

EVEREST EXPEDITIONSM PRIVATE COMPANY MANAGEMENT LIABILITY POLICY
EMPLOYED LAWYERS LIABILITY COVERAGE PART



SECTION I – INSURING AGREEMENTS

A. INSURED PERSON LIABILITY COVERAGE

The Insurer shall pay on behalf of the **Insured Persons** all **Loss** for which the **Insured Persons** are not indemnified by the **Company** and which the **Insured Persons** become legally obligated to pay on account of any **Claim** first made against them during the **Policy Period** or the **Extended Reporting Period**, if exercised, for a **Wrongful Act**.

B. COMPANY REIMBURSEMENT COVERAGE

The Insurer shall pay on behalf of the **Company** all **Loss** for which the **Company** grants indemnification to the **Insured Persons** and which the **Insured Persons** have become legally obligated to pay on account of any **Claim** first made against them during the **Policy Period** or the **Extended Reporting Period**, if exercised, for a **Wrongful Act**.

SECTION II – DEFINITIONS

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

A. Claim means:

1. a written demand against any **Insured Person** for monetary damages or non-monetary relief, including injunctive relief, and including a written demand that the **Insured Person** toll or waive a statute of limitations or a written demand 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 Person** commenced by and which shall be deemed first made upon the service on or other receipt by the **Insured Person** of a complaint or similar pleading;
3. a criminal proceeding against any **Insured Person** commenced by and which shall be deemed first made upon the **Insured Person's** arrest, receipt of a return of an indictment or information, or receipt of a filing of notice of charges or similar document;
4. a formal administrative or regulatory proceeding against any **Insured Person** commenced by and which shall be deemed first made upon service upon or other receipt by the **Insured Person** of a notice of charges or similar document; or
5. a judicial, administrative, bar association or other proceeding against an **Insured Person** which concerns the eligibility or license of such **Insured Person** to practice law, which shall be deemed first made upon the **Insured Person's** receipt of notice of a proceeding;

or the functional or foreign equivalent of paragraphs 1 - 5 above, including any appeal therefrom; provided that a **Claim** under paragraphs 1 - 5 above, shall not provide coverage for any investigation of an **Insured Person**.

6. a civil, criminal, administrative or regulatory investigation of any **Insured Person** commenced by the service upon or other receipt by the **Insured Person** of a target letter or other written notice from the investigating authority identifying by name the **Insured Person** as an individual against whom a proceeding may be commenced, which shall be deemed first made upon the **Insured Person's** receipt of the target letter or other written notice;

7. the arrest or confinement of any **Insured Person** to: (i) a specified residence; or (ii) a secure custodial premises operated by or on behalf of any **Enforcement Unit**, if such arrest or confinement is in connection with the business of any **Company**, which shall be deemed first made upon the **Insured Person's** receipt of the warrant or notice of confinement;
8. 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 **Extradition**, which shall be deemed first made upon the **Insured Person's** receipt of such official request or warrant;

Claim also means any request, demand or subpoena by an **Enforcement Unit**, or by the **Company** (including its Board of Directors or any committee of its Board of Directors) in connection with its investigation or evaluation of alleged or potential wrongdoing by the **Company** or any director, officer or employee of the **Company**, to interview or depose an **Insured Person**, or to produce documents by an **Insured Person**, in his or her capacity as such, whether or not such **Insured Person** allegedly committed a **Wrongful Act**; provided that such request, demand or subpoena: (i) is not part of an examination, audit or inspection in the **Company's** normal course of business, (ii) shall constitute a **Claim** only if and when the **Insureds** in their sole discretion elect to give to the Insurer notice thereof, and (iii) shall be deemed first made when the request, demand or subpoena is first reported to the Insurer.

- B. **Contract Lawyer** means a natural person admitted to practice law who provides legal services to the **Company** pursuant to an independent contractor agreement with the **Company** or as an employee of a temporary employment agency pursuant to a written service agreement with the **Company**, but only while acting under the supervision of an **Employed Lawyer**.
- C. **Employed Lawyers** means any one or more natural persons who were, now are or shall become an **Employee** admitted to practice law anywhere in the world who is employed by the **Company** to provide legal services to the **Company**.
- D. **Insured Persons** means any one or more natural persons who were, now are or shall become:
 1. an **Employed Lawyer**;
 2. an **Employee** who supports an **Employed Lawyer** in the performance of **Professional Services** or while acting as a notary public, but only while acting under the supervision of an **Employed Lawyer**; or
 3. a **Contract Lawyer**, but only if the **Company** agrees to indemnify the **Contract Lawyer**;
 4. a holder of an equivalent position set forth in paragraphs 1-3 above, in any **Company** incorporated, formed or organized anywhere in the world;

provided, however, **Insured Person** does not include any natural person while employed by or a partner or member of an outside law firm.

