EVEREST EXPEDITION[®] NOT-FOR-PROFIT MANAGEMENT LIABILITY POLICY EMPLOYMENT PRACTICES LIABILITY COVERAGE PART



SECTION I – INSURING AGREEMENTS

A. EMPLOYMENT PRACTICES LIABILITY COVERAGE

The Insurer shall pay on behalf of the **Insureds** all **Loss** for which the **Insureds** become legally obligated to pay on account of any **Employment Practices Claim** first made against the **Insureds** during the **Policy Period** or during the **Extended Reporting Period**, if exercised, for an **Employment Practices Wrongful Act**.

B. THIRD PARTY LIABILITY COVERAGE

The Insurer shall pay on behalf of the **Insureds** all **Loss** for which the **Insureds** become legally obligated to pay on account of any **Third Party Claim** first made against the **Insureds** during the **Policy Period** or during the **Extended Reporting Period**, if exercised, for a **Third Party Wrongful Act**.

SECTION II – COVERAGE ENHANCEMENTS

A. CONTINUITY COVERAGE

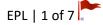
If an **Employment Practices Claim** described in Section III.D.1 be v, or in **EEOC Charge** is first made against the **Insureds** during the policy period of the **Prior EPL Polic** ("Prior claim") and is not covered under the **Prior EPL Policy** solely because notice of such Prior Claim was not time, view to the insurer under the **Prior EPL Policy**, then such Prior Claim shall be considered first make a sing this Coverage Part's **Policy Period**, subject to the following conditions:

- 1. no Executive Officer or risk manager or equivalent osition of the Organization was aware of such Prior Claim prior to the expiration of the Lime to give notice of such Prior Claim under the Prior EPL Policy;
- 2. such Prior Claim would have been overed up at the **Prior EPL Policy** had notice of such Prior Claim been timely given under the **Prior EPL olice** and
- 3. written notice of such Pher Claim is given under this Policy to the Insurer no later than sixty (60) days after the earlier of: (i) be denothat any **Executive Officer** or risk manager of the **Organization** became aware of such Prior Claim; or (i) the end of the **Policy Period**. Coverage under this Coverage Part for any Prior Claim; or such this Section II.A shall only apply to **Loss** incurred after the date the Prior Claim is first police to the Insurer under this Coverage Part.

The maximum covers a valuable under this Coverage Part for any such Prior Claim shall be the lesser of the coverage them anable to der the **Prior EPL Policy** or this Coverage Part, taking into account all of the terms, conditions and exclusions of the **Prior EPL Policy** and this Coverage Part, including without limitation the applicable retention and available limit of liability under each policy as reduced by payments of loss.

B. WORKPLACE VIOLENCE COVERAGE

- The Insurer shall pay on behalf of the Organization all Workplace Violence Expenses incurred by the Organization as a result of all Workplace Violence Incidents first occurring during the Policy Period, subject to the Sublimit of Liability for all Workplace Violence Expenses, combined as set forth in the Coverage Schedule in ITEM 8 of the Declarations, which shall be part of and not in addition to the Aggregate Limit of Liability for this Coverage Part; provided that the Insurer shall not be liable to make any payment pursuant to this Section II.B for:
 - a. any Workplace Violence Expenses incurred in connection with any Workplace Violence Incident based upon, arising out of or attributable to (i) declared or undeclared war, civil war,



insurrection, riot, rebellion, revolution, governmental intervention, expropriation or nationalization, or (ii) the use or threat of force or violence occurring on the **Premises** for the purpose of demanding money, securities or property;

- b. any Workplace Violence Expenses incurred in connection with any Workplace Violence Incident which occurs at any location other than the Premises; or
- c. any Workplace Violence Expenses incurred as a result of any demand, suit or proceeding against any Organization based upon, arising out of or attributable to a Workplace Violence Incident.
- The Insureds shall, as a condition precedent to coverage provided by this Section II.B, give the Insurer notice in writing of any Workplace Violence Incident as soon as practicable after an Executive Officer or risk manager of the Organization first learns of such Workplace Violence Incident but in no event later than thirty (30) days after the Workplace Violence Incident occurs.

