



PLEASE READ THE ENTIRE POLICY CAREFULLY.

**PERSONNEL CONSULTANTS AND TEMPORARY HELP SERVICES
PROFESSIONAL LIABILITY INSURANCE POLICY**

Subject to the applicable limits of liability and all of the terms and conditions of this Policy, Executive Risk Specialty Insurance Company (the Company) and the Insureds agree as follows:

I. INSURING AGREEMENTS

A. The Company will pay on behalf of the **Insureds, Damages** which the **Insureds** shall become legally obligated to pay:

1. as a result of any **Personnel Consulting Occurrence** or **Temporary Help Services Occurrence** which first occurs during the **Policy Period**;
2. as a result of any **Employment Practice Occurrence** which first occurs during the **Policy Period**; or
3. for any actual or alleged **Personal Injury** resulting from any **Occurrence** which first occurs during the **Policy Period**.

B. In addition to the limits of liability applicable to **Damages** under INSURING AGREEMENT A:

1. the Company will have the right and duty to defend any claim against the **Insureds** that could give rise to **Damages** covered under INSURING AGREEMENT A, even if the claim is groundless, false or fraudulent; and
2. with respect to any claim the Company defends, the Company will pay:
 - a. all expenses the Company incurs;
 - b. the cost of bonds to release attachments, but only for bond amounts within the applicable limit of liability; provided, that the Company does not have to furnish such bonds;

- c. all reasonable expenses incurred by the **Insureds** at the Company's request to assist the Company in the investigation or defense of the

claim, including the actual loss of earnings up to \$100 a day, with a maximum of \$5,000, because of time off from work;

- d. prejudgment interest awarded against the **Insureds** on that part of any judgment the Company is liable to pay, except that if the Company makes an offer to pay the applicable limit of insurance, the Company will not be liable to pay any prejudgment interest based on that period of time after the offer; and
- e. all interest on the full amount of any judgment the Company is liable to pay that accrues after entry of the judgment and before the Company has paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.

II. DEFINITIONS

- A. “**Bodily Injury**” means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time; provided, that **Bodily Injury** will not include mental anguish or emotional distress.
- B. “**Damages**” means damages, judgments or settlements which an **Insured** is legally obligated to pay; provided, that **Damages** will not include:
 - 1. fines, taxes or penalties;
 - 2. fees or other charges of any **Insured**, including but not limited to salaries, overhead or benefit expenses of any **Insured**;
 - 3. punitive or exemplary damages or the multiplied portion of any multiplied damage award, except that, where permitted by law, **Damages** may include, in an amount not exceeding the sum of \$25,000, the multiplied portion of a multiplied damages award or an award of punitive or exemplary damages, which sum shall be part of and not in addition to the applicable limit or limits of liability; or
 - 4. any salary, wages or other employment-related benefits which an **Insured** is obligated to pay to an employee:
 - a. under an express written contract either to commence or continue employment or to make any payment in the event of a termination of employment, or
 - b. by operation of 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 or any federal, state or local statutory or

common law or any rules or regulations promulgated under any of the foregoing.

- C. **“Employment Practices Occurrence”** means any actual or alleged:
1. wrongful termination, whether actual or constructive, of the employment of, or demotion of, or failure or refusal to hire or promote, any person;
 2. discrimination or sexual harassment adversely affecting any employee of, or applicant for employment with, an **Insured**; or
 3. retaliatory treatment against an employee of an **Insured** on account of such employee’s exercise or attempted exercise of his or her rights under law.
- D. **“Insured”** means the person or entity stated in ITEM 1 of the Declarations, and any natural person who was, is or shall become a director, officer, employee or partner thereof, but only while such person was, is or shall be acting within the scope of his or her duties as such.
- E. **“Occurrence”** means any **Employment Practices Occurrence, Personnel Consulting Occurrence** or **Temporary Help Services Occurrence**. Any and all **Occurrences** which are logically or causally connected by reason of any common fact, circumstance, situation, transaction, event or decision will be deemed to be a single **Occurrence**.
- F. **“Personal Injury”** means injury, including mental anguish or emotional distress, arising out of one or more of the following offenses:
1. false arrest, detention or imprisonment;
 2. malicious prosecution;
 3. the wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies by or on behalf of its owner, landlord or lessor;
 4. oral or written publication of material that slanders or libels a person or organization or disparages a person’s or organization’s goods, products or services; or
 5. oral or written publication of material that violates a person’s right of privacy;
- provided, that **Personal Injury** will not include any **Bodily Injury**.
- G. **“Personnel Consulting Occurrence”** means any actual or alleged act, error, omission, misstatement, misleading statement or breach of duty by an **Insured** solely in connection with the selection, recruitment or placement of any candidate(s) for permanent employment with a client of an **Insured**. For purposes of this definition, the term “client” shall not include any **Insured**, any entity owned

