

EVEREST EXPEDITIONSM PRIVATE COMPANY MANAGEMENT LIABILITY POLICY

GENERAL TERMS AND CONDITIONS



SECTION I – TERMS AND CONDITIONS

This Policy is comprised of these General Terms and Conditions, the Declarations, various Coverage Parts and endorsements, if applicable, and the **Application**. Although various Coverage Parts may be referenced in this Policy, a Coverage Part is included within this Policy and affords coverage only if that Coverage Part is designated as being purchased in the Coverage Schedule in ITEM 8 of the Declarations.

Except for these General Terms and Conditions or unless stated to the contrary in any Coverage Part or endorsement, the terms and conditions of each Coverage Part of this Policy apply only to that Coverage Part and shall not apply to any other Coverage Part of this Policy. Any defined term referenced in the General Definitions but defined in a Coverage Part shall, for purposes of coverage under that Coverage Part, have the meaning set forth in that Coverage Part. If any provision in the General Terms and Conditions is inconsistent or in conflict with the terms and conditions of any Coverage Part, the terms and conditions of such Coverage Part shall control for purposes of that Coverage Part. The descriptions in the headings of the General Terms and Conditions or any Coverage Part are solely for convenience and form no part of the terms and conditions of coverage.

SECTION II - GENERAL DEFINITIONS

The following **Definitions** shall have the same meaning throughout this Policy:

- A. Application** means all written materials and information, including all signed applications and any materials attached thereto or incorporated therein, submitted by or on behalf of the **Insureds** to the Insurer in connection with the underwriting of this Policy. The **Application** is deemed attached to and incorporated into this Policy.
- B. Change in Control** means the occurrence of either of the following during the **Policy Period**:
1. the **Named Insured**: (i) sells or substantially all of its assets to any other person or entity or affiliated group of persons or entities, or (ii) merges or consolidates with another entity such that the **Named Insured** is not the surviving entity; or
 2. any person, entity or affiliated group of persons or entities acquires:
 - a. an ownership interest of the **Named Insured** representing more than fifty percent (50%) of the power to manage or control the **Named Insured**, including the power to elect, appoint or designate a majority of the board of directors or equivalent executives of such entity; or
 - b. the right pursuant to written contract or the by-laws, charter, operating agreement or similar documents of the **Named Insured** (including a limited liability company or joint venture) to elect, appoint or designate a majority of the board of directors or equivalent executives of the **Named Insured**.
- C. Claim** means, with respect to any **Liability Coverage Part**, those matters defined as a **Claim** in such Coverage Part.
- D. Claim Expenses** means that part of **Loss** consisting of reasonable fees (including attorneys' fees and experts' fees) and expenses incurred by the **Insureds** (other than wages, salaries, fees, benefits or overhead associated with any **Insured**) (i) in the investigation, defense or appeal of a **Claim**, including the premium for appeal, attachment or similar bonds (without any obligation by the Insurer to apply for or furnish such bonds), or (ii) at the Insurer's request to assist the Insurer in investigating a **Claim**.
- E. Clean-Up Costs** means any amount incurred to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**.

