

# EVEREST EXPEDITION<sup>SM</sup> PRIVATE COMPANY MANAGEMENT LIABILITY POLICY CRIME COVERAGE PART



## SECTION I – INSURING AGREEMENTS

### A. EMPLOYEE THEFT COVERAGE

The Insurer shall pay the **Named Insured** for direct loss of **Money, Securities** or **Property** sustained by an **Insured** resulting from **Theft** or **Forgery** committed by an **Employee** acting alone or in collusion with others.

### B. PREMISES COVERAGE

The Insurer shall pay the **Named Insured** for direct loss sustained by an **Insured** resulting from:

1. **Robbery, Safe Burglary**, or unlawful taking of **Money** or **Securities** committed by a **Third Party**; or
2. actual destruction or disappearance of **Money** or **Securities**,

within or from the **Premises** or **Banking Premises**.

Coverage under this Insuring Agreement B shall also include:

- i. loss of or damage to **Property** which results from **Robbery** or attempted **Robbery** within the **Premises**;
- ii. loss of or damage to such **Property** contained within any locked vault or safe which results from **Safe Burglary** or attempted **Safe Burglary** within the **Premises**;
- iii. damage to a locked safe, cash drawer, cash box or cash register within the **Premises** by felonious entry or attempted felonious entry or loss by felonious abstraction of such container from within the **Premises**; and
- iv. damage to the **Premises** or to its exterior resulting from **Safe Burglary** or **Robbery**,

committed by a **Third Party**.

### C. IN TRANSIT COVERAGE

The Insurer shall pay the **Named Insured** for direct loss sustained by an **Insured** resulting from:

1. **Robbery** or unlawful taking of **Money** or **Securities** committed by a **Third Party**; or
2. actual destruction or disappearance of **Money** or **Securities**;

while **In Transit** or while temporarily within the home of an **Employee** or a partner of a **Company**.

Coverage under this Insuring Agreement C shall also include:

- i. damage to **Property** which results from **Robbery** while **In Transit**; and
- ii. loss by the unlawful taking of **Property** temporarily within the home of an **Employee** or a partner of a **Company**;

committed by a **Third Party**.

### D. FORGERY COVERAGE

The Insurer shall pay the **Named Insured** for direct loss sustained by an **Insured** resulting from **Forgery** or alteration of a **Financial Instrument** committed by a **Third Party**.

### E. COMPUTER FRAUD COVERAGE

The Insurer shall pay the **Named Insured** for direct loss of **Money, Securities or Property** sustained by an **Insured** resulting from **Computer Fraud** committed by a **Third Party**.

**F. FUNDS TRANSFER FRAUD COVERAGE**

The Insurer shall pay the **Named Insured** for direct loss of **Money** or **Securities** sustained by an **Insured** resulting from **Funds Transfer Fraud** committed by a **Third Party**.

**G. MONEY ORDERS AND COUNTERFEIT CURRENCY FRAUD COVERAGE**

The Insurer shall pay the **Named Insured** for direct loss sustained by an **Insured** resulting from **Money Orders and Counterfeit Currency Fraud** committed by a **Third Party**.

**H. CREDIT CARD FRAUD COVERAGE**

The Insurer shall pay the **Named Insured** for direct loss sustained by an **Insured** resulting from **Credit Card Fraud** committed by a **Third Party**.

**I. CLIENT COVERAGE**

The Insurer shall pay the **Named Insured** for direct loss of **Money, Securities or Property** sustained by a **Client** resulting from **Theft** or **Forgery** committed by an **Employee** not in collusion with such **Client's** employees.

**J. SOCIAL ENGINEERING FRAUD COVERAGE**

The Insurer shall pay the **Named Insured** for direct loss sustained by an **Insured** resulting from a **Company** having transferred, paid or delivered any **Money** or **Securities** as the direct result of **Social Engineering Fraud** committed by a person purporting to be a **Vendor, Client** or **Employee** who was authorized by the **Company** to instruct other **Employees** to transfer **Money** or **Securities**.

**K. EXPENSE COVERAGE**

The Insurer shall pay the **Named Insured** for

1. **Investigative Expenses** resulting from any direct loss covered under Insuring Agreement A (Employee Theft Coverage), B (Premises Coverage), C (In Transit Coverage), D (Forgery Coverage), E (Computer Fraud Coverage), F (Funds Transfer Fraud Coverage), G (Money Orders and Counterfeit Currency Fraud Coverage), H (Credit Card Fraud Coverage), I (Client Coverage) or J (Social Engineering Fraud Coverage); or
2. **Computer Violation Expenses** resulting from any direct loss covered under Insuring Agreement A (Employee Theft Coverage), E (Computer Fraud Coverage), or I (Client Coverage);

incurred by any **Company** up to the Limit of Liability for the Expense Coverage Insuring Agreement set forth in ITEM 1 of the Crime Declarations, in excess of the deductible applicable to the other Insuring Agreement referenced in paragraphs 1 and 2 above. Such Limit of Liability for Expense Coverage shall be part of and not in addition to the Limit of Liability applicable to such other Insuring Agreement.