C. EPL CRISIS MANAGEMENT

The Insurer shall pay on behalf of the **Organization**, all **EPL Crisis Expenses** incurred by the **Organization** as a result of all **EPL Crises** first occurring during the **Policy Period**, subject the trice of the Liability as set forth in ITEM 8 of the Declarations, for all **EPL Crisis Expenses**, which shall be part of and not in addition to the Aggregate Limit of Liability for this Coverage Part.

D. ADDITIONAL CLAIM EXPENSES LIMIT FOR EMPLOYMENT P. TICL LIABIL Y

If an Additional Claim Expenses Limit for Employment Pracice Liab. ity is selected on ITEM 8 of the Declarations, then the Insurer shall provide an additional fimit of Liab ity for **Claim Expenses** covered under this Coverage Part, in the amount set forth in the Declaration. This Additional Claim Expenses Limit shall be in addition to and not part of the Aggregate Limit of Libble V set forth in ITEM 2 of the Declarations, provided that such Additional Limit shall attach or y after the exhaustion of such Aggregate Limit of Liability and any amounts payable under any other insurince policie that are specifically written excess of this Coverage Part.

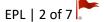
SECTION III – DEFINITIONS

When used in the Employmer Practices 'abil' y Coverage Part, the following terms, whether in the singular or plural, are defined as follow:

- A. Benefits means arguis s, fringe benefits, deferred compensation or payments (including insurance premiums) in connection with an employee benefit plan, and any other payment to or for the benefit of an Employee arguing act on the employment relationship, including without limitation retirement benefits, vacation or sick days, or redical or insurance benefits other than wages, salary, commissions, bonuses, cash incentive compendation or similar non-deferred compensation.
- B. Claim means an Employment Practices Claim or a Third Party Claim.
- **C. EEOC Charge** means any written charge filed against one or more **Insureds** with the Equal Employment Opportunity Commission or any state or local fair employment practices agency, but does not include any proceeding or investigation initiated by the Equal Employment Opportunity Commission or any state or local fair employment practices agency.

D. Employment Practices Claim means:

1. a written demand against any **Insured** for monetary damages or non-monetary (including injunctive) relief, including a written demand for reinstatement, reemployment or reengagement of an



Employee, a written demand that the **Insured** toll or waive a statute of limitations, or a written demand or request for arbitration, mediation or other alternative dispute resolution, which shall be deemed first made upon the **Insured's** receipt of the demand;

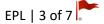
- 2. a civil proceeding against any **Insured** commenced by and which shall be deemed first made upon service upon the **Insured** of a complaint, or similar pleading;
- a criminal proceeding against any **Insured** commenced by and which shall be deemed first made upon the **Insured's** arrest, the return of an indictment or information, or receipt of a notice of charges or similar document;
- 4. an administrative or regulatory proceeding against any Insured, including a proceeding before the Equal Employment Opportunity Commission, a proceeding for violations of the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), or a similar state or local governmental body, or by the Office of Federal Contract Compliance Programs, commenced by and which shall be deemed first made upon the Insured's receipt of a notice of charges, EEOC Charge or similar document; or
- 5. an official request for the **Extradition** of any **Insured Person** or the execution of a warrant for the arrest of any **Insured Person** where such execution is an element of **tradition**.

by or on behalf of any past, present, future or prospective **Er Joyee** or **C** applicant or prospective applicant for employment with the **Organization**, or an individual claiming an employment relationship with the **Insured**, in their capacity as such, including any appendither **C** and provided **Employment Practices Claim** does not include (i) a labor or grievance proceeding pullic unit to the creditive bargaining agreement, or (ii) an audit by the Office of Federal Contract Compliance Program. Unless and until the **Insured** receives a Notice of Violation or Order to Show cause or a writter the theorem of s described above in connection with such audit.

Employment Practices Claim also means an administrative or regulatory investigation or proceeding commenced by the Equal Employment (pportunity Core mission or a similar state or local governmental body, which shall be deemed first made upon the ling of a notice of charges, service of a complaint or similar document of which notice has been given to the **Insured**.