- F. Company** means, collectively, the **Named Insured** and its **Subsidiaries**, including any such organization as a debtor in possession under United States bankruptcy law or an equivalent status under the law of any other country.
- G. Coverage Event** means, with respect to a **Non-Liability Coverage Part**, the event or loss which must occur or be discovered in order to invoke coverage under such Coverage Part.
- H. Domestic Partner** means any natural person qualifying as a domestic partner under the provisions of any applicable federal, state or local law or under the provisions of any formal program established by the **Company**.
- I. Employee** means the following:
1. any natural persons who were, now are or shall be in the regular service of the **Company** in the ordinary course of the **Company's** business, regardless whether such natural person is in a supervisory, co-worker or subordinate position or otherwise, and including any such natural persons who are leased, temporary, part-time or seasonal employees of the **Company**; and
 2. any volunteers or interns of the **Company**;
- in their capacity as such;
- provided (i) any such natural person who is leased to the **Company** shall qualify as an **Employee** only if the **Company** agrees in writing to indemnify such natural person, and (ii) coverage for any such leased employees shall be specifically excess of any indemnification or insurance otherwise available to such leased employees from the applicable leasing company or any other source.
- J. Enforcement Unit** means any federal, state, local or foreign law Enforcement Unit or other investigative, administrative, regulatory or governmental authority (including but not limited to, the U.S. Department of Justice, the U.S. Securities and Exchange Commission or any attorney general), or the enforcement unit of any securities or commodities exchange or similar self-regulatory organization (including, but not limited to, the New York Stock Exchange, NASDAQ and the American Stock Exchange).
- K. ERISA** means the Employee Retirement Income Security Act of 1974, and as amended, and any similar foreign, state or local law, statute, rule or regulation.
- L. Executive Officer** means with respect to any **Company** the natural persons who were, now are or shall become such **Company's** chief executive officer, chief financial officer, in-house general counsel or the functional equivalent of any of the foregoing positions, or with respect to coverage under the Employment Practices Liability Coverage Part, the head of human resources.
- M. Extended Reporting Period** means the period set forth in ITEM 4.B of the Declarations for the extended coverage under the **Liability Coverage Parts**, as described in Section XIV of these General Terms and Conditions.
- N. Extradition** means any formal process by which an **Insured Person** located in any foreign or domestic jurisdiction is or is sought to be surrendered to any other foreign or domestic jurisdiction for trial, or otherwise to answer any criminal accusation, for a **Wrongful Act**.
- O. Financial Impairment** means the status of the **Company** resulting from:
1. the appointment of any receiver, conservator, liquidator, trustee, rehabilitator or similar official to control, supervise, manage or liquidate the **Company**, or
 2. the **Company** becoming a debtor in possession, as defined under U.S. Bankruptcy law or equivalent foreign law.
- P. Foreign Jurisdiction** means any jurisdiction, other than the United States or any of its territories or possessions.

- Q. Foreign Policy** means the standard insurance policy (including all mandatory endorsements, if any) approved by the Insurer for use within a **Foreign Jurisdiction** that provides coverage substantially similar to the coverage afforded by the applicable Coverage Part under this Policy, but shall not include any commercial general liability, property or similar insurance policy.
- R. Insured Persons** means with respect to each Coverage Part the natural persons defined as **Insured Persons** in such **Coverage Part**.
- S. Insureds** means with respect to each Coverage Part the entities, plans and natural persons defined as **Insureds** in such Coverage Part.
- T. Interrelated Wrongful Acts** means all **Wrongful Acts** that have as a common nexus any fact, circumstance, situation, event, transaction, cause, or series of related facts, circumstances, situations, events, transactions or causes.
- U. Liability Coverage Part** means any of the following: Directors and Officers Liability Coverage Part, Employment Practices Liability Coverage Part, Fiduciary Liability Coverage Part, Cyber Coverage Part, Employed Lawyers Liability Coverage Part, or Miscellaneous Professional Liability Coverage Part, if purchased as set forth in the Coverage Schedule in ITEM 8 of the Declarations.
- V. Loss** means:
1. with respect to any **Liability Coverage Part**, the amounts defined as **Loss** in such Coverage Part; and
 2. with respect to any **Non-Liability Coverage Part**, the amount covered under such Coverage Part.
- W. Manager** means any natural person who is a former, present or future manager, managing member, general partner or member of the board of managers or equivalent executive of a **Company** that is a limited liability company or limited partnership.
- X. Non-Indemnifiable Loss** means **Loss** incurred by an **Insured Person** for which the **Company** is not permitted by common or statutory law to indemnify or is not financially able to indemnify by reason of **Financial Impairment**.
- Y. Non-Liability Coverage Part** means the Crime Coverage Part and the Kidnap and Ransom Coverage Part, if purchased.
- Z. Named Insured** means the organization designated in ITEM 1 of the Declarations.
- AA. 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, malicious tort or abuse of process, assault, battery, loss of consortium, or any violation of a federal, state or local statutory or common law, rule or regulation involving the unsolicited electronic dissemination of faxes, emails, texts, or other communications by or on behalf of a **Company** to any actual or prospective customers of a **Company** or any other third party, including but not limited to the Telephone Consumer Protection Act, the United States of America CAN-SPAM Act of 2003, the Junk Fax Prevention Act of 2005, and any amendments thereto, or any similar federal, state or local statutory or common law, rule or regulation.
- BB. Plans** mean the plans and programs defined as **Plans** in the Fiduciary Liability Coverage Part, if purchased.
- CC. Policy Period** means the period set forth in ITEM 3 of the Declarations, subject to prior termination in accordance with Section XX (Cancellation and Nonrenewal) of these General Terms and Conditions.
- DD. Pollutants** means any substance located anywhere in the world exhibiting any hazardous characteristics as defined by, or identified on a list of hazardous substances issued by, the United States Environmental Protection Agency or a state, county, municipality or locality counterpart thereof. **Pollutants** also means any other air emission, odor, waste water, oil or oil products, infectious or medical waste, asbestos or asbestos products, silica, noise, fungus (including mold, mildew and any mycotoxins, spores, scents or byproducts produced or released by fungi, but not any fungi intended by the **Insured** for consumption) and