**SECTION II – DEFINITIONS**

When used in the Crime Coverage Part, the following terms, whether in the singular or plural, are defined as follows:

- A. **Banking Premises** means the interior portion of a building occupied by, or the night depository chute or safe maintained by, any bank, trust company or similar financial institution.
- B. **Client** means a customer of a **Company** to whom a **Company** provides goods or services under written contract or for a fee.

- C. **Computer Fraud** means the unlawful taking of **Money, Securities or Property** resulting from a **Computer Violation**.
- D. **Computer System** means a computer or network of computers, including its input, output, processing, storage and communication facilities, and shall include off-line media libraries.
- E. **Computer Violation** means an unauthorized:
  1. entry into or deletion of **Data** from a **Computer System**;
  2. change to **Data** elements or program logic of a **Computer System**, which is kept in machine readable format; or
  3. introduction of instructions, programmatic or otherwise, which propagate themselves through a **Computer System**;

directed against a **Company**.

- F. **Computer Violation Expenses** means reasonable expenses, other than a **Company's** internal corporate costs (such as **Salary**), incurred by a **Company** with the Insurer's prior written consent to reproduce or duplicate damaged or destroyed electronic **Data** or computer programs. If computer programs cannot be duplicated from other computer programs, then **Computer Violation Expenses** shall also include reasonable costs incurred for computer time, computer programmers, technical experts or consultants to restore the computer programs to substantially the same level of operational capability immediately preceding the covered direct loss. **Computer Violation Expenses** shall not include expenses incurred by any **Client**.
- G. **Confidential Information** means confidential or personal information including, but not limited to, patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any similar type of nonpublic information.
- H. **Contractual Independent Contractor** means any natural person independent contractor while in the regular service of a **Company** in the ordinary course of such **Company's** business, pursuant to a written contract for services between such **Company**, and either (i) such natural person independent contractor, or (ii) any other entity acting on behalf of such natural person independent contractor.
- I. **Credit Card Fraud** means the **Forgery** or alteration of, on or in, any written instrument required in connection with any credit card, debit card, or charge card issued to a **Company** or at the request of a **Company**, to any partner, officer or **Employee** of a **Company**.
- J. **Data** means information contained in records, manuscripts, accounts, microfilms, tapes or other records, which are processed and stored in a **Computer System**.
- K. **Discovery** or **Discovered** means knowledge acquired by an **Executive Officer** which would cause a reasonable person to believe a covered loss has occurred or an occurrence has arisen that may subsequently result in a covered loss including loss:
  1. sustained prior to the inception date of any coverage under this Coverage Part;
  2. which does not exceed the applicable Deductible set forth in ITEM 1 of the Crime Declarations; or
  3. the exact amount or details of which are unknown;

provided that **Discovery** or **Discovered** shall not include knowledge acquired by an **Executive Officer** acting alone or in collusion with an **Employee**, or the knowledge possessed by any **Executive Officer** who is a participant in the **Theft** or **Forgery**.

- L. **Employee** means any:

