

EVEREST EXPEDITIONSM PRIVATE COMPANY MANAGEMENT LIABILITY POLICY

FIDUCIARY LIABILITY COVERAGE PART



SECTION I – INSURING AGREEMENTS

FIDUCIARY 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 a **Claim** first made against the **Insureds** during the **Policy Period** or the **Extended Reporting Period**, if exercised, for a **Wrongful Act**.

SECTION II – COVERAGE ENHANCEMENTS

A. VOLUNTARY COMPLIANCE PROGRAMS

The Insurer shall pay on behalf of the **Insureds** any **Voluntary Settlement** and **Claim Expenses** which the **Insureds** become legally obligated to pay resulting from a **Voluntary Compliance Program Notice** first given to the Insurer during the **Policy Period**, provided such **Voluntary Settlement** and **Claim Expenses** are incurred after such **Voluntary Compliance Program Notice** is first given to the Insurer. The Insurer's maximum liability under this Section II.A for all covered **Voluntary Settlements** and **Claim Expenses**, combined, shall be the Voluntary Compliance Program Cost Sublimit of Liability set forth in ITEM 8 of the Declarations.

B. ADDITIONAL CLAIM EXPENSES LIMIT FOR FIDUCIARY LIABILITY

If Additional Claim Expenses Limit for Fiduciary Liability is selected on ITEM 8 of the Declarations, then the Insurer shall provide an additional Limit of Liability for **Claim Expenses** under this Coverage Part, in the amount set forth in the Declarations, which 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. 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 Fiduciary Liability Coverage Part, the following terms, whether in the singular or plural, are defined as follows:

- A. **Administration** means (i) advising, counseling or providing notice to employees, beneficiaries or **Plan** participants with respect to any **Plan**, (ii) providing interpretations with respect to any **Plan**, (iii) handling records in connection with any **Plan**, and (iv) enrolling, terminating or canceling employees, beneficiaries or participants under any **Plan**.
- B. **Affordable Care Act** means the Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act of 2011, as amended.
- C. **Claim** means:
 - 1. a written demand against any **Insured** for monetary damages or non-monetary (including injunctive) 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 administrative or regulatory proceeding against any **Insured** commenced by and which shall be deemed first made upon, the service on or other receipt by the **Insured** of a notice of charges or similar document;

including any appeal therefrom of any of the foregoing; provided that a **Claim** under paragraphs 1-4 above, shall not provide coverage for any investigation of an **Insured**;

5. any **Fiduciary Inquiry**, provided that the **Fiduciary Inquiry** shall be deemed a **Claim** only if the **Insured** elects to provide written notice of such **Fiduciary Inquiry** to the Insurer pursuant to Section III.A.2 of the General Terms and Conditions Part of the Policy and shall be deemed first made when it is noticed to the Insurer;
6. a civil, criminal, administrative or regulatory investigation (including a fact finding investigation by the Department of Labor, Pension Benefit Guaranty Corporation or similar authority) of any **Insured** commenced by and which shall be deemed first made upon the service on or other receipt by the **Insured** of a target letter or formal investigative order;
7. 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 a element of **Extradition**, which shall be deemed first made upon the **Insured Person's** receipt of the official request or warrant; or
8. solely with respect to Section II.A, **Claim** means a **Voluntary Compliance Program Notice** only if the **Insured** elects to provide written notice of such **Voluntary Compliance Program Notice** to the Insurer pursuant to Section III.A.2 of the General Terms and Conditions Part of the Policy and shall be deemed first made when it is noticed to the Insurer.

D. Fiduciary Inquiry means:

1. a civil, criminal, administrative, or regulatory investigation or inquiry of an **Insured Person** by an **Enforcement Unit**, commenced by the **Insured Person's** receipt of a subpoena, Wells Notice, target letter (within the meaning of Title 9, § 1.151 of the U.S. Attorney's Manual), formal order of investigation, civil investigative demand, notice of charges, order to show cause, search warrant, S.E.C. Form 1661 or 1662, or other similar document, or the functional or foreign equivalent thereof;
2. a written request or demand of an **Insured Person** by an **Enforcement Unit** for an interview, meeting, sworn testimony or documents in connection with the business of the **Company**, or in connection with such **Insured Person** in his or her capacity as such;
3. a written request or demand of an **Insured Person** by a **Company** (including its board of directors or any committee of its board of directors) for an interview, meeting, sworn testimony or documents in connection with an investigation of a **Company** by an **Enforcement Unit**;

in connection with a **Plan**, insurance actually or attempted to be purchased through a **Healthcare Exchange**, or the facilitation of the administration of a "multiemployer plan" by a third party.

Fiduciary Inquiry shall not include any routine or regularly scheduled regulatory or internal supervision, inspection, compliance, review, examination, production or audit, industry sweep, including any request for mandatory information from an **Enforcement Unit**, conducted in a **Company's** and/or **Enforcement Unit's** normal review or compliance process or any subpoena received by an **Insured** as a non-party witness.