electric or magnetic or electromagnetic field. Such matters shall include, without limitation, solids, liquids, gaseous, thermal, biological, nuclear or radiological irritants, contaminants or smoke, soot, fumes, acids, alkalis, chemicals or waste materials.

EE. Run-Off Coverage Period means the period set forth in ITEM 5 of the Declarations for the Run-Off Coverage Period under the **Liability Coverage Parts**, as described in Section X.C of these General Terms and Conditions.

FF. Subsidiary means:

1. any organization in which more than fifty percent (50%) of the outstanding securities or voting rights representing the present right to vote for the election of directors or equivalent position is owned, in any combination, by one or more **Companies**;
2. any organization in which one or more **Companies**, in any combination, have the right, pursuant to a written contract with or the by-laws, charter, operating agreement or similar document of such organization, to elect or appoint a majority of the directors or equivalent position of such organization;
3. any organization in which exactly fifty percent (50%) of the outstanding securities or voting rights representing the present right to vote for the election of directors or equivalent positions is owned, in any combination, by one or more **Companies**, if one or more **Companies** solely controls the management and operation of such organization pursuant to a written contract with the owners of the remaining fifty percent (50%) of such securities or voting rights;
4. any foundation, charitable trust or political action committee controlled or exclusively sponsored by one or more **Companies**; and
5. any other not-for-profit organization exclusively sponsored by one or more **Companies**.

GG. Wage and Hour Law means any state, local or foreign statutory or common law (including, but not limited to the Fair Labor Standards Act or Wage Payment and Collection Act), or any amendments thereto, or rule or regulations promulgated thereunder governing wage, hour and payroll policies and practices (except the Equal Pay Act) including, but not limited to:

1. the refusal, inability or failure of a **Company** or **Insured Person** to pay wages or overtime pay, off-the-clock work, on-call time compensation, compensation for waiting time and dressing time, minimum wage compensation, reimbursement of expenses or any amounts representing such wages or pay or expenses, for services rendered or time spent in connection with work related activities;
2. improper pay deductions taken by a **Company** or **Insured Person** from any employee or purported employee, including but not limited to garnishments and withholdings;
3. improper classification of any employee or purported employee or improper or failure to maintain accurate records;
4. child labor;
5. pay equity or comparable worth;
6. failure to provide or enforce any legally required rest or meal breaks; or any similar practices, policies, or procedures.

HH. Wrongful Acts means, with respect to any **Liability Coverage Part**, the acts, errors, omissions and other matters defined as **Wrongful Acts** in such Coverage Part.

SECTION III – NOTICE

A. Solely with respect to any **Liability Coverage Part**:

1. *Notice of Claim:* The **Insureds** shall give to the Insurer written notice of any **Claim** made against an **Insured** as soon as practicable after an **Executive Officer** or risk manager of a **Company** or the functional equivalent of either of the foregoing, first learns of such **Claim**, but in no event later than (i) ninety (90) days after expiration of the **Policy Period**, or (ii) the expiration of the **Extended Reporting Period**, if exercised. The failure of the **Insureds** to provide notice of a **Claim** as soon as practicable as required by this Section III.A.1 shall not constitute a coverage defense with respect to such **Claim** unless the Insurer establishes it was materially prejudiced by such failure.
2. *Notice of Inquiry/Fiduciary Inquiry/Voluntary Compliance Program Notice:* If an **Insured** elects to seek coverage for an **Inquiry, Fiduciary Inquiry** or a **Voluntary Compliance Program Notice**, the **Insured** shall give notice of such **Inquiry, Fiduciary Inquiry** or **Voluntary Compliance Program Notice** to the Insurer no later than ninety (90) days after the expiration of the **Policy Period** or **Extended Reporting Period**, if exercised.
3. *Notice of Circumstances:* If during the **Policy Period** or the **Extended Reporting Period**, if exercised, the **Insured** first becomes aware of circumstances that could give rise to a **Claim** against the **Insureds** and give written notice of such circumstances to the Insurer during the **Policy Period** or the **Extended Reporting Period**, if exercised, then any **Claims** subsequently arising from such circumstances shall be considered to have been made during the **Policy Period**. Except as otherwise provided in the Directors and Officers Liability Coverage Part, no coverage is afforded under any **Liability Coverage Part** for fees, expenses or other loss incurred in connection with such circumstances prior to the time a **Claim** is actually made and reported to the Insurer.

