** will be treated as a single **Claim** made when the earliest of such **Related Claims** was first made, or when the earliest of such **Related Claims** is treated as having been made in accordance with CONDITION (A) (2), whichever is earlier.

(B) Defense and Settlement of Claims; Payment and Allocation of Loss:

- (1) The Underwriter will have no duty under this Policy to defend any **Claim**. No **Defense Expenses** may be incurred and no settlement of any **Claim** may be made without the Underwriter's consent, such consent not to be unreasonably withheld.
- (2) The Underwriter will, upon written request, pay on a current basis **Defense Expenses** for which this Policy provides coverage. Otherwise, the Underwriter will pay **Loss** only on the final disposition of a **Claim**.
- (3) As a condition of any payment of **Defense Expenses** under CONDITION (B) (2), the Underwriter may require a written undertaking on terms and conditions satisfactory to the Underwriter guaranteeing the repayment of any **Defense Expenses** paid to or on

behalf of any **Insured Person** if it is finally determined that **Loss** incurred by such **Insured Person** would not be covered.

- (4) If some, but less than all, of the allegations in any **Claim** give rise to **Loss** for which this Policy provides coverage, the **Company**, the **Insured Persons** and the Underwriter will use their best efforts to arrive at a fair and appropriate allocation of any damages, settlements, and legal fees and expenses incurred in connection with such **Claim**.

(C) Limit of Liability:

- (1) The amount stated in ITEM 3 of the Declarations will be the maximum aggregate limit of liability of the Underwriter under this Policy for all **Loss** from all **Claims** for which this Policy provides coverage, regardless of the time of payment by the Underwriter, and regardless of whether such **Claims** are made during the **Policy Period** or during any Discovery Period. However, if any **Claim** made against the **Insured Persons** gives rise to coverage both under this Policy and under any other policy or policies of directors and officers liability or other similarities insurance issued by the Underwriter to any **Outside Entity**, the Underwriter's maximum aggregate limit of liability under all such policies for all **Loss**, including **Defense Expenses**, in respect of such **Claim** will not exceed the largest single available limit of liability under any such policy, including this Policy.
- (2) **Defense Expenses** will be part of and not in addition to the Underwriter's limit of liability, and payment of **Defense Expenses** by the Underwriter will reduce its limit of liability.

(D) Presumption of Indemnification; Applicable Retention:

- (1) The certificate of incorporation, charter, articles of association or other organizational documents of the **Parent Corporation**, each **Subsidiary** and each **Outside Entity**, including by-laws and resolutions, will be deemed to have been adopted or amended to provide indemnification to the **Insured Persons** to the fullest extent permitted by law.
- (2) Regardless of whether **Loss** in connection with any **Claim** against the **Insured Persons** (including any **Claim** against the **Insured Persons** for **Wrongful Acts** in their **Outside Capacities**) is payable under INSURING AGREEMENT (A) or (B), the retention set forth in ITEM 5(b) of the Declarations will apply to any **Loss** as to which indemnification by the **Company** or any **Outside Entity** is legally permissible, whether or not actual indemnification is made, unless such indemnification is not made by the **Company** or such **Outside Entity** solely by reason of its financial insolvency.
- (3) If different retentions are applicable to different parts of any **Loss**, the applicable retentions will be applied separately to each part of such **Loss**, and the sum of such retentions will not exceed the largest applicable retention as set forth in ITEM 5 of the Declarations.

(E) Events Allowing the Underwriter to Amend Policy and Charge Additional Premium:

If, during the **Policy Period**, any of the following events occurs:

- (1) the **Company** acquires any assets, acquires a **Subsidiary** or acquires any entity by merger and, at the time of such transaction, the assets so acquired or the assets of the entity so acquired exceed twenty-five percent (25%) of the total assets of the **Company** as reflected in the **Company's** most recent audited consolidated financial statements, or
- (2) the **Company** assumes any liabilities and, at the time of such assumption, the liabilities so assumed exceed twenty-five percent (25%) of the total liabilities of the **Company** as reflected in the **Company's** most recent audited consolidated financial statements;

the **Company** must give the Underwriter full details of such transaction or event as soon as practicable, and the Underwriter will be entitled to impose such terms, conditions and limitations of coverage and such additional premium in connection with the foregoing which the Underwriter, in its sole discretion, may require.

