



Lawyers Professional

Liability Policy

Executive Risk Indemnity Inc.

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

EXECUTIVE RISK INDEMNITY INC.

LAWYERS PROFESSIONAL LIABILITY POLICY

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

I. INSURING AGREEMENT

The Underwriter will pay on behalf of the **Insureds Loss** in excess of the applicable retention resulting from **Claims** first made against any **Insured** and reported to the Underwriter during the **Policy Period** or, if applicable, the Extended Reporting Period, for **Wrongful Acts** occurring before the expiration of the **Policy Period**.

II. DEFINITIONS

- SPECIMEN**
- (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 this Policy, as if physically attached.
- (B) "**Claim**" means:
- (1) any written notice received by an **Insured** that it is the intention of any person or entity to hold any **Insured** responsible for the results of a **Wrongful Act**;
 - (2) any written request to toll or waive a statute of limitations relating to a potential **Claim** against an **Insured**; and
 - (3) any judicial, administrative or other proceeding (other than a disciplinary or grievance proceeding before a court or bar association) against any **Insured**.
- (C) "**Defense Expenses**" means reasonable legal fees and expenses incurred in the investigation, defense or appeal of any **Claim**; provided, that **Defense Expenses** will not include remuneration, salaries, wages, fees, overhead or benefit expenses of any **Insured** except with the prior written consent of the Underwriter.
- (D) "**Firm**" means the organization(s) engaged in the practice of law under the name first set forth in ITEM 1 of the Declarations, whether as a partnership, professional corporation or association or otherwise, and will also include its predecessors as set forth in ITEM 1 of the Declarations.

- (E) **"Insured"** means the **Firm** and each person who was, is or becomes:
- (1) a partner, principal, director, officer or shareholder of the **Firm**;
 - (2) a full-time or part-time, salaried employee of the **Firm** or of an incorporated partner of the **Firm**; or
 - (3) "counsel" or "of counsel" to the **Firm**.
- (F) **"Loss"** means any damages, settlements and **Defense Expenses** which an **Insured** is legally obligated to pay as a result of a **Claim**; provided, that **Loss** will not include fines, sanctions, taxes or penalties, punitive or exemplary damages, the multiplied portion of any multiplied damage award, or matters which are uninsurable under the law pursuant to which this Policy is construed.
- (G) **"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.
- (H) **"Professional Services"** means services provided to others by an **Insured**:
- (1) as an attorney or notary public, but only if such services are performed or to be performed in the name or on behalf of the **Firm**; or
 - (2) as an administrator, conservator, executor, trustee, guardian or committee or in any similar fiduciary capacity incidental to the practice of law by the **Firm**, but only if some or all of the fee, if any, accruing from such services (regardless of whether such fee is actually collected) inures to the benefit of the **Firm**.
- (I) **"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 facts, circumstances, situations, transactions, events or **Wrongful Acts** or the same or related series of facts, circumstances, situations, transactions, events or **Wrongful Acts**.
- (J) **"Wrongful Act"** means any actual or alleged act, error, omission, breach of contract or duty, libel or slander committed by an **Insured** or by any person other than an **Insured** for whose actions the **Firm** is legally responsible, but only in connection with the performance of, or actual or alleged failure to perform, **Professional Services**.

III. EXCLUSIONS

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

- (A) resulting from or contributed to:
- (1) by any fraudulent, dishonest or criminal action or omission on the part of any **Insured**, or by the gaining by any **Insured** of any personal profit, gain or advantage to which such **Insured** was not legally entitled, and

- (2) that is admitted by the **Insured**, or that is determined by any judgment, decree, finding or other final adjudication by any court, disciplinary board, or other tribunal, whether in the same proceeding in which the **Claim** against the **Insured** is adjudicated or in a separate proceeding;

provided, however, that this EXCLUSION (A) is subject to the Protection For Innocent Insureds provisions of CONDITION (N).