E. Healthcare Exchange means any public, private or government-sponsored or controlled entity established to facilitate the purchase of health insurance in accordance with the **Affordable Care Act**.

F. **Insured Persons** means any one or more natural persons who were, now are or shall become duly elected or appointed directors, trustees, governors, **Managers**, officers, **Employees** (including employed lawyers solely in their capacity as an **Employee**), advisory directors or members of a duly constituted committee or board of any **Company** or **Plan** or their functional equivalent.

G. **Insureds** means:

1. the **Insured Persons**;
2. the **Company**; and
3. the **Plans**.

H. **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 punitive, exemplary or multiple damages), judgments, any award of pre-judgment and post-judgment interest with respect to covered damages, settlements, **Claim Expenses**, and solely with respect to Section II, **Loss** means a **Voluntary Settlement** and **Claim Expenses** associated therewith.

Loss includes:

1. the five percent (5%) or less or the twenty percent (20%) or less civil penalties imposed under §502(i) or (l) of **ERISA**;
2. civil penalties imposed upon an **Insured** for violation of the privacy provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), as amended, provided that the Insurer's maximum aggregate liability for all such civil money penalties under this Coverage Part shall be the Sublimit of Liability set forth in ITEM 8 of the Declarations for Penalties for Violations of HIPAA Privacy Provisions;
3. the civil penalties imposed upon an **Insured** as a fiduciary under Section 502(c) of **ERISA**, other than penalties under the Pension Protection Act, provided that the Insurer's maximum aggregate liability under this Coverage Part for all such civil penalties shall be the Sublimit of Liability set forth in ITEM 8 of the Declarations for Penalties under Section 502(c) of **ERISA**;
4. the civil penalties imposed upon an **Insured** under the Pension Protection Act of 2006, provided that the Insurer's maximum aggregate liability under this Coverage Part for all such civil penalties shall be the Sublimit of Liability set forth in ITEM 8 of the Declarations for Penalties under the Pension Protection Act of 2006;
5. the civil penalties imposed upon an **Insured** under the **Affordable Care Act**, provided that the Insurer's maximum aggregate liability under this Coverage Part for all such civil penalties shall be the Sublimit of Liability set forth in ITEM 8 of the Declarations for Penalties under the Affordable Care Act;
6. the fifteen percent (15%) or less tax penalty imposed upon an **Insured** under Section 4975 of the Internal Revenue Code of 1986, provided that the Insurer's maximum aggregate liability under this Coverage Part for all such penalties shall be the Sublimit of Liability set forth in ITEM 8 of the Declarations for Penalty under IRC Section 4975;
7. civil penalties imposed upon an **Insured** by the United Kingdom Secretary of State for Social Services or by the United Kingdom Occupational Pensions Regulatory Authority, pursuant to the English Pension Scheme Act 1993, the English Pensions Act 1995, or rules or regulations thereunder, provided any coverage for such civil penalties applies only if the funds or assets of the subject **Plan** are not used to fund, pay or reimburse the premium for this Coverage Part;

The insurability of such punitive, exemplary or multiple damages, civil penalties or **Voluntary Settlements** 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:

- i. any amount not indemnified by the **Company** for which the **Insureds** are absolved from payment by reason of any covenant, agreement or court order;
- ii. taxes, fines or penalties imposed by law, other than civil penalties expressly referenced in paragraphs 1 through 7 above;
- iii. any costs incurred by the **Company** or **Plan** to comply with any injunctive or other non-monetary relief or any agreement to provide such relief;
- iv. matters uninsurable under the law pursuant to which this Policy is construed;
- v. **Clean-Up Costs**;
- vi. (i) benefits due or to become due under any **Plan**, or (ii) benefits which would be due under any **Plan** if such **Plan** complied with all applicable law, or (iii) that portion of any settlement or judgment which constitutes such benefits, except to the extent that recovery for such benefits is based upon a covered **Wrongful Act** by an **Insured Person** and such benefits are payable as a personal obligation of such **Insured Person**;
- vii. contributions owed by the **Company** to any **Plan** for which any of the **Insureds** failed to collect from the **Company** unless the failure is because of the negligence of an **Insured**.

provided **Loss** shall include that portion of a settlement or judgment attributable to **Wrongful Acts** which actually or allegedly cause or contribute to a reduction or loss in the value of a **Plan's** assets or a participant's account in a **Plan**, due to investment losses, missed investment opportunities, excessive costs or failure to comply with such participant's investment directions.

I. Managed Care Services means the management or administration, by any entity that is not an **Insured**, of any **Plan** that is a health care, pharmaceutical, vision or dental plan, utilizing cost control mechanisms.