- E. **Insureds** means the **Insured Persons** and, solely with respect to Insuring Agreement B, the **Company**.
- F. **Loss** means the total amount the **Insured Persons** become legally obligated to pay on account of a **Claim**, including, but not limited to, damages (including punitive, exemplary or multiple damages), judgments, any award of pre-judgment and post-judgment interest with respect to covered damages, settlements, and **Claim Expenses**.

Loss shall include:

- a. plaintiffs' attorney fees;
- b. civil fines or civil penalties assessed against an **Insured Person** for any unintentional and non-willful violation of law, including without limitation pursuant to Section 308 of the Sarbanes-Oxley Act of 2002 and Section 2(g)(2)(B) of the Foreign Corrupt Practices Act, 15 U.S.C. §78dd-2(g)(2)(B), and where insurable.

The insurability of such punitive, exemplary or multiple damages, civil fines or penalties shall be determined under the internal laws of any applicable jurisdiction most favorable to the **Insureds**, including without limitation the jurisdiction in which the **Company**, the **Insured Persons**, the Insurer, this Policy or such **Claim** is located.

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

1. any amount not indemnified by the **Company** for which the **Insured Persons** are absolved from payment by reason of any covenant, agreement or court order;
 2. taxes, fines or penalties imposed by law, other than civil fines or penalties referenced above;
 3. any amount that represents or is substantially equivalent to an increase in the consideration paid or proposed to be paid by a **Company** in connection with its purchase of any securities or assets;
 4. any amount incurred by the **Insured Persons** to comply with any injunctive or other non-monetary relief or any agreement to provide such relief;
 5. matters uninsurable under the law pursuant to which this Policy is constructed;
 6. any amount that represents or is substantially equivalent to salary, wages, commissions, benefits or other compensation owed to an **Insured Person** or any director, officer, employee or person serving in a functionally equivalent position with the **Company**; or
 7. **Clean-Up Costs**.
- G. Moonlighting Services** means legal services performed by an **Employed Lawyer** for others outside the scope of his or her employment with the **Company**, including legal services rendered to a director, officer or **Employee** of the **Company**, solely while such **Employed Lawyer** is a full-time or part-time **Employee** of the **Company**, except with respect to services performed: (i) for compensation, (ii) in his or her capacity as an owner, principal, partner, director, officer, member, manager, employee or any equivalent position of an entity that is not the **Company**, or (iii) in connection with a trust or estate when such **Employed Lawyer** is also a beneficiary of such trust or estate.
- H. Personal Injury** means libel, slander, disparagement, defamation, invasion of privacy, invasion of right of publicity, wrongful entry, wrongful detention, wrongful eviction, false imprisonment, false arrest, malicious prosecution, or malicious use or abuse of process.
- I. Professional Services** means:
1. legal services and notary public services rendered to or for the benefit of the **Company** by an **Insured Person**;
 2. **Moonlighting Services**; or
 3. pro bono legal services rendered by an **Employed Lawyer** without compensation to indigent clients or for non-profit public interest groups solely while such **Employed Lawyer** is a full-time or part-time employee of the **Company**.
- J. Wrongful Act** means any actual or alleged error, misstatement, misleading statement, act, omission, neglect, **Personal Injury** committed, attempted or allegedly committed or attempted, or breach of duty, by any **Insured Person** in their capacity as such in the performance of or failure to perform **Professional Services**.

SECTION III – 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 Person**:

A. PRIOR NOTICE

based upon, arising out of, or attributable to any fact, circumstance or **Wrongful Acts** which have been the subject of any written notice given prior to inception of this Policy and accepted under any employed lawyers 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, circumstance or **Wrongful Acts** alleged in or underlying such prior **Claim**.

C. CONDUCT

based upon, arising out of or attributable to:

1. any deliberately fraudulent act or omission, or any willful violation of any law, statute or regulation, committed by such **Insured**; or
2. such **Insured** gaining any personal financial profit, remuneration or financial advantage to which such **Insured** was not legally entitled;

if evidenced by a final, non-appealable adjudication adverse to such **Insured** in the underlying proceeding provided that with respect to subsection III.C.1 above, any acts or omission which are treated as criminal violations in a foreign jurisdiction that are not treated as criminal violations in the United States of America, the imposition of a criminal fine or other criminal sanction in such foreign jurisdiction will not, by itself, be conclusive proof that deliberately criminal or fraudulent acts occurred;

For purposes of determining the applicability of this exclusion, the **Wrongful Act**, knowledge of, or facts pertaining to any **Insured Person** shall not be imputed to any other **Insured Person** and only the **Wrongful Acts**, knowledge of or facts pertaining to the chief executive officer or chief financial officer of the **Named Insured** shall be imputed to a **Company**.