- (B) for any actual or alleged act, error, omission, breach of contract or duty, libel or slander committed by:
- (1) any individual **Insured** before such person became a partner, principal, director, officer, shareholder, "counsel" or "of counsel" or employee of the **Firm** or of an incorporated partner of the **Firm**, or
- (2) any **Insured** as a fiduciary under the Employee Retirement Income Security Act of 1974 and any amendments thereto or any regulations or orders promulgated thereunder;
- (C) for any actual or alleged bodily injury to, or sickness, disease or death of, any person, or damage to or destruction of any property, including the loss of use thereof;
- (D) with respect to property as to which an **Insured** is or is alleged to be an owner or operator in a fiduciary or any other capacity, 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 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;
- (E) by or on behalf of, or in the name or right of, any **Insured**;
- (F) based on or directly or indirectly arising out of or resulting from the service of any individual **Insured** in his or her capacity as a partner, member principal, director, officer, shareholder, counsel, of counsel, or employee of any entity other than the **Firm**;

- (G) by or on behalf of, or in the name or right of, or based on or directly or indirectly arising out of or resulting from any action or omission on the part of any **Insured** in connection with any Controlled Enterprise, provided, that this EXCLUSION (G) shall not apply to the extent that the ownership, control, operation or management of such Controlled Enterprise was exclusively in a fiduciary capacity incidental to the practice of law by the **Firm**; for purposes of this EXCLUSION (G), "Controlled Enterprise" means any business enterprise other than an **Insured** if:
- (1) such enterprise is a publicly traded company and five percent (5%) or more of its issued and outstanding voting stock is or was owned or controlled, individually or collectively, by the **Firm** or by one or more other **Insureds**, or
 - (2) such enterprise is not a publicly traded company and twenty-five percent (25%) or more of its issued and outstanding voting stock is or was owned or controlled, individually or collectively, by the **Firm** or by one or more other **Insureds**, or
 - (3) such business enterprise is or was otherwise controlled, operated or managed by the **Firm** or by one or more other **Insureds**;
- (H) based on or directly or indirectly arising out of or resulting from any **Claim** or fact, circumstance, situation, transaction, event or **Wrongful Act** which, before the Inception Date of this Policy as set forth in ITEM 2 of the Declarations, was the subject of any notice given under any other insurance policy, including but not limited to any policy of which this Policy is a renewal or replacement, or which was identified in any summary or statement of **Claims** or potential **Claims** submitted in connection with the **Application** or an **Application** for any policy of which this Policy is a renewal or replacement.

IV. CONDITIONS

(A) **TERRITORY:**

This Policy applies to **Wrongful Acts** occurring and **Claims** made anywhere in the world.

(B) **REPORTING OF CLAIMS AND WRONGFUL ACTS:**

- (1) If a **Claim** is made against any **Insured**, the **Insureds** or the **Firm** shall immediately forward to the Underwriter every demand, notice, summons, complaint or other process received by the **Insureds** or their representatives.
- (2) If during the **Policy Period** an **Insured** becomes aware of a **Wrongful Act** which may subsequently give rise to a **Claim**, and the **Insureds**:
 - (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 **Insureds** 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 made against the **Insureds** during the **Policy Period** and, if written notice of such **Claim** is then given to the Underwriter as soon as practicable after it is first made, as if such **Claim** had also been reported to the Underwriter during the **Policy Period**.

- (3) All notices of **Claims** required under CONDITION (B)(1) and notices of **Wrongful Acts** required under CONDITION (B)(2) must be sent by certified mail to the address set forth in the Declarations.

(C) **ADDITIONAL TIME IN WHICH TO REPORT CLAIMS MADE AT THE END OF THE POLICY PERIOD:**

If a **Claim** is first made against an **Insured** during the last fourteen (14) calendar days of the **Policy Period**, such **Claim** will be treated as if it had been reported to the Underwriter during the **Policy Period** if:

- (1) the **Insureds** make reasonable efforts to report such **Claim** immediately, and
- (2) the **Insureds** give the Underwriter written notice of such **Claim** no later than fourteen (14) calendar days after the end of the **Policy Period**.

(D) **TIMING AND INTERRELATIONSHIP OF CLAIMS:**

- (1) A **Claim** as defined in DEFINITIONS (B)(1) and (2) is first made when any **Insured** receives a written notice or request as set forth therein, and a **Claim** as defined in DEFINITION (B)(3) is first made when any **Insured** first becomes aware, through service of process or otherwise, of the filing of a complaint, motion for judgment or similar document or pleading commencing a judicial, administrative or other proceeding against an **Insured**.
- (2) All **Related Claims** will be treated as a single **Claim** made at the time the first of such **Related Claims** was made in accordance with CONDITION (D)(1), or when the first of such **Related Claims** is treated as having been made in accordance with CONDITION (B)(2), whichever is earlier.

