

EVEREST EXPEDITIONSM PRIVATE COMPANY 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 below, or an **EEOC Charge** is first made against the **Insureds** during the policy period of the **Prior EPL Policy** (“**Prior Claim**”) and is not covered under the **Prior EPL Policy** solely because notice of such **Prior Claim** was not timely given to the Insurer under the **Prior EPL Policy**, then such **Prior Claim** shall be considered first made during this Coverage Part’s **Policy Period**, subject to the following conditions:

1. no **Executive Officer** or risk manager or equivalent position, of the **Company** was aware of such **Prior Claim** prior to the expiration of the time to give notice of such **Prior Claim** under the **Prior EPL Policy**;
2. such **Prior Claim** would have been covered under the **Prior EPL Policy** had notice of such **Prior Claim** been timely given under the **Prior EPL Policy**; and
3. written notice of such **Prior Claim** is given under this Policy to the Insurer no later than sixty (60) days after the earlier of: (i) the date that any **Executive Officer** or risk manager of the **Company** became aware of such **Prior Claim**; or (ii) the end of the **Policy Period**. Coverage under this Coverage Part for any **Prior Claim** pursuant to this Section II.A shall only apply to **Loss** incurred after the date the **Prior Claim** is first notified to the Insurer under this Coverage Part.

The maximum coverage available under this Coverage Part for any such **Prior Claim** shall be the lesser of the coverage then available under the **Prior EPL Policy** or this Coverage Part, for such **Prior Claim**, 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

1. The Insurer shall pay on behalf of the **Company** all **Workplace Violence Expenses** incurred by the **Company** 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) 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 **Company** based upon, arising out of or attributable to a **Workplace Violence Incident**.

- 2. 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 **Company** 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 the **Company**, all **EPL Crisis Expenses** incurred by the **Company** as a result of all **EPL Crises** first occurring during the **Policy Period**, subject to the Sublimit Limit of 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 PRACTICES LIABILITY

If Additional Claim Expenses Limit for Employment Practices Liability is selected on ITEM 8 of the Declarations, then the Insurer shall provide an additional limit of Liability 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 Liability for this Coverage Part, and in addition to and not part of the Combined Aggregate Limit of Liability set forth in ITEM 2 of the Declarations, provided that such Additional Limit shall attach only after the exhaustion of such Aggregate Limit of Liability and any amounts payable under any other insurance policies that are specifically written excess of this Coverage Part.

SECTION III – DEFINITIONS

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

- A. **Benefits** means perquisites, 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** arising out of the employment relationship, including without limitation retirement benefits, vacation or sick days, medical or insurance benefits) other than wages, salary, commissions, bonuses, cash incentive compensation 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;
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, 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 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 or similar document;
5. an **EEOC Charge** against any **Insured** commenced by and which shall be deemed first made upon the service on or other receipt by the **Insured** of such **EEOC Charge**; or
6. 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;

by or on behalf of any past, present, future or prospective **Employee**, or on an applicant or prospective applicant for employment with the **Company**, in their capacity as such, including any appeal therefrom; provided **Employment Practices Claim** does not include (i) a labor or grievance proceeding pursuant to a collective bargaining agreement, or (ii) an audit by the Office of Federal Contract Compliance Programs unless and until the **Insured** receives a Notice of Violation or Order to Show cause or a written demand as described above in connection with such audit.

E. Employment Practices Wrongful Act means any actual or alleged:

1. breach of any express or implied employment contract;
2. violation of any law or public policy concerning discrimination in employment whether based upon race, national origin, religion, sex, sexual preference, gender identity or expression, age, marital status, disability, medical leave or genetic predisposition;
3. employment-related torts including without limitation wrongful termination, dismissal or discharge; failure or refusal to hire or promote; wrongful discipline; wrongful reference; deprivation of a career opportunity; demotion 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 as respects employment-related discrimination or harassment;

and without limitation, the conduct described in paragraphs 1-4 above, shall include 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 a **Company**, **Insured Person**, or others.