The **Insureds** shall include with any such notice of circumstances a description of the circumstances, the nature of any potential **Wrongful Act(s)**, the nature of the alleged or potential damage, the names of actual or potential claimants, and the manner in which the **Insureds** first became aware of the circumstances.

- B. Solely with respect to any **Non-Liability Coverage Part** as a condition precedent to their rights under such Coverage Part, the **Insureds** shall give to the Insurer written notice of any **Coverage Event** pursuant to the applicable notice provision in such **Non-Liability Coverage Part**.
- C. Except as otherwise provided in this Policy, all notices under any provision of this Policy shall be in writing and given by prepaid express courier, certified mail, email or fax properly addressed to the appropriate party. Notice to the **Insureds** may be given to the **Named Insured** at the address as shown in ITEM 1 of the Declarations. Notice to the Insurer shall be given to the respective address shown in ITEM 6 of the Declarations. Notice given as described above shall be deemed to be received and effective upon actual receipt thereof by the addressee or in the case of courier, email or fax, one day following the date such notice is sent, whichever earlier, subject to proof of transmittal.

SECTION IV – LIMITS OF LIABILITY

A. COMBINED AGGREGATE LIMIT OF LIABILITY

The amount set forth in ITEM 2 of the Declarations shall be the Insurer's maximum aggregate liability for all **Loss** covered under all **Liability Coverage Parts**, combined.

The Insurer's maximum liability under the **Non-Liability Coverage Parts** shall be the respective Limits of Liability as set forth in the respective Coverage Part Declarations, if any. Such Limits of Liability will be applied as described in the respective **Non-Liability Coverage Part**.

B. EACH LIABILITY COVERAGE PART LIMIT OF LIABILITY

The respective Aggregate Limit of Liability for each **Liability Coverage Part**, as set forth in the Coverage Schedule in ITEM 8 of the Declarations, shall be the Insurer's maximum aggregate liability for all **Loss** on account of all **Claims** under each such **Liability Coverage Part**. The Limit of Liability for each **Liability**

Coverage Part shall be part of and not in addition to, the Combined Aggregate Limit of Liability as set forth in ITEM 2 of the Declarations.

C. SHARED LIABILITY COVERAGE PART LIMIT OF LIABILITY

If the Aggregate Limit(s) of Liability for more than one Coverage Part is selected to be a Shared Limit in ITEM 8 of the Declarations, then: (i) the Aggregate Limit of Liability for each shared Coverage Part shall be the maximum liability of the Insurer for all **Loss** arising from all **Claims** under such shared Coverage Parts, (ii) any **Loss** paid under one shared Coverage Part shall reduce the Aggregate Limit of Liability for all other shared Coverage Parts, and (iii) in no event shall the maximum liability of the Insurer for all **Loss** arising from all **Claims** under all Shared Coverage Parts, collectively, exceed the highest Aggregate Limit of Liability applicable to such Coverage Parts that have a Shared Limit. Such Shared Limit of Liability shall be part of and not in addition to the Combined Aggregate Limit of Liability as set forth in ITEM 2 of the Declarations. This paragraph further limits the Insurer's maximum liability under each such **Liability Coverage Part** and does not increase the respective separate Aggregate Limit of Liability for each **Liability Coverage Part**.