(E) **DEFENSE AND SETTLEMENT OF CLAIMS:**

- (1) The **Insureds** will have the right and duty to defend claims and to retain qualified counsel of their choosing to represent them in the defense or appeal of **Claims**, but no **Defense Expenses** may be incurred without the Underwriter's consent, such consent not to be unreasonably withheld. It shall not be unreasonable for the Underwriter to withhold its consent to the representation of any **Insured** by another **Insured** or, if more than one **Insured** is involved in a **Claim**, to withhold its

consent to separate counsel for one or more of such **Insureds** unless there is a material actual or potential conflict of interest among such **Insureds**.

- (2) The Underwriter will, upon written request, pay **Defense Expenses** owed under this Policy on a current basis. As a condition of any payment of **Defense Expenses** before the final disposition of a **Claim**, the Underwriter may require a written undertaking on terms and conditions satisfactory to it guaranteeing the repayment of any **Defense Expenses** paid on behalf of any **Insured** if it is finally determined that this Policy would not cover **Loss** incurred by such **Insured** in connection with such **Claim**. Except for **Defense Expenses** paid in accordance with this CONDITION (E)(2), the Underwriter will have no obligation to pay any **Loss** before the final disposition of a **Claim**.
- (3) No **Insured** may admit any liability for or settle any **Claim** without the Underwriter's consent. The Underwriter will have the right to make investigations and conduct negotiations and, with the consent of the **Insureds**, enter into such settlement of any **Claim** as the Underwriter deems appropriate. If the **Insureds** refuse to consent to a settlement acceptable to the claimant in accordance with the Underwriter's recommendation, the Underwriter's liability for such **Claim** will not exceed the amount for which the **Claim** could have been settled plus any **Defense Expenses** incurred with the Underwriter's consent up to the date the **Insureds** refused to settle such **Claim**.

(F) **LIMIT OF LIABILITY; RETENTION:**

- (1) The amount stated in ITEM 3 of the Declarations will be the maximum Limit of Liability of the Underwriter under this Policy for all **Loss** from all **Claims** for which this Policy provides coverage, regardless of the number of **Claims**, the number of persons or entities included within the definition of "**Insured**" or the number of claimants who make **Claims** against the **Insureds**. **Defense Expenses** will be part of and not in addition to such Limit of Liability, and payment of **Defense Expenses** by the Underwriter will reduce, and may exhaust, the Limit of Liability.
- (2) The obligation of the Underwriter to pay **Loss**, including **Defense Expenses**, in connection with any **Claim** will only be in excess of the retention, the amount of which must be borne by the **Insureds** at their own expense. The Underwriter will have no obligation whatsoever, either to the **Insureds** or to any other person or entity, to pay all or any portion of the retention amount on behalf of any **Insured**. The Underwriter will, however, at its sole discretion, have the right and option to do so, in which event the **Insureds** will repay the Underwriter any amounts so paid.

(G) **OTHER INSURANCE:**

All **Loss** payable under this Policy will be 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.

(H) **CHANGES IN RISK:**

- (1) If, during the **Policy Period**, the total number of attorneys in the **Firm** increases by more than five percent (5%) as the result of the **Firm's** merger with or acquisition of any other law firm or any group of attorneys who practiced together at another law firm, the **Firm** must promptly give the Underwriter written notice thereof, and the Underwriter will be entitled to impose such additional coverage terms and charge such additional premium in connection therewith as the Underwriter, in its sole discretion, may require.
- (2) In the event of the death, incapacity or bankruptcy of an **Insured**, a **Claim** against the estate, heirs, legal representatives or assigns of such **Insured** for a **Wrongful Act** by such **Insured** will be deemed to be a **Claim** against such **Insured**.
- (3) Bankruptcy or insolvency of an **Insured** or an **Insured's** estate will not relieve the Underwriter of any of its obligations hereunder.

(I) **CANCELATION:**

- (1) The Underwriter may cancel this Policy for non-payment of premium in the event that the required premium is not remitted by the date set forth in ITEM 5 of the Declarations. The Underwriter shall mail or deliver to the **Insureds** written notice of such cancellation as soon as practicable following the premium due date.
- (2) The **Insureds** may cancel this Policy by surrendering this Policy or by mailing or delivering to the Underwriter notice stating when thereafter such cancellation will be effective. If this Policy is canceled by the **Insureds**, 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.