or controlled by any **Insured**, any person or entity owning or controlling or under common ownership or control with any **Insured**, or any entity of which any **Insured** is a director, officer, partner or principal shareholder.

- H. **“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.
- I. **“Property Damage”** means:
 - 1. physical injury to tangible property, including all resulting loss of use of that property, which loss of use shall be deemed to occur at the time of the physical injury that caused it; or
 - 2. loss of use of tangible property that is not physically injured, which loss of use shall be deemed to occur at the time of the **Occurrence** that caused it.
- J. **“Temporary Help Services Occurrence”** means any actual or alleged act, error, omission, misstatement, misleading statement or breach of duty by an **Insured** solely in connection with the selection, recruitment or placement of any candidate(s) for temporary employment with a client of an **Insured**. For purposes of this definition, the term “client” shall not include any **Insured**, any entity owned or controlled by any **Insured**, any person or entity owning or controlling or under common ownership or control with any **Insured**, or any entity of which any **Insured** is a director, officer, partner or principal shareholder. However, **Temporary Help Services Occurrence** shall not include any actual or alleged act, error, omission, misstatement, misleading statement or breach of duty in connection with the performance of, or failure to perform, services with respect to any candidate(s) for employment as an architect, engineer or investment advisor, or whose services are directly related to the provision of medical care, including but not limited to medical care provider, pharmacist, nutritionist, chiropractor, dentist, dental assistant, hygienist, nurse, physician or home health aide.

III. EXCLUSIONS

This Policy shall not apply:

- A. to any **Damages** or claim:
 - 1. based on or directly or indirectly arising out of or resulting from any criminal, fraudulent or dishonest act or omission or any act, error or omission committed with knowledge of its wrongful nature or with intent to cause damage, or any willful violation of any statute, rule or law by any **Insured**, or the gaining by any **Insured** of any personal profit, gain or advantage to which such **Insured** was not legally entitled;
 - 2. based on or directly or indirectly arising out of or resulting from:

- a. 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,
 - b. any actual, alleged or threatened exposure to or presence of, or manufacture, distribution, sale, installation, utilization, ingestion or inhalation of, asbestos or products or materials containing or consisting, in whole or in part, of asbestos or asbestos fibers, or
 - c. 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. based on or directly or indirectly arising out of or resulting from any **Bodily Injury or Property Damage**;
4. based on or directly or indirectly arising out of or resulting from any **Occurrence** taking place, in whole or in part, before the inception of this Policy; or any act, error, omission, fact, circumstance, situation, transaction, event or decision which was the subject of any notice or claim under any prior policy of insurance; or any act, error, or omission, whenever occurring, which is logically or causally connected by reason of any common fact, circumstance, situation, transaction, event or decision to any act, error, omission, fact, circumstance, situation, transaction, event or decision which was the subject of any such notice or claim;
5. based on or directly or indirectly arising out of or resulting from:
 - a. any actual or alleged kickback, rebate, antitrust violation, price fixing, unfair trade practice or restraint of trade,
 - b. 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 statute, any rule or regulation promulgated under any of the foregoing, or any amendment to any of the foregoing, or
 - c. the syndication, formation, promotion, offer, sale, roll-up or management of any limited or general partnership or any interest therein;
6. based on or directly or indirectly arising out of or resulting from any actual or alleged breach of duty imposed by the Employee Retirement Income Security Act of 1974, any rule or regulation promulgated thereunder or any amendments thereto, or any actual or alleged breach of any similar duty imposed by any other law, rule or regulation; or