1. natural person while in the regular service of a **Company** in the ordinary course of such **Company's** business, whom such **Company** governs and directs in the performance of such service, including a part-time, seasonal, leased or temporary employee, intern or volunteer;
  2. **Executive** while performing acts within the scope of the usual duties of an **Employee**;
  3. **Contractual Independent Contractor**;
  4. natural person fiduciary, trustee, administrator or **Employee**, as defined in paragraphs 1 and 2 above, of an **ERISA Plan** and any other natural person, who handles **ERISA Plan** assets and is required to be bonded by a **Company** in connection with such **ERISA Plan** by Title 1 of the Employee Retirement Income Security Act of 1974, as amended, or by the Pension Protection Act of 2006;
  5. former or retired **Employee**, as defined in paragraphs 1 and 2 above, of the **Company**, retained as a consultant (as evidenced by a written contract for services) to the **Company**; or
  6. **Employee**, as defined in paragraphs 1 and 2 above, of the **Company**, while on leave for military services.
- M. ERISA Plan** means any Employee Benefit Plan, Pension Benefit Plan or Welfare Benefit Plan, defined and required to be bonded under Title 1 of the Employee Retirement Income Security Act of 1974, as amended, or by the Pension Protection Act of 2006, which is operated solely by a **Company** or jointly by a **Company** and a labor organization for the benefit of **Employees** and which existed on or before the inception of this Policy or which is created or acquired after the inception of this Policy, provided that **ERISA Plan** shall not include any multi-employer plan.
- N. Executive** means any natural person specified below:
1. a duly elected or appointed director, officer, trustee, in-house general counsel or duly constituted committee member of any **Company** incorporated in the United States of America;
  2. a duly elected or appointed: (i) manager or member of the Board of Managers or equivalent position; (ii) duly constituted committee member; (iii) in-house general counsel; or (iv) trustee, of any **Company** formed as a limited liability company in the United States of America; or
  3. a holder of an equivalent position to those described in paragraphs 1 or 2 above in any **Company** incorporated, formed or organized anywhere in the world.
- O. Financial Instrument** means checks, drafts or similar written promises, orders or directions to pay a sum certain in money, that are made, drawn by or drawn upon a **Company** or by anyone acting as a **Company's** agent, or that are purported to have been so made or drawn.
- P. Forgery** means the signing of another natural person's name with the intent to deceive, but does not mean a signature that includes in whole or in part, one's own name, with or without authority, in any capacity for any purpose. Mechanically or electronically produced or reproduced signatures shall be treated the same as hand-written signatures.
- Q. Funds Transfer Fraud** means fraudulent written, electronic, telegraphic, cable, teletype or telephone instructions (other than **Forgery**), purportedly issued by a **Company**, and issued to a financial institution directing such institution to transfer, pay or deliver **Money** or **Securities** from any account maintained by such **Company** at such institution, without such **Company's** knowledge or consent.
- R. Insurance Representative** means an **Employee**, as defined in Sections II.L.1 and II.L.2 of the definition of **Employee**, including a risk manager, designated to represent an **Insured** for the purpose of effecting and maintaining insurance.
- S. Insured** means any **Company** and any **Sponsored Plan**.

- T. In Transit** means being conveyed outside the **Premises**, from one person or place to another, by the **Company** within the custody of:
1. an **Employee** or a partner of a **Company**; or
  2. a person duly authorized by such **Company** to have custody of **Money, Securities** or **Property**;
- provided that such conveyance begins immediately upon receipt of **Money, Securities** or **Property** by the person(s) described in paragraphs 1 or 2 above, from such **Company**, and ceases immediately upon delivery to the designated recipient or its agent.
- U. Investigative Expenses** means reasonable expenses, other than a **Company's** internal corporate costs (such as **Salary**), incurred by a **Company** with the Insurer's prior written consent to establish the existence and amount of a covered loss. **Investigative Expenses** shall not include expenses incurred by any **Client**.
- V. Money** means currency, coin, bank notes, bullion, travelers checks, registered checks and money orders held for sale to the general public.
- W. Money Orders and Counterfeit Currency Fraud** means the good faith acceptance by a **Company**:
1. in exchange for merchandise, **Money** or services, of any post office express money order, issued or purporting to have been issued by any post office or express company, if such money order is not paid upon presentation; or
  2. in the regular course of business, of counterfeit paper currency.
- X. Non-ERISA Plan** means any employee benefit plan not subject to Title I of the Employee Retirement Income Security Act of 1974, as amended, or by the Pension Protection Act of 2006, which is operated solely by a **Company** or jointly by a **Company** and a labor organization for the benefit of **Employees** and which existed on or before the inception of this Policy or which is created or acquired after the inception of this Policy, provided that **Non-ERISA Plan** shall not include any multi-employer plan.
- Y. Premises** means the interior portion of a building occupied by a **Company** in conducting its business.
- Z. Property** means tangible property other than **Money** or **Securities**. **Property** shall not include any **Insured's** or another entity or person's **Confidential Information**.
- AA. Robbery** means the unlawful taking of **Money, Securities** or **Property** from the custody of an **Employee** or other person (except a person acting as a watchman, porter or janitor) duly authorized by a **Company** to have custody of such **Money, Securities** or **Property**, by violence or threat of violence, committed in the presence and cognizance of such **Employee** or other person.
- BB. Safe Burglary** means the unlawful taking of **Money, Securities** or **Property** by forcible or violent entry evidenced by visible marks, from a locked vault or safe located within the **Premises**.
- CC. Salary** means compensation a **Company** pays an **Employee**, including bonus, commission, incentive payments, and the cost of health, welfare and pension benefits.
- DD. Securities** means any negotiable and non-negotiable contracts or instruments representing either **Money** or **Property**, including revenue and other stamps in current use, casino chips, tokens and tickets, provided that **Securities** shall not include **Money**.
- EE. Social Engineering Fraud** means the intentional misleading of an **Employee**, through misrepresentation of a material fact which is relied upon by an **Employee**, believing it be genuine.
- FF. Sponsored Plan** means any **ERISA Plan** and **Non-ERISA Plan**.
- GG. Theft** means the unlawful taking of **Money, Securities** or **Property** to the deprivation of:

1. an **Insured**, solely for the purposes of Insuring Agreement A (Employee Theft Coverage); or
2. a **Client**, solely for the purposes of Insuring Agreement I (Client Coverage).