F. EPL Crisis means:

1. A congressional inquiry regarding the **Insured's** violations of employment laws; or
 2. 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.
- G. EPL Crisis Expenses** means the reasonable fees, costs, and other expenses of a public relations consultant engaged by the **Company** and approved by the Insurer, such approval not to be unreasonably withheld, to mitigate reputational harm to such **Company** as a result of an **EPL Crisis**.
- H. Independent Contractor** means any natural person who is not an **Employee** and who is working for a **Company** in the capacity as an independent contractor pursuant to an express contract or agreement with the **Company** which governs the nature of such person's engagement.
- I. Insured Persons** means:
1. any one or more natural persons who were, now are or shall become a duly elected or appointed director (including a de facto director and shadow director), trustee (other than a bankruptcy or litigation trustee), governor, **Manager**, officer, **Employee** (including employee lawyers solely in their capacity as an **Employee**), general counsel, risk manager, controller, treasury director, or member of a duly constituted committee or board of the **Company** or their functional equivalent; or
 2. any **Independent Contractor**, but only if the **Company** agrees in writing to provide indemnification to such **Independent Contractor** to the same extent as provided to the **Company's Employees**; provided any coverage under this Coverage Part for any such **Independent Contractor** shall be specifically excess of any indemnification or insurance otherwise available to such **Independent Contractor** from any other source.
- J. Insured** means the **Insured Persons** and the **Company**.
- K. Labor Relations Law** means any federal, state, local or foreign, statutory or common law (including the National Labor Relations 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 proceeding;
 4. strikes, work stoppages, boycotts, picketing and lockouts; or
 5. any similar rights or duties.
- L. 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, damages (including back pay, front pay and punitive, exemplary, and multiple damages), judgments, any award of pre-judgment and post-judgment interest with respect to covered damages, settlements and **Claim Expenses**.
- Loss** also includes:
- 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 **Company** is obligated to institute by reason of judgment, settlement or arbitration award for liability on account of a **Claim**;

The insurability of such punitive, exemplary, liquidated or multiple damages or attorneys' fees 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 incurred by the **Insured** to comply with any injunctive or other non-monetary relief or any agreement to provide such relief, including without limitation any costs associated with providing any reasonable accommodations required by, made as a result of, or to conform with the requirements of, the Americans with Disabilities Act and any amendments thereto or any similar foreign, federal, state or local statute, regulation, rule or law;
2. future salary, wages, commissions, **Benefits**, **Stock Benefits**, or any other employment related benefits or compensation, of a claimant who has been or shall be rehired, promoted, or reinstated;
3. salary, wages, commissions, **Benefits**, **Stock Benefits**, or other monetary payments which constitute severance payments or payments pursuant to a notice period, other than any payments negotiated with and consented to by the Insurer as part of a settlement;
4. employment-related benefits, including but not limited to **Benefits**, **Stock Benefits**, bonuses or any amount equivalent to or substantially equivalent to such employment related benefits, or any other type of compensation other than salary or wages;
5. any amount not indemnified by the **Company** for which the **Insureds** are absolved from payment by reason of any covenant, agreement or court order;
6. taxes, fines or penalties imposed by law, except as provided above;
7. matters uninsurable under the law pursuant to which this Policy is construed; or
8. **Clean-Up Costs**.

M. 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** for the entirety of the one (1) year period immediately preceding the inception of this Policy.

N. Premises means all properties and buildings which the **Company** regularly occupies in conducting its business.

O. Related Claims means all **Claims** for **Wrongful Acts** or **Interrelated Wrongful Acts**, which allege, arise out of, are based upon, or are in consequence of, the same or related facts, circumstances, situations, transactions or events or series of related facts, circumstances, situations, transactions or events.

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, other business invitee of the **Company**, provided, however, **Third Party** shall not include an **Employee**, applicant or prospective applicant for employment with the **Company**.

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, or receipt of a notice of charges or similar document;
4. 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;

by or on behalf of a **Third Party** in their capacity as such, including any appeal therefrom.

S. Third Party Wrongful Act means any actual or alleged:

1. Racial, national origin, religious, sex, sexual preference, age, marital status, disability, or genetic predisposition discrimination against a **Third Party**.
2. sexual, gender, racial, religious, sexual orientation, pregnancy, disability, age, or national origin based harassment of a **Third Party**.

and without limitation, the conduct described in paragraphs 1 and 2 above, shall include 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 a **Company, Insured Person**, or others.

T. Workplace Violence Expenses means reasonable fees and expenses incurred by the **Company** with the Insurer's prior written consent, such consent not to be unreasonably withheld, to hire:

1. an independent public 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 guard 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 **Company**.

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 Acts** 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, circumstance or **Wrongful Act** alleged in or underlying such prior **Claim**.

C. BODILY INJURY/PROPERTY DAMAGE

for bodily injury, sickness, emotional distress, mental anguish, humiliation, disease or death 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 employment-related emotional distress, mental anguish or humiliation.

D. VIOLATIONS OF LAW

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

1. any law governing workers' compensation, unemployment insurance, social security, disability benefits or similar law;
2. **ERISA** (except Section 510 thereof);
3. **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 D.3;
4. any **Labor Relations Law**, the Worker Adjustment and Retraining Notification Act, the Consolidated Omnibus Budget Reconciliation 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** or knowledge of any **Insured Person** shall not be imputed to any other **Insured Person**, and only the **Wrongful Act** or knowledge of a chief executive officer or chief financial officer of a **Company** shall be imputed to a **Company**.