- E. Employment Practices Wrong. 'Act means any actual or alleged:
 - 1. breach of any expr الم imp of er المinopment contract;
 - 2. violation of an, 'aw or public policy concerning discrimination in employment whether based upon race, national one religion, sex, sexual preference, gender identity or expression, age, marital status, sability, medical leave or genetic predisposition;
 - 3. employ <u>relate</u> I torts including without limitation wrongful termination, dismissal or discharge; failure or refusal thire or promote; wrongful discipline; wrongful reference; deprivation of a career opportunity, ucinotion or adverse change in terms, conditions or status of employment; wrongful failure to grant tenure; humiliation; retaliation for asserting a legal right; workplace harassment, including without limitation offensive, intimidating, coercive or unwelcome conduct, advances, contact or communications, bullying, sexual harassment or hostile work environment; negligent hiring, retention, supervision, training or performance evaluation; and employment-related misrepresentation, defamation, libel, slander, humiliation, invasion of privacy or infliction of emotional distress; or
 - 4. wrongful failure or refusal to adopt or enforce workplace or employment practices, policies or procedures, solely with respect to employment-related discrimination or harassment;

with respect to the conduct described in paragraphs 1-4 above, **Employment Practices Wrongful Act** shall include such matters carried out by any means in any location, including, without limitation, the Internet



(i.e. e-mail, instant messaging, social networking services, blogs, etc.), regardless of whether access to the Internet is effected (i) on or off the **Premises**; or (ii) through any computer or device owned or leased by an **Organization**, **Insured Person**, or others.

- F. EPL Crisis means:
 - 1. A congressional inquiry regarding the Insured's violations of employment laws;
 - The Insured's receipt of notice by a civil rights organization or public interest group that it is: (i) investigating the Insured for violations of employment laws, or (ii) distributing literature which accuses the Insured of violations of employment laws;
 - 3. when a Mass Class Claim is commenced or reasonably likely to be commenced against an Insured; or
 - 4. an allegation of employment harassment by a director or corporate officer of the **Organization**, where the **Organization's** director of Human Resources, in-house General Counsel, or equivalent position of the foregoing, reasonably believes that such allegation will result in a **Claim**.
- **G. EPL Crisis Expenses** means the reasonable fees, costs, and other expenses of a public relations consultant engaged by the **Organization** and approved by the Insurer, such approval not to be preasonably withheld, to mitigate reputational harm to such **Organization** as a result of an **EPL C** such
- H. Independent Contractor means any natural person who is not a Employe and who is working for an Organization in the capacity as an independent contractor purchant to an express contract or agreement with the Organization which governs the nature of such person's congement
- I. Insured Persons means:
 - 1. any one or more natural persons who were, ... are, o shall become a duly elected or appointed director (including a de facto director or shade r on str), trustee (other than a bankruptcy or litigation trustee), trustee emeritus, regent, getterno. Manager, officer, in-house general counsel, risk manager, controller, Employee (inclutions emploied lawyers solely in their capacity as an Employee), advisory director, department heat, faculty momber, staff member or member of a duly constituted committee or board of the Organia tion or their functional or foreign equivalent; or
 - any Independent Contract 1, but only the rganization agrees in writing to provide indemnification to such Independent Contract 1 to the same extent as provided to the Organization's Employees; provided that any coverage under the Coverage Part for any such Independent Contractor shall be specifically excess of a 1 in mr location or insurance otherwise available to such Independent Contractor from any of er source.
- J. Insured means +' 'nsur, Persons and the Organization.
- K. Labor Relati ns Labor and any federal, state, local, foreign, statutory or common law (including the National Labor criations act) or any amendments to or regulations promulgated under any such law that governs:
 - 1. the rights of employees to engage in, or to refrain from engaging in, union or other collective bargaining activities, including union organizing, union elections and any other union activities;
 - 2. the duty or obligation of an employer to meet, discuss, notify or bargain with an employee or employee representative, collectively or otherwise;
 - 3. the enforcement of any collective bargaining agreement, including any grievance or arbitration proceedings;
 - 4. strikes, work stoppages, boycotts, picketing and lockouts; or
 - 5. any similar rights or duties.



Loss means the total amount the Insureds become legally obligated to pay on account of a Claim made against them, including, but not limited to, Claim Expenses, damages (including back pay, front pay and punitive, exemplary, or multiple damages), judgments, settlements, as well as any award of pre-judgment and post-judgment interest with respect to covered damages or settlements.