**HH. Third Party** means a natural person other than:

1. an **Employee**; or
2. a natural person acting in collusion with an **Employee**.

**II. Vendor** means any entity or natural person that has provided goods or services to a **Company** under a legitimate preexisting arrangement or written agreement. However, **Vendor** does not include any financial institution, asset manager, broker-dealer, armored motor vehicle company, or any similar entity.

### SECTION III – EXCLUSIONS

**A.** No coverage will be available for:

**1. TRADING**

loss resulting directly or indirectly from any authorized or unauthorized trading of **Money, Securities** or **Property**, whether or not in the name of an **Insured** and whether conducted in a genuine or fictitious account, provided that this exclusion shall not apply to direct losses caused by **Theft** or **Forgery** which result in improper financial gain to an **Employee** (direct losses as used herein shall mean only the amount of improper financial gain to such **Employee**, which shall not include **Salary**, commissions, fees or other compensation, including promotions and raises associated with employment, paid by the **Insured** to such **Employee**).

**2. CONFIDENTIAL INFORMATION**

- a. loss involving the disclosure or use of an **Insured's** or another entity or person's **Confidential Information** while in the care, custody or control of an **Insured**; or
- b. fees, costs, fines, penalties or any other expenses incurred by an **Insured** which result, directly or indirectly, from the access to or disclosure of **Confidential Information**.

**3. OWNER/PARTNER**

loss due to **Theft** or **Forgery** committed by an owner or partner of a **Company**, whether acting alone or in collusion with others, provided that if such **Theft** or **Forgery** would otherwise be covered under Insuring Agreement A (Employee Theft Coverage) or I (Client Coverage), this exclusion shall not apply to the extent coverage under this Coverage Part is excess of the amount of such owner or partner's percentage ownership of such **Company**, on the day immediately preceding the date of **Discovery**, multiplied by such **Company's** total assets as reflected in such **Company's** most recent annual financial statements.

**4. WAR**

loss or damage due to declared or undeclared war, civil war, insurrection, rebellion, revolution, military, naval or usurped power, governmental intervention, expropriation or nationalization, or any act or condition incident to any of the foregoing.

**5. NUCLEAR**

loss or damage due to nuclear reaction, nuclear radiation or radioactive contamination, or any act or condition incident to any of the foregoing.

**6. POTENTIAL INCOME**

loss of income not realized as the result of a covered loss.

## 7. INDIRECT/CONSEQUENTIAL

indirect or consequential loss of any kind, provided that this exclusion shall not apply to:

- a. otherwise covered **Investigative Expenses** and **Computer Violation Expenses** under Insuring Agreement K (Expense Coverage);
- b. the cost of reproducing information contained in any lost or damaged manuscripts, records, accounts, microfilms, tapes, or other records resulting directly from a covered loss, provided that the **Company's** maximum liability for the cost of reproducing information contained in any lost or damaged manuscripts, records, accounts, microfilms, tapes, or other records resulting directly from a covered loss sustained shall be \$25,000, which amount shall be part of, and not in addition to, the applicable Limit of Liability set forth in ITEM 1 of the Crime Declarations.

## 8. DATA, FEES, COSTS AND EXPENSES

fees, costs or expenses incurred or paid:

- a. as a result of the reconstitution of **Data** if a **Company** knowingly used illegal copies of programs;
- b. to render the **Data** usable by replacement processing equipment;
- c. to design, update or improve software or program or to perfect their operation or performance; or
- d. as a result of an alteration in **Data** held on magnetic media due to the effect of magnetic fields, their incorrect use or the obsolescence of the computer or its facilities.

## 9. FIRE

loss due to fire, provided that this exclusion shall not apply to:

- a. loss of **Money** or **Securities** or
- b. damage to any safe or vault caused by the application of fire thereto for the purposes of **Safe Burglary**.

## 10. LEGAL FEES, COSTS AND EXPENSES

fees, costs or expenses incurred or paid in defending or prosecuting any legal proceeding or claim, provided that this exclusion shall not apply to the coverage provided under Section V (Legal Expenses Extension)

## 11. VOLUNTARY EXCHANGE OR PURCHASE

loss due to an **Insured** knowingly having given or surrendered **Money**, **Securities** or **Property** in any exchange or purchase with a **Third Party**, not in collusion with an **Employee**, provided that this exclusion shall not apply to otherwise covered loss under Insuring Agreement A (Employee Theft Coverage), G (Money Orders and Counterfeit Currency Fraud Coverage), I (Client Coverage), or J (Social Engineering Fraud), or otherwise covered loss of **Property** under Insuring Agreement E (Computer Fraud Coverage).