D. BODILY INJURY OR PROPERTY DAMAGE

for any actual or alleged bodily injury, sickness, disease or death, mental anguish, emotional distress or humiliation of any person or damage to or destruction of any tangible property including loss of use of such damaged or destroyed property; provided this exclusion shall not apply to any **Loss** for emotional distress, mental anguish or humiliation resulting from **Personal Injury** or a **Claim** covered under Insuring Agreement A.

E. POLLUTION

for:

1. the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of **Pollutants** at any time; or
2. any request, demand, order, or statutory or regulatory requirement, that any **Insured** or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, **Pollutants**;

provided this exclusion shall not apply to Insuring Agreement A, or a **Claim** by one or more shareholders of the **Company** in their capacity as such.

F. INSURED VS. INSURED

by or on behalf of an **Insured Person** in any capacity or a **Company**, provided this exclusion shall not apply to:

- i. a **Claim** that is a derivative action on behalf of the **Company** by one or more persons who are not directors or officers of the **Company** if the **Claim** is brought and maintained without the active assistance or active participation of the **Company** or any such directors or officers or if the only such assistance or participation by the **Company** and such directors and officers is (i) solely pursuant to, or in compliance with, a subpoena or similar legal process, or (ii) protected pursuant to any whistleblower statute;
- ii. a **Claim** by or on behalf of a bankruptcy or insolvency trustee, examiner, receiver, conservator, liquidator, similar official or creditors committee for such **Company**, or any assignee of such trustee, examiner, receiver, conservator, liquidator, similar official or creditors committee; or
- iii. **Claim Expenses** covered under Insuring Agreement A.

G. SECURITIES

based upon, arising out of or attributable to (i) the actual, alleged or attempted purchase or sale, or offer or solicitation of an offer to purchase or sell, any securities, or (ii) the actual or alleged violation of any federal, state, local or common or foreign law relating to securities.

H. VIOLATIONS OF LAW

for an actual or alleged violation of the responsibilities, obligations and duties imposed by:

1. any law governing workers' compensation, unemployment insurance, social security, disability benefits or similar law;
2. **ERISA**, provided this subsection H.2 shall not apply to **Claims** arising out of **Professional Services** to a fiduciary of a plan sponsored by the **Company**;
3. any **Wage and Hour Law**; provided that notwithstanding anything in this Policy to the contrary it shall be the duty of the **Insureds** and not the duty of the Insurer to defend any **Claim** which is in part excluded from coverage pursuant to this Exclusion H.3;
4. the National Labor Relations Act;
5. the Worker Adjustment and Retraining Notification Act;
6. the Consolidated Omnibus Budget Reconciliation Act of 1985;
7. the Occupational Safety and Health Act; or
8. rules or regulations promulgated under any of such statutes or laws, amendments thereto or similar provisions of any federal, state, local or foreign statutory law or common law.

I. EMPLOYMENT PRACTICES

based upon, arising out of or attributable to any employment practice not otherwise excluded in this Section III, including discrimination, harassment, retaliation, breach of employment contract, or wrongful dismissal, discharge or termination; provided that this exclusion shall not apply to **Loss** for any such employment practice committed by an entity or person other than an **Employed Lawyer**, to the extent that such employment practice was committed in reliance upon **Professional Services** performed by an **Insured Person**.

J. INTELLECTUAL PROPERTY

based upon, arising out of or attributable to any actual or alleged infringement of copyright, patent, trademark, trade name, trade dress or service mark, or the actual or alleged misappropriation of ideas or trade secrets or the unauthorized disclosure of or access to confidential information.

K. NOTARY

based upon, arising out of or attributable to any **Insured Person** notarizing any signature not made in the presence of such **Insured Person** at the time of such notarization.

L. OTHER INSURANCE

for which an **Insured Person** has coverage under any valid and collectible directors and officers liability policy, employment practices liability policy, errors and omission policy, media liability policy, lawyers professional liability policy or any similar insurance, whether or not the retention (or deductible) of such policy has been exhausted, and regardless as to whether such policy is stated to be primary, contributory, excess, contingent or otherwise; provided, that this exclusion shall not apply to the amount of **Loss** that is in excess of both the amount of any retention (or deductible) and the limit or remaining limit of liability of such other policy.

For the purpose of determining the applicability of any Exclusion set forth in this section III, the **Wrongful Act** or knowledge of any **Insured Person** shall not be imputed to any other **Insured Person**.

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