7. based on or directly or indirectly arising out of or resulting from any commingling of, or inability or failure to pay, collect or safeguard, any money; or

B. to any claim for any actual or alleged liability of an **Insured** under any express written contract or agreement; provided, that this EXCLUSION B will not apply to otherwise covered claims resulting from **Employment Practices Occurrences**.

IV. **CONDITIONS**

A. **Territory:**

This Policy only applies to **Occurrences** in the United States of America, its territories or possessions, or Canada.

B. **Notice:**

As a condition precedent to any right to coverage under this Policy, the **Insureds** must give the Company written notice as soon as practicable of any claim or **Occurrence** for which coverage may be available under this Policy. To the extent possible, notice should include how, when and where the **Occurrence** giving rise to such claim took place, the names and addresses of any injured persons and witnesses, and the nature of the claim.

C. **Defense and Settlement of Claims:**

The **Insureds** shall not admit any liability or settle any claim or incur any costs, charges or expenses without the Company's written consent. The Company will have the right to make investigations and conduct negotiations and, with the written consent of the **Insureds**, to enter into such settlement of any claim as the Company deems appropriate. If the **Insureds** refuse to consent to a settlement acceptable to the claimant in accordance with the Company's recommendation, the **Insureds** will thereafter be responsible for negotiating and defending such claim at the **Insureds'** own expense independently of the Company and, subject to the applicable limit or limits of liability under this Policy, the Company's liability in respect of any such claim will not exceed the amount for which such claim could have been settled.

D. **Duties in the Event of a Claim; Cooperation and Subrogation:**

1. In the event of a claim, the **Insureds** must give the Company all information, assistance, and cooperation in connection with the investigation, settlement or defense of the claim as the Company may request. The **Insureds** shall immediately send the Company copies of any demands, notices, summonses or legal papers received in connection with any claim, and authorize the

Company to obtain records and other information. The **Insureds** shall, upon the Company's request, assist in making settlements and in the conduct of actions, suits or proceedings. The **Insureds** shall attend hearings, trials and depositions and shall assist in securing and giving evidence and obtaining the attendance of witnesses. The **Insureds** will do nothing that may prejudice the Company's position or the Company's potential or actual rights of recovery.

2. In the event of payment under this Policy, the Company shall be subrogated to, and entitled to an assignment of all of the rights of recovery therefor, of the **Insureds**. The **Insureds** 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 Company effectively to pursue and enforce such rights and to bring suit in the name of the **Insureds**.

E. Limits of Liability:

1. Regardless of the number of claims, the number of persons or entities included within the definition of **Insured**, the number of such persons or entities against whom claims may be made or the number of claimants who make any claim or claims against any **Insured**:
 - a. each **Occurrence** limit stated in ITEM 3(a) of the Declarations shall be the maximum limit of liability of the Company for all **Damages** resulting from each **Occurrence** for which this Policy provides coverage; and
 - b. the Aggregate Limit stated in ITEM 3(b) of the Declarations shall be the maximum aggregate limit of liability of the Company for all **Damages** resulting from all **Occurrences** for which this Policy provides coverage.
2. The Company shall not be obligated to pay any **Damages** or to defend or continue to defend any claim after the applicable limit of liability has been exhausted by the payment of **Damages**.
3. The Company (or other affiliated companies of Executive Risk Specialty Insurance Company) may have issued other policies of Personnel Consultants and Temporary Help Services Professional Liability Insurance that provide coverage in respect of an **Occurrence**, or in respect of continuous, repeated or related **Occurrences**, as to which the **Insureds** under this Policy and persons or organizations covered under such other policies are jointly and severally liable. In such an event, and subject to the limits of liability stated in ITEM 3 of the Declarations, the Company will not be liable under this Policy for a greater proportion of the total **Damages** resulting therefrom than this Policy's applicable limit of liability bears to the total applicable limits of liability under all such policies. In addition, the total amount payable under the applicable limits of liability under all such policies in connection therewith will not exceed the single highest applicable limit of liability under any of such policies.