## 12. ADVANTAGE

loss sustained by one **Insured** to the advantage of any other **Insured**.

### 13. CUSTODIAL

loss of or damage to **Money, Securities** or **Property** while in the custody of any bank, trust company, similar recognized place of safe deposit, armored motor vehicle company or any person who is duly authorized by a **Company** to have custody of such **Money, Securities** or **Property**, provided that this exclusion shall not apply to the extent that coverage under this Coverage Part is excess of the amount recovered or received by such **Company** under:

- a. such **Company's** contract, if any, with, or insurance carried by, any of the foregoing; or
- b. any other insurance or indemnity in force which would cover the loss in whole or in part.

### 14. AUTHORIZED REPRESENTATIVE

loss or damage due to **Theft, Forgery, Computer Fraud, Funds Transfer Fraud, Money Orders And Counterfeit Currency Fraud, Credit Card Fraud** or other fraudulent, dishonest or criminal act (other than **Robbery** or **Safe Burglary**) committed by any authorized representative of an **Insured**, whether acting alone or in collusion with others, provided that this exclusion shall not apply to otherwise covered loss under Insuring Agreement A (Employee Theft Coverage) or I (Client Coverage), resulting from **Theft** or **Forgery** committed by an **Employee** acting in collusion with such authorized representative.

**B.** In addition to the Exclusions in Subsection A above, no coverage will be available under:

1. Insuring Agreement A (Employee Theft Coverage) or I (Client Coverage), for:

a. **BROKER/INDEPENDENT CONTRACTOR**

loss caused by any broker, factor, commission merchant, consignee, contractor, independent contractor (other than a **Contractual Independent Contractor**), or other agent or representative of the same general character,

b. **PRIOR DISHONESTY**

loss caused by an **Employee** which is sustained by an **Insured**:

i. after an **Executive** or **Insurance Representative** becomes aware of a:

1. **Theft**;
2. **Forgery**;
3. other fraudulent, dishonest or criminal act;
4. which is valued at one thousand dollars (\$1,000) or more, committed by such **Employee** while employed with or in the service of an **Insured**;

ii. after an **Executive** or **Insurance Representative** becomes aware of a **Theft, Forgery** or other fraudulent, dishonest or criminal act, involving:

1. **Money**;
2. **Securities**; or
3. other property;
4. which is valued at twenty-five thousand dollars (\$25,000) or more, committed by such **Employee** prior to employment or service with an **Insured**; or

iii. more than ninety (90) days following the termination of such **Employee**;



2. Insuring Agreement B (Premises Coverage) or C (In Transit Coverage), for:
- a. **OTHER INSURING AGREEMENTS**  
loss or damage due to **Forgery, Computer Fraud, Funds Transfer Fraud, Money Orders and Counterfeit Currency Fraud or Credit Card Fraud**; or
  - b. **MAIL/CARRIER FOR HIRE**  
loss of or damage to **Money, Securities or Property** while in the mail or in the custody of a carrier for hire other than an armored motor vehicle company;
3. Insuring Agreement B (Premises Coverage), C (In Transit Coverage), E (Computer Fraud Coverage), F (Funds Transfer Fraud Coverage), or J (Social Engineering Fraud Coverage) for:
- a. **KIDNAP, RANSOM OR EXTORTION**  
loss or damage as a result of a kidnap, ransom or other extortion payment (as distinct from **Robbery**) surrendered to any person as a result of a threat to do bodily harm to any person or a threat to do damage to the **Premises** or other property;
  - b. **FORGERY OR ALTERATION**  
loss due to **Forgery** or alteration of:
    - (i) any **Financial Instrument** committed by a **Third Party** in collusion with any **Employee**; or
    - (ii) any registered or coupon obligations issued or purported to have been issued by the **Insured**, or any coupons whether attached or detached; or
4. Insuring Agreement D (Forgery Coverage) for:
- FORGERY OR ALTERATION**
- loss due to **Forgery** or alteration of:
- (i) any **Financial Instrument** committed by any **Third Party** in collusion with any **Employee**; or
  - (ii) any registered or coupon obligations issued or purported to have been issued by the **Insured** or any coupons whether attached or detached; or
5. Insuring Agreement H (Credit Card Fraud Coverage) for:
- FORGERY OR ALTERATION (CREDIT CARD)**
- loss caused by any **Forgery** or alteration of, on or in any written instrument, provided that this Exclusion B.5 shall not apply if:
- (i) the provisions, conditions and other terms under which the involved credit card was issued were fully complied with; and
  - (ii) the **Company** is legally liable to the issuer of such credit card for such loss.
6. Insuring Agreement J (Social Engineering Fraud Coverage) for:
- a. **CAUSE(S) OF LOSS**  
loss or damage due to **Theft** by an **Employee, Forgery, Computer Fraud, Funds Transfer Fraud, Money Orders and Counterfeit Currency Fraud or Credit Card Fraud**;