Loss shall include:

- i. plaintiff attorney's fees and costs, and liquidated damages awarded under the Age Discrimination in Employment Act, the Equal Pay Act or the Family Medical Leave Act; and
- ii. the costs of any training, reeducation, sensitivity, or "protected class" or other discrimination prevention programs which the Organization is obligated to institute by reason of judgment, settlement or arbitration award for liability on account of a Claim, subject to a Sublimit in the amount of \$25,000, which shall be part of and not in addition to the Aggregate Limit of Liability for the Coverage Part;

The insurability of punitive, exemplary, liquidated or multiple damages shall be determined under the internal laws of any jurisdiction most favorable to the **Insureds**, including without imitation the jurisdiction in which the **Organization**, the **Insured Persons**, the Insurer, this Policy or such **Clain** is located.

Loss, except with respect to Claim Expenses, does not include:

- 1. except as provided in paragraph (ii) above, any amount in urred by the normed to comply with any injunctive or other non-monetary relief or any agreement or ovide such relief, including without limitation any costs associated with providing any real vable occomposations required by, made as a result of, or to conform with the requirements of, he Americans with Disabilities Act and any amendments thereto or any similar foreign, feedeal, stat. or chall statute, regulation, rule or law;
- 2. future salary, wages, commissions, **Benets**, **Suck Deliver**, or any other employment related benefits or compensation, of a claimant who use or shall be rehired, promoted, or reinstated;
- 3. salary, wages, commissions, **Benef**'s, **Stock Bene**, s, or other monetary payments which constitute severance payments or payments ursuant to a notice period, other than any payments negotiated with and consented to by the insure as part c a settlement;
- 4. employment-related be stits, in luding but not limited to **Benefits**, **Stock Benefits**, bonuses or any amount equivalent to or s be antially quivalent to such employment related benefits, or any other type of compensations here an stary or wages;
- 5. any amount no indem fied by the **Organization** for which the **Insureds** are absolved from payment by reason of any commant, agreement or court order;
- 6. taxes, files or penaltic imposed by law, except as provided above;
- 7. matters unnsurably under the law pursuant to which this Policy is construed; or
- 8. Clean-Up Co....
- M. Mass Class Claim means any Claim that is brought by or on behalf of: (i) any actual or alleged class (whether or not certified as such); (ii) any group of three of more complainants, plaintiffs or potentially aggrieved parties; or (iii) by the Equal Employment Opportunity Commission or any similar foreign, state, county or local body on behalf of any group of three or more complainants, plaintiffs or potentially aggrieved parties against an Insured.
- **N. Prior EPL Policy** means the prior employment practices liability insurance policy (including if by coverage part) or policy providing comparable insurance that was in effect for the **Named Insured** during the one (1) year period immediately preceding the inception of this Policy.
- **O. Premises** means all properties and buildings which the **Organization** regularly occupies in conducting its business.



- P. Stock Benefits means stock, stock warrants, stock appreciation rights, phantom stock plans or arrangements, stock options or other similar rights.
- Q. Third Party means any natural person who is a customer, vendor, service provider, client, or other business invitee of the Organization, provided, however, Third Party shall not include an Employee, applicant or prospective applicant for employment with the Organization.
- R. Third Party Claim means:
 - 1. a written demand against any **Insured** for monetary damages or non-monetary relief, including a written demand that the **Insured** toll or waive a statute of limitations or a written demand or request for arbitration, mediation or other alternative dispute resolution, which shall be deemed first made upon the **Insured's** receipt of the demand;
 - 2. a civil proceeding against any **Insured** commenced by, and which shall be deemed first made upon the service upon the **Insured** of a complaint, or similar pleading;
 - 3. a criminal proceeding against any **Insured** commenced by, and which shall be deemed first made upon, the **Insured's** arrest, the return of an indictment or information proceeding of a notice of charges or similar document;
 - 4. an official request for the **Extradition** of any **Insured Perr n** or t¹ execution of a warrant for the arrest of any **Insured Person** where such execution is a element of **Extradition**, which shall be deemed first made upon the **Insured Person's** receipt is such ficial equest or warrant;

by or on behalf of a **Third Party** in their capacity as such, inclu 'interview of a peal therefrom.