(F) Conversion of Coverage Under Certain Circumstances:

If, during the **Policy Period**, any of the following events occurs:

- (1) the acquisition of the **Parent Corporation**, or of all or substantially all of its assets, by another entity, or the merger or consolidation of the **Parent Corporation** into or with another entity such that the **Parent Corporation** is not the surviving entity;
- (2) the appointment of a receiver, conservator, trustee, liquidator or rehabilitator, or any similar official, for or with respect to the **Parent Corporation**; or
- (3) the obtaining by any person, entity or affiliated group of persons or entities of the right to elect, appoint or designate at least fifty percent (50%) of the directors of the **Parent Corporation**;

coverage under this Policy will continue in full force and effect with respect to **Claims** for **Wrongful Acts** committed before such event, but coverage will cease with respect to **Claims** for **Wrongful Acts** committed after such event. After any such event, the Policy may not be canceled, regardless of CONDITION (G) (2), and the entire premium for the Policy will be deemed fully earned.

(G) Cancellation; No Obligation to Renew:

- (1) The Underwriter may not cancel this Policy except for failure to pay a premium when due.
- (2) The **Parent Corporation** may cancel this Policy by mailing the Underwriter written notice stating when, 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.

(H) **Discovery Period:**

If either the Underwriter or the **Parent Corporation** refuses or declines to renew this Policy for any reason and, within ten (10) days of the end of the **Policy Period**, the **Parent Corporation** elects to purchase either of the Discovery Periods set forth in ITEM 6 of the Declarations by paying the corresponding additional premium set forth in ITEM 7 of the Declarations, then the coverage otherwise afforded by this Policy will be extended to apply to **Loss** from **Claims** first made during whichever of the Discovery Periods the **Parent Corporation** has elected to purchase, but only if such **Claims** are for **Wrongful Acts** committed before the end of the **Policy Period** or the date of any conversion of coverage under CONDITION (F), whichever is earlier.

(I) **Other Insurance; Other Indemnification:**

(1) All **Loss** payable under this Policy will be specifically excess of and will not contribute with other 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. This Policy will not be subject to the terms of any other insurance.

(2) All coverage for **Loss** from **Claims** against **Insured Persons** for **Wrongful Acts** in their **Outside Capacities** will be specifically excess of, and will not contribute with, any other insurance available to such **Insured Persons** by reason of their service in **Outside Capacities**, and any indemnification by any person or entity other than the **Company**, including any **Outside Entity**, available to such **Insured Persons** in connection with their service in **Outside Capacities**.

(J) **Exhaustion:**

If the Underwriter's limit of liability is exhausted by the payment of **Loss**, the premium will be fully earned, all obligations of the Underwriter under this Policy will be completely fulfilled and exhausted, and the Underwriter will have no further obligations of any kind or nature whatsoever under this Policy.

(K) **Cooperation; Subrogation:**

The **Insured Persons** and the **Company** 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. The Underwriter will be subrogated to the extent of any payment to all of the rights of recovery of the **Insured Persons** and the **Company**. The **Insured Persons** and the **Company** will 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.

The obligations of the **Insured Persons** and the **Company** under this CONDITION (K) will survive the Policy.

(L) **Representations; Severability:**

The **Insured Persons** and the **Company** represent that the particulars and statements contained in the **Application** are true, accurate and complete, and agree that this Policy is issued in reliance on the truth of that representation, and that such particulars and statements, which are deemed to be incorporated into and to constitute a part of this Policy, are the basis of this Policy. No knowledge or information possessed by any **Insured Person** will be imputed to any other **Insured Person** 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** is untrue, this Policy will be void with respect to any **Insured Person** who knew of such untruth or to whom such knowledge is imputed.

(M) **No Action Against the Underwriter:**

(1) No action may be taken against the Underwriter unless, as conditions precedent thereto, there has been full compliance with all of the terms of this Policy and the amount of the obligation of the **Insured Persons** to pay has been finally determined either by judgment against the **Insured Persons** after actual trial, or by written agreement of the **Insured Persons**, the claimant and the Underwriter.

(2) No person or entity will have any right under this Policy to join the Underwriter as a party to any **Claim** to determine the liability of any **Insured Person**; nor may the Underwriter be impleaded by an **Insured Person** or his or her legal representative in any such **Claim**. The Underwriter will not be relieved of any of its obligations under the Policy by the bankruptcy or insolvency of any of the **Insured Persons** or their estates.

(N) **Authorization and Notices:**

The **Parent Corporation** will act on behalf of the **Insured Persons** with respect to receiving any notices and return premiums from the Underwriter.

(O) **Changes:**

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

(P) **Assignment:**

No assignment of interest under this Policy will bind the Underwriter without its consent.

(Q) Entire Agreement:

The **Insured Persons** and the **Company** 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.

(R) 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 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. Aubil
Secretary


President