b. **MAIL/CARRIER FOR HIRE**

loss of or damage to **Money** or **Securities** while in the mail or in the custody of any carrier for hire, including but not limited to any armored motor vehicle company;

c. **INVESTMENTS**

loss due to any investment in **Securities**, or ownership in any corporation, partnership, real property, or similar instrument, whether or not such investment is genuine;

d. **PRODUCTS OR SERVICES**

loss due to the failure, malfunction, inadequacy or illegitimacy of any product or service;

e. **PERFORMANCE UNDER CONTRACT**

loss due to the failure of any part to perform, in whole or in part, under any contract;

f. **LOANS AND CREDIT**

loss due to the extension of any loan, credit or similar promise to pay;

g. **GAMBLING**

loss due to any gambling, game of chance, lottery or similar game;

h. **PROPERTY**

loss or damage to any **Property**;

i. **CREDIT CARD LOSS**

loss due to any party's use of or accountability of any credit card, debit card or similar instrument, whether or not genuine.

C. **Loss Discovered**

No coverage will be available for:

1. loss unless such loss is sustained by a **Named Insured**, and such loss is **Discovered** prior to the termination of this Coverage Part as to such **Named Insured**;
2. loss unless such loss is sustained by any **Named Insured** and **Discovered** prior to the termination of the applicable Insuring Agreement or the applicable coverage offered under any Insuring Agreement;
3. loss unless such loss is sustained by any **Named Insured** and **Discovered** prior to the termination of this Coverage Part in its entirety;
4. loss unless such loss is sustained prior to the termination of this Coverage Part and such loss is **Discovered** within one (1) year following such termination if the termination results from the voluntary liquidation or voluntary dissolution of the **Named Insured**; or
5. any loss that an **Named Insured** is aware of prior to the inception date of this Policy;

provided that in no event will coverage be available under this Coverage Part for such loss if such loss is covered under any renewal or replacement of this Coverage Part or any Insuring Agreement or any particular coverage offered under any Insuring Agreement.

**SECTION IV – ERISA PLAN EXTENSION**

- A. Solely with respect to loss sustained by an **ERISA Plan**, payment by the Insurer for covered loss shall be to the **ERISA Plan** sustaining such loss. If such payment is in excess of the amount of coverage required by the Employee Retirement Income Security Act of 1974, as amended, for such **ERISA Plan(s)**, such excess shall be held for the use and benefit of any other **ERISA Plan(s)** should such **ERISA Plan(s)** also discover loss recoverable hereunder.

**B. With respect to each ERISA Plan:**

1. if covered loss is sustained by any ERISA Plan which does not have any employer securities, the Limit of Liability applicable to such covered loss shall be the greater of:
  - a. \$1,000; or
  - b. ten percent (10%) of the ERISA Plan's funds handled as of the beginning of such ERISA Plan's fiscal year,up to \$500,000; or
2. if covered loss is sustained by any ERISA Plan which does have any employer securities, the Limit of Liability applicable to such covered loss shall be the greater of;
  - a. \$1,000; or
  - b. ten percent (10%) of the ERISA Plan's funds handled as of the beginning of such ERISA Plan's fiscal year;up to \$1,000,000,

provided that, in all events, if the applicable Limit of Liability set forth in ITEM 1 of the Crime Declarations:

- a. is less than or equal to the amounts set forth in Paragraph IV.B.1 or IV.B.2 above, then the applicable Limit of Liability shall be amended to the respective amounts set forth in Paragraph IV.B.1 or IV.B.2 above; or
- b. is greater than the amounts set forth in Paragraph IV.B.1 or IV.B.2 above, then the applicable Limit of Liability for each ERISA Plan shall be the amounts set forth in Paragraph IV.B.1 or IV.B.2 above, with the remaining amount for which the applicable Limit of Liability set forth in ITEM 1 of the Crime Declarations exceeds the amounts in Paragraph IV.B.1 or IV.B.2 above to be allocated equally between all ERISA Plans sustaining the loss.