F. Other Insurance:

If other valid and collectible insurance is available to the **Insureds** for any claim the Company covers under this Policy, the coverage provided under this Policy, including any applicable duty to defend, shall be specifically excess of, and shall not contribute with, such other insurance, whether such other insurance is stated to be primary, contributing, excess (except insurance specifically in excess of this Policy) or otherwise. If, however, any other policy of insurance applies to any **Occurrence** taking place, in whole or in part, before the inception of this Policy, then this Policy will not apply to any claim based on or directly or indirectly arising out of or resulting from such **Occurrence**, and this Policy will not be valid and collectible insurance as to such **Occurrence** and will provide no coverage in respect thereof.

G. Cancellation; Non-Renewal:

1. The Company may cancel this Policy by delivering or mailing to the **Insureds** written notice stating when, not less than forty-five (45) days thereafter, such cancellation shall be effective. The Company may also cancel this Policy at any time for failure to pay a premium when due, by mailing or delivering to the **Insureds** written notice of such cancellation not less than twenty (20) days before the effective date thereof.
2. The **Insureds** may cancel this Policy by surrendering this Policy or by delivering or mailing to the Company written notice stating when, not later than the Expiration Date set forth in ITEM 2(b) of the Declarations, such cancellation will be effective.
3. The Company will not be required to renew this Policy upon its expiration. If the Company elects not to renew this Policy, the Company will deliver or mail to the **Insureds** written notice to that effect at least sixty (60) days before the Expiration Date set forth in ITEM 2(b) of the Declarations.
4. The mailing of notice as aforesaid shall be sufficient proof of notice. If this Policy is canceled by the Company, the earned premium shall be computed pro rata. If this Policy is canceled by the **Insureds**, 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.

H. Representations:

The **Insureds** represent that the particulars and statements contained in the Application and all materials submitted in connection therewith 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 incorporated into and constitute a part of this Policy, are the basis of this Policy and are material to the Company's acceptance of this risk.

I. No Action Against Company; Bankruptcy of Insured:

1. No action shall be taken against the Company 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 **Insureds** 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 Company.
2. No person or entity shall have any right under this Policy to join the Company as a party to any claim against the Insured to determine the liability of any **Insured**, nor shall the Company be impleaded by any **Insured** or an **Insured's** legal representative in any such claim.
3. Bankruptcy or insolvency of an **Insured** will not relieve the Company of its obligations under this Policy. In the event of the death, incapacity or bankruptcy of any **Insured**, the coverage otherwise provided under this Policy in connection with such **Insured's** actual or alleged liability for any claim will also apply to the estate, heirs, legal representatives and assigns of such **Insured**.

J. Authorization and Notices:

The person or entity stated in ITEM 1 of the Declarations 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, the payment of premium and the receipt of any return premiums.

K. Changes:

Notice to any agent or knowledge possessed by any agent or other person acting on behalf of the Company shall not effect a waiver or change in any part of this Policy or estop the Company 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.

L. No Transfer or Assignment of Insured's Interest:

No transfer or assignment of interest under this Policy or any cause of action against the Company 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 Company's written consent.

M. Entire Agreement:

The **Insureds** agree 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 Company and are a part of this Policy, as if physically attached, constitutes the entire agreement existing between the **Insureds** and the Company or any of its agents relating to this insurance.

N. 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 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.

EXECUTIVE RISK SPECIALTY INSURANCE COMPANY

Henry A. Aubit

Secretary

[Handwritten Signature]

President