(J) **EXTENDED REPORTING PERIOD:**

The coverage otherwise afforded under this Policy will be extended to apply, subject to all of its terms, conditions, limitations and endorsements, to **Loss** from **Claims** against the **Insureds** first made and reported to the Underwriter during the Extended Reporting Period set forth in ITEM 6 of the Declarations, but only if:

- (1) the Underwriter fails or refuses to renew this Policy, or the **Insureds** cancel or decline to renew this Policy, and
- (2) within thirty (30) days of the end of the **Policy Period** the **Insureds** pay the additional premium set forth in ITEM 6 of the Declarations, and
- (3) such **Claims** are for **Wrongful Acts** committed before the effective date of the cancellation or non-renewal of the Policy.

The **Insureds** shall not be entitled to purchase an Extended Reporting Period in the event that the Policy is canceled by the Underwriter for non-payment of premium.

(K) **EXHAUSTION:**

If the Limit of Liability is exhausted by the payment of **Loss**, 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, and the premium will be fully earned.

(L) **COOPERATION AND SUBROGATION:**

- (1) In the event of a **Claim**, or after giving the Underwriter notice of a **Wrongful Act** which may subsequently give rise to a **Claim**, the **Insureds** must provide the Underwriter with all information, assistance and cooperation as the Underwriter may reasonably request.
- (2) The **Insureds** may do nothing to prejudice the Underwriter's position or the Underwriter's potential or actual rights of recovery in the event of a **Claim**.
- (3) In the event of payment under this Policy, the Underwriter will 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 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 **Insureds**.
- (4) The obligations of the **Insureds** under this CONDITION (L) will survive the Policy.

(M) **REPRESENTATIONS; SEVERABILITY:**

The **Insureds** 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** 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.

(N) **PROTECTION FOR INNOCENT INSUREDS:**

- (1) If coverage under any provision of this Policy would be excluded under EXCLUSION (A) because of any fraudulent, dishonest or criminal action or omission on the part of any individual **Insured**, or because of the gaining by any individual **Insured** of any personal profit, gain or advantage to which he or she was not legally entitled, the coverage otherwise afforded under this Policy shall continue to apply to the **Firm** and to any individual **Insured** who neither committed, personally knew of or acquiesced in, nor was adjudged liable for such fraudulent, dishonest or criminal action or omission or such gaining of such improper personal profit, gain or advantage.
- (2) The Underwriter shall be liable to pay **Loss** as to which coverage shall apply as a result of CONDITION (N)(1) only in excess of the full extent of the assets in the **Firm** of any individual **Insured** who is not entitled to a continuation of coverage thereunder, and any assets of such **Insured** recovered by the **Firm** (or any other **Insured**) shall inure, to the extent of the amount paid by this Policy, to the benefit of the Underwriter.

(O) **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 **Insureds** to pay has 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 entity will have any right under this Policy to join the Underwriter as a party to any **Claim** against any **Insured** to determine the liability of such **Insured**; nor may the Underwriter be impleaded by any **Insured** or any **Insured's** legal representative in any such **Claim**.

(P) **AUTHORIZATION AND NOTICES:**

The person or entity first named in ITEM 1 of the Declarations will act on behalf of the **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, and the purchase of any Extended Reporting Period.

(Q) **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 its terms, conditions and limitations.

(R) **NO TRANSFER OR ASSIGNMENT OF INSURED 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 will be effective without the Underwriter's written consent.

(S) **HEADINGS:**

The descriptions in the headings and sub-headings of this Policy are solely for convenience, and form no part of the terms, conditions and limitations of the Policy.

(T) **ENTIRE AGREEMENT:**

The **Insureds** agree that this Policy, including the **Application** and any endorsements, constitutes the entire agreement existing between the **Insureds** and the Underwriter or any of its agents relating to this insurance, and that the terms, conditions, limitations and endorsements of this Policy may not be waived or changed except by written endorsement issued to form a part of this Policy.

In witness whereof the Underwriter has caused this Policy to be executed by its authorized officers, but this Policy will not be valid unless countersigned on the Declarations Page by a duly authorized representative of the Underwriter.

Henry A. Aubert
Secretary

[Signature]
President