- S. Third Party Wrongful Act means any actual or al' ged:
 - 1. racial, national origin, religious, sex. corual pefere. e, age, marital status, disability, or genetic predisposition based discrimination against a Thin Party;
 - 2. racial, national origin, religious, s x, sexual efference, age, marital status, disability, or genetic predisposition based harasselent of Third P. ty;

and without limitation, the c duct r' scribed in paragraphs 1 and 2 above, shall include matters carried out by any means in any location i cluding without limitation, the Internet (i.e. e-mail, instant messaging, social networking services, but is, e 1, r cardless of whether access to the Internet is effected (i) on or off the **Premises**; or (ii) crough r by computer or device owned or leased by an **Organization**, **Insured Person**, or others.

- T. Workplace V lence Expension means reasonable fees and expenses incurred by the Organization with the Insurer's price writion consent, such consent not to be unreasonably withheld, to hire:
 - 1. an independent rublic relations or security consultant or forensic analyst for ninety (90) days;
 - 2. an independent consultant to provide counseling for Employees; or
 - 3. an independent security company to provide security services for fifteen (15) days;

immediately following the Workplace Violence Incident.

- U. Workplace Violence Incident means any unlawful and intentional actual or threatened use of deadly force involving the display of a lethal weapon which occurs in or on the **Premises** and which did or could reasonably result in the death or bodily injury of any **Insured Person**.
- V. Wrongful Act means:
 - 1. an Employment Practices Wrongful Act; or



2. a Third Party Wrongful Act;

by any of the Insured Persons in their capacity as such, or by the Organization.

SECTION IV – EXCLUSIONS

The Insurer shall not be liable under this Coverage Part to pay any Loss on account of that portion of any Claim made against any Insured:

A. PRIOR NOTICE

based upon, arising out of or attributable to any fact, circumstance or **Wrongful Act(s)** which have been the subject of any written notice given prior to inception of this Policy and accepted under any prior employment practices liability or comparable insurance policy or coverage part.

B. PENDING OR PRIOR LITIGATION

based upon, arising out of or attributable to any **Claim** against any **Insured** which was pending on or existed prior to the respective Pending or Prior Date for this Coverage Part set forth in the Coverage Schedule in ITEM 8 of the Declarations, or the same or substantially the same fact, **Section Coverage Act(s)** alleged in or underlying such prior **Claim**.

C. BODILY INJURY/PROPERTY DAMAGE

for bodily injury, sickness, emotional distress, mental anguit hum. tion isease or death of any person or damage to or destruction of any tangible property including ission is of such damaged or destroyed property; provided this exclusion shall not apply to including is on e ployment-related emotional distress, mental anguish or humiliation.

D. VIOLATIONS OF LAW

for an actual or alleged violation of the r sponsibilitions, outigations or duties imposed by:

- 1. any law governing workers' com, insation, unemployment insurance, social security, disability benefits or similar law;
- 2. ERISA (except Section 51, the cof);
- 3. Wage and Hour 1 w, p, vide, the notwithstanding anything in this Policy to the contrary it shall be the duty of the **isured** and not the duty of the Insurer to defend any Claim which is in part excluded from coverage put what to this Exclusion D.3;
- 4. any Lator Relations Low, the Worker Adjustment and Retraining Notification Act, the Consolidated Omnib. Broket R conciliation Act of 1985, the Occupational Safety and Health Act;

or any rules or regulations promulgated under any of such statutes or laws, amendments thereto or similar provisions of any federal, state, local or foreign statutory or common law; but this exclusion shall not apply to **Loss** on account of that portion of any **Claim** for any actual or alleged retaliatory treatment of the claimant by the **Insured** on account of the claimant's exercise of rights pursuant to any such law, rule or regulation or for any other actual or alleged violation of any whistleblower statute or law.

E. CONTRACT

based upon, arising out of or attributable to any liability under any written contract or agreement, provided this exclusion shall not apply to: (1) the extent that liability would have been incurred in the absence of such contract or agreement; or (2) **Claim Expenses**.

For the purpose of determining the applicability of any Exclusion set forth in this Section IV, the Wrongful Act(s) or knowledge of any Insured Person shall not be imputed to any other Insured Person, and only the Wrongful

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Act(s) or knowledge of a chief executive officer or chief financial officer of an Organization shall be imputed to an Organization.