J. Plan means:

1. any Employee Benefit Plan, Pension Benefit Plan or Welfare Benefit Plan, as each is defined in **ERISA**, which was, is now, or hereafter becomes sponsored solely by the **Company**, or sponsored jointly by the **Company** and a labor organization, solely for the benefit of the employees of the **Company**;
2. any other employee benefit plan or program not subject to **ERISA** sponsored solely by the **Company** for the benefit of the employees of the **Company**, including any fringe benefit, or excess benefit plan;
3. any employee benefit plan or program otherwise described in paragraphs 1 or 2 above while such plan or program is being actively developed, formed or proposed by any **Company** prior to the formal creation of such plan or program;
4. any government-mandated insurance program for workers' compensation, unemployment, social security or disability benefits for employees of the **Company**; and
5. any Voluntary Employee's Beneficiary Association as defined in Section 501(c)(9) of the Internal Revenue Code of 1986, as amended, for which the purpose is to provide life, sickness, accident or other benefits for voluntary members who are **Employees** (including their dependents or designated beneficiaries).

Plan shall not include any "multiemployer plan" or "employee stock ownership plan" as defined by **ERISA**, unless such plan is specifically included as a **Plan** by endorsement to this Policy.

K. Voluntary Compliance Program means any voluntary compliance resolution program or similar voluntary settlement program administered by the United States Internal Revenue Service, United States Department of Labor or any other domestic or foreign governmental authority. Such programs include, without limitation, the Employee Plans Compliance Resolution System, Audit Closing Agreement Program, Voluntary Compliance Resolution Program, Walk-in Closing Agreement Program, Administrative Policy Regarding Self-

Correction, Tax Sheltered Annuity Voluntary Correspondence Program, Delinquent Filer Voluntary Compliance Program, and Voluntary Fiduciary Correction Program.

- L. Voluntary Compliance Program Notice** means prior written notice to the Insurer by any **Insured** of the **Insured's** intent to enter into a **Voluntary Settlement**.
- M. Voluntary Settlement** means any fees, fines or penalties paid by an **Insured** to a governmental authority pursuant to a **Voluntary Compliance Program** for the actual or alleged inadvertent non-compliance by a **Plan** with any statute, rule or regulation; provided **Voluntary Settlement** shall not include (i) any costs to correct the non-compliance, or any other charges, expenses, taxes or damages; or (ii) any fees, fines or penalties relating to a **Plan** which, as of the earlier of the inception date of this Policy or the inception date of the first policy in an uninterrupted series of policies issued by the Insurer of which this Policy is a direct or indirect renewal or replacement, any **Insured Person** knew to be actually or allegedly non-compliant.
- N. Wrongful Act** means:
1. any actual or alleged act, error or omission by the **Insureds** in the discharge of their duties as, or by reason of their status as, fiduciaries of any **Plan**;
 2. any actual or alleged act, error or omission committed or attempted by the **Insureds** in the **Administration** of a **Plan**;
 3. any actual or alleged act, error or omission by an **Insured** in the **Insured's** settlor capacity with respect to any **Plan**;
 4. any actual or alleged act, error or omission by an **Insured** in connection with insurance actually or attempted to be purchased through a **Healthcare Exchange**; and
 5. solely as respects a "multiemployer plan," any negligent act, error or omission by an **Insured** in facilitating such "multiemployer plan's" administration by a third party, including but not limited to transmitting data concerning **Employees** who are participants in such "multiemployer plan;"
- provided, however, that a **Fiduciary Inquiry** of an **Insured Person** shall be treated as a **Claim** for a **Wrongful Act** whether or not a **Wrongful Act** is alleged.

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 fiduciary 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** underlying or alleged therein.

C. CONDUCT

based upon, arising out of or attributable to any deliberately fraudulent act or omission or any willful violation of any law, statute or regulation, committed by such **Insured**, if a final and non-appealable adjudication adverse to such **Insured** in the underlying proceeding establishes such **Insured** committed such a deliberately fraudulent act or omission or willful violation; provided that any acts or omissions 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 a deliberately criminal or fraudulent act occurred.

D. 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 a **Claim** for actual or alleged negligent or improper selection of a **Managed Care Services** provider or improper delay or denial of benefits under a **Plan** by a **Managed Care Services** provider.

E. OTHER VIOLATIONS OF LAW

for any actual or alleged violation of:

1. any law governing workers' compensation, unemployment insurance, social security, disability benefits, or any similar federal, state or local statutory or regulatory law; provided this exclusion shall not apply to any actual or alleged obligation of any **Insured** pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1985 or Health Insurance Portability and Accountability Act of 1996, as amended;
2. 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 E.2.

F. CONTRACT

based upon, arising out of, or attributable to any actual or alleged liability of an **Insured** under any written contract or agreement; provided this exclusion shall not apply to the extent (i) the **Insured** would have been liable in the absence of such contract or agreement; or (ii) the liability was assumed in accordance with or under the trust agreement or equivalent document pursuant to which the **Plan** was established.

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 the chief executive officer or chief financial officer: (i) of a **Company** shall be imputed to such **Company**, and (ii) of a **Plan** shall be imputed to such **Plan**.