D. LIABILITY UNDER MULTIPLE COVERAGE PARTS

If a single **Claim** (as described in Section VI below) is covered in whole or in part under more than one **Liability Coverage Part**, the applicable Aggregate Limits of Liability under each such **Liability Coverage Part** shall apply with respect to coverage for such **Claim** under such **Liability Coverage Part**, provided the Insurer's maximum aggregate liability for all **Loss** covered under all such **Liability Coverage Parts**, combined, on account of such **Claim** shall not exceed the largest of such applicable Aggregate Limits of Liability which shall be reduced by payment of **Loss**.

E. COORDINATION OF COVERAGE

Any **Loss** covered under more than one **Liability Coverage Part** including the Cyber Coverage Part, shall first be covered under the Cyber Coverage Part, subject to its terms, conditions and limitations. Any remaining portion of such **Loss** which is not paid under the Cyber Coverage Part shall then be covered under the Employment Practices Liability Coverage Part, if applicable, subject to its terms, conditions and limitations. Any remaining portion of such **Loss** otherwise covered under any other applicable **Liability Coverage Part** which is not paid under the Cyber Coverage Part or Employment Practices Liability Coverage Part shall be covered under such other **Liability Coverage Part**, subject to the terms, conditions and limitations of such **Liability Coverage Part**.

Any **Loss** covered under the Cyber Coverage Part and the Kidnap and Ransom Coverage Part shall be first covered under the Kidnap and Ransom Coverage Part, subject to its terms, conditions and limitations. Any remaining portion of such **Loss** otherwise covered under the Cyber Coverage Part which is not paid under the Kidnap and Ransom Coverage Part shall be covered under the Cyber Coverage Part, subject to its terms, conditions and limitations.

F. SUBLIMITS OF LIABILITY

Except as otherwise indicated, any Sublimit of Liability set forth in any Coverage Part shall be part of and not in addition to, the respective Aggregate Limit of Liability for that Coverage Part. No retention shall apply to any **Loss** which is subject to a Sublimit of Liability unless otherwise specifically indicated in the Declarations, the Policy and/or any endorsements thereto.

G. CLAIM EXPENSES WITHIN LIMIT OF LIABILITY

Except as otherwise provided, **Claim Expenses** are part of and not in addition to the Limits of Liability applicable to the **Liability Coverage Parts**, and the payment by the Insurer of **Claim Expenses** reduces such Limits of Liability.

H. LIMIT OF LIABILITY EXHAUSTION AND PAYMENT

If the applicable Limit of Liability under this Policy is exhausted by payment of **Loss**, the Insurer's obligations, including without limitation any duty to defend, shall be completely fulfilled and extinguished. Except with respect to Section XIX of these General Terms and Conditions (Payment Priority), the Insurer is entitled to pay **Loss** as it becomes due and payable by the **Insureds**, without consideration of other future payment obligations.

SECTION V – RETENTION

A. RETENTIONS FOR LIABILITY COVERAGE PARTS

The Insurer's liability under the **Liability Coverage Parts** with respect to **Loss** on account of each **Claim** shall apply only to that part of **Loss** which is excess of the applicable Retention set forth in the Coverage Schedule in ITEM 8 of the Declarations. If more than one Retention applies to a single **Claim**, the largest applicable Retention shall apply to such **Claim**. The retention shall be uninsured under this Policy. The Insurer shall recognize payment of any applicable retention by the **Insured**, any Side A Except DIC Insurer and/or by any other source.

If a **Company** refuses or fails within sixty (60) days after an **Insured Person** requests to indemnify or advance covered **Loss** or if a **Company** is unable to indemnify or advance covered **Loss** due to its **Financial Impairment**, the Insurer shall pay such covered **Loss** without applying the applicable Retention. If the Insurer pays under this Policy any **Loss** incurred by an **Insured Person** for which the **Company** is legally permitted or required and is financially able to advance or indemnify, then the **Company** shall reimburse the Insurer for such amounts up to the applicable Retention, and such amounts shall become due and payable as a direct obligation of the **Company** to the Insurer.

B. DEDUCTIBLES FOR NON-LIABILITY COVERAGE PARTS

The Insurer's maximum liability and the applicable Deductible under the **Non-Liability Coverage Parts** shall be the respective Limits of Liability and Deductible amounts as set forth in the respective Coverage Part Declarations, if any. Such Limits of Liability and Deductible amounts will be applied as described in the respective **Non-Liability Coverage Part**.