**C. Solely with respect to loss sustained by an ERISA Plan:**

1. Insuring Agreement A (Employee Theft Coverage), is replaced with the following:

The Insurer shall pay an ERISA Plan for direct loss of **Money, Securities or Property** sustained by such ERISA Plan resulting from a fraudulent or dishonest act, including larceny, theft, embezzlement, forgery, misappropriation, wrongful abstraction, wrongful conversion and willful misapplication, committed by an **Employee** acting alone or in collusion with others.

2. The words "ninety (90) days" are deleted from the exclusions applicable to this Coverage Part, wherever they appear, and the words "one (1) year" are substituted in place thereof.

**D. No Deductible shall apply to loss sustained by an ERISA Plan covered under this Coverage Part.**

**SECTION V – LEGAL EXPENSES EXTENSION**

In addition to the Limits of Liability set forth in ITEM 1 of the Crime Declarations, the Insurer shall pay the **Named Insured:**

- A. as a result of loss covered under Insuring Agreement D (Forgery Coverage), reasonable court costs and attorneys' fees incurred and paid, with the Insurer's prior written consent, in defending a **Company** or a **Company's** bank in any legal proceeding brought against it to enforce payment of a **Financial Instrument;** and

- B. as a result of loss covered under Insuring Agreement H (Credit Card Fraud Coverage), reasonable court costs and attorneys' fees incurred and paid with the Insurer's prior written consent in defending a **Company** in any legal proceeding brought against it to enforce payment of a written instrument, required in connection with any credit card, debit card, or charge card.

#### SECTION VI – NOTICE AND PROOF OF LOSS

- A. It is a condition precedent to coverage under this Coverage Part that, upon **Discovery**, the **Named Insured** will:
1. give written notice to the Insurer at the earliest practicable moment, and in no event later than 180 days after such **Discovery**;
  2. furnish affirmative proof of loss with full particulars to the Insurer at the earliest practicable moment, and in no event later than 180 days after such **Discovery**;
  3. submit to examination under oath at the Insurer's request;
  4. produce all pertinent records at such reasonable times and places as the Insurer shall designate; and
  5. provide full cooperation with the Insurer in all matters pertaining to the claim.
- B. Knowledge possessed by any **Insured**, or **Discovery**, shall be deemed knowledge possessed by, or **Discovery**, by all **Insureds**.
- C. The **Named Insured** may offer a comparison between a **Company's** inventory records and actual physical count of its inventory to prove the amount of loss, only where **Company** establishes wholly apart from such comparison that it has sustained a covered loss caused by an **Employee**.

#### SECTION VII – LIMITS OF LIABILITY

- A. The Insurer's maximum liability for each loss shall not exceed the Limit of Liability applicable to such loss set forth in ITEM 1 of the Crime Declarations, regardless of the number of **Insureds** sustaining the loss, provided that with respect to an **ERISA Plan**, the Limit of Liability shall apply in accordance with the terms of Section IV (ERISA Plan Extension).
- B. If a direct loss is covered under more than one Insuring Agreement, the maximum amount payable under this Coverage Part shall not exceed the largest applicable Limit of Liability of any such Insuring Agreement.
- C. All loss resulting from a single act or any number of acts of the same **Employee** or **Third Party**, whether such act or acts occurred before or during the **Policy Period**, will be treated as a single loss and the applicable Limit of Liability set forth in ITEM 1 of the Crime Declarations will apply to such single loss, subject to Section X (Liability for Prior Losses).

#### SECTION VIII – DEDUCTIBLE

- A. The Insurer's liability under this Coverage Part shall apply only to that part of each loss which is in excess of the applicable Deductible set forth in ITEM 1 of the Crime Declarations.
- B. If an **Insured** receives payment under another policy or bond, after applying a deductible or retention, for loss also covered hereunder, then the applicable Deductible set forth in ITEM 1 of the Crime Declarations shall be reduced by the deductible or retention previously applied to such loss.

#### SECTION IX – OWNERSHIP

- A. Solely for the purposes of Insuring Agreements A (Employee Theft Coverage), B (Premises Coverage), C (In Transit Coverage), D (Forgery Coverage), E (Computer Fraud Coverage), F (Funds Transfer Fraud Coverage), G (Money Orders and Counterfeit Currency Fraud Coverage), and H (Credit Card Fraud Coverage), the Insurer's liability under this Coverage Part shall only apply to **Money**, **Securities** or **Property** owned by a

**Company** or for which the **Company** is legally liable, or held by the **Company** in any capacity whether or not the **Company** is liable, provided that:

1. the Insurer's liability will not apply to damage to the **Premises** unless the **Company** is the owner of such **Premises** or is legally liable for such damage; or
  2. with respect to Insuring Agreement A (Employee Theft Coverage), the Insurer's liability will not apply to **Money, Securities** or **Property** of a **Client**.
- B. Solely for the purposes of Insuring Agreement I (Client Coverage), the Insurer's liability under this Coverage Part will only apply to **Money, Securities** or **Property**:
1. owned by a **Client**, which is held by a **Company** in any capacity or for which the **Company** is legally liable; or
  2. held or owned by a **Client**, for which the **Client** is legally liable.

#### SECTION X – LIABILITY FOR PRIOR LOSSES

Coverage will be available for loss sustained at any time and **Discovered** during the **Policy Period**, provided that coverage for loss sustained prior to the effective date of this Coverage Part and the effective date of coverage for any additional **Insureds**, or the effective date of any coverage added by endorsement, is subject to the following:

1. if a **Company** or some predecessor in interest of such **Company** carried a prior bond or policy which afforded coverage for a loss sustained during the period of such prior bond or policy and such prior bond or policy was not issued by the Insurer or any subsidiary or affiliate of the Insurer and such loss was first **Discovered** by an **Insured** prior to the expiration of the time allowed for discovery under the last such policy, then no coverage shall be available under this Coverage Part, unless the total amount of covered loss exceeds the limit of liability of the last such bond or policy carried by the **Company** or predecessor in interest of such **Company**, and the **Company's** Limit of Liability for any such loss will be in excess of the limit of liability of the last bond or policy subject to all of the terms and conditions of this Coverage Part; or
2. if a **Company** or some predecessor in interest of such **Company** carried a prior bond or policy which afforded coverage for a loss sustained during the period of such prior bond or policy and such prior bond or policy was issued by the Insurer or any subsidiary or affiliate of the Insurer then such prior bond or policy shall terminate as of the inception of this Policy and such prior bond or policy shall not cover any loss not discovered and noticed to the Insurer prior to the inception of this Policy and then the Insurer's Limit of Liability for such loss shall be the applicable Limit of Liability set forth in ITEM 1 of the **Company** Declarations.

#### SECTION XI – NON-CUMULATION OF LIABILITY

- A. When there is more than one **Insured**, the maximum liability of the Insurer for loss sustained by one or all **Insureds** shall not exceed the amount for which the Insurer would be liable if all losses were sustained by any one **Insured**.
- B. Regardless of the number of years this coverage remains in effect and the total premium amounts due or paid, the limit of liability of the Insurer with respect to any loss shall not be cumulative from **Policy Period** to **Policy Period**.

#### SECTION XII – LEGAL ACTION AGAINST INSURER

No **Insured** shall institute legal proceedings against the Insurer:

1. after two (2) years immediately following any **Discovery**; or

2. to recover a judgment or settlement against it or its bank resulting from **Forgery, Credit Card Fraud** or related legal expenses as set forth in Section V (Legal Expenses Extension) after two (2) years immediately following the date upon which such judgment shall become final or settlement was entered.

### SECTION XIII – OTHER INSURANCE

If an **Insured** or any other party in interest in any loss covered by this Coverage Part has any bond, indemnity or insurance which would cover such loss in whole or in part in the absence of this Coverage Part, then this Coverage Part shall be null and void to the extent of the amount recoverable or received under such other bond, indemnity, or insurance; but this Coverage Part shall cover such loss, subject to its exclusions, conditions and other terms, only to the extent of the amount of such loss in excess of the amount recoverable or received under such other bond, indemnity or insurance.

### SECTION XIV – TERMINATION OF PRIOR BONDS OR POLICIES

Any prior bonds or policies issued by the Insurer or any subsidiary or affiliate of the Insurer shall terminate, if not already terminated, as of the inception of this Policy.

### SECTION XV – VALUATION AND FOREIGN CURRENCY

The Insurer shall pay:

- A. the actual market value of lost, damaged or destroyed **Securities** at the closing price of such **Securities** on the business day immediately preceding the day on which loss is **Discovered**; or the cost of replacing **Securities**, whichever is less, plus the cost to post a Lost Instrument Bond;
- B. the cost of blank books, pages or tapes or other blank materials to replace lost or damaged books of account or other records;
- C. the least of:
  1. the actual cash value of the **Property**; or
  2. the cost to repair or replace **Property**, other than precious metals, with that of similar quality and value,at the time the **Named Insured** complies with Section VI (Notice and Proof of Loss) regarding the furnishing of proof of loss;
- D. the United States of America dollar value of foreign currency based on the rate of exchange published in *The Wall Street Journal* on the day loss involving foreign currency is **Discovered**; or
- E. the United States of America dollar value of any precious metals based on the amount published in *The Wall Street Journal*, *Gold Price*, *Precious Metals*, on the day loss involving such precious metals is **Discovered**.