SECTION VI- SINGLE CLAIMS

All **Claims** under the **Liability Coverage Parts** which arise out of the same **Wrongful Act** or **Interrelated Wrongful Act** shall be deemed one **Claim**, and such **Claim** shall be deemed to be first made on the date the earliest of such **Claims** is first made against any **Insured**, regardless of whether such date is before or during the **Policy Period**. In no event shall a single lawsuit or proceeding constitute more than one **Claim**.

If a single **Claim** is covered in whole or in part under more than one **Liability Coverage Part**, the applicable Retention under each such **Liability Coverage Part** shall be applied with respect to coverage for such **Claim** under such **Liability Coverage Part**, provided the sum of all applicable Retentions under all such **Liability Coverage Parts** shall not exceed the largest of such applicable Retentions.

SECTION VII – DEFENSE AND SETTLEMENT

- A. *Duty to Defend Coverage:* If duty to defend coverage is selected with respect to any **Liability Coverage Part** as designated in the Coverage Schedule in ITEM 8 of the Declarations, the Insurer shall have the right and duty to defend any **Claim** covered under such **Liability Coverage Part**, even if any of the allegations are groundless, false or fraudulent. The Insurer's duty to defend any **Claim** shall cease upon exhaustion of the Limit of Liability applicable to such **Claim**.
- B. *Non-Duty to Defend Coverage:* If non-duty to defend coverage is selected with respect to any **Liability Coverage Part** as designated in the Coverage Schedule in ITEM 8 of the Declarations, it shall be the duty of

the **Insureds** and not the duty of the Insurer to defend any **Claim** covered under such **Liability Coverage Part**.

- C. *Optional Duty to Defend:* If Optional duty to defend is selected with respect to any **Liability Coverage Part**, as designated in the Coverage Schedule in ITEM 8 of the Declarations, then the **Insured** shall have the right to tender the defense of a **Claim**, on behalf of all **Insureds** to the Insurer. Such tender must be noticed in writing by the **Insured** to the Insurer within thirty (30) days of the **Insured's** first reporting of the **Claim** pursuant Section III.A.1 above. If the **Insured** does not tender the defense, then it shall be the duty of the **Insureds** and not the duty of the Insurer to defend any **Claim** covered under such **Liability Coverage Part** and the Advancement of Claim Expenses referenced in Section VII.E below, shall apply.

Furthermore, from the date the **Claim** is first made against an **Insured** to the date when the Insurer accepts the tender of the defense of such **Claim**, the **Insureds** shall take no action, or fail to take any required action, that prejudices the rights of any **Insured** or the Insurer with respect to such **Claim**. The assumption of the defense of the **Claim** shall be effective upon written confirmation sent by the Insurer to the **Named Insured**.

D. **Multiple Coverage Part Defense**

If a **Claim** is subject to coverage under more than one **Liability Coverage Part** and the **Insured** has not selected in ITEM 8 of the Declarations either Duty to Defend or Non-Duty to Defend for all such **Liability Coverage Parts**, then the **Insured** shall select either *Duty to Defend* or *Non-Duty to Defend* as referenced above, to apply with respect to the defense of the entire **Claim**. The **Insured** shall notify the Insurer of its selection within thirty (30) days of the **Insured's** first reporting of the **Claim** pursuant to Section III.A.1 of the Policy. If the **Insured** does not notify the Insurer of its selection within the thirty (30) day time frame then it shall be the duty of the **Insureds** and not the duty of the Insurer to defend the **Claim**.

E. **Advancement of Claim Expenses**

Solely with respect to *Non-Duty to Defend* coverage referenced in Section VII.B above, the Insurer shall advance covered **Claim Expenses** within forty-five (45) days after the receipt by the Insurer of properly detailed **Claim Expenses** invoices. Any advancement of covered **Claim Expenses** shall be repaid to the Insurer by the **Insureds** severally according to their respective interests if and to the extent it is later determined the **Insureds** shall not be entitled under the terms and conditions of this Policy to coverage for such **Claim Expenses**.

F. With respect to any **Liability Coverage Part**:

1. The **Insureds** agree not to offer to settle or settle any **Claim**, incur any **Claim Expenses** or otherwise assume any contractual obligation, admit any liability or stipulate to any judgment with respect to any **Claim** without the Insurer's prior written consent, which shall not be unreasonably withheld. The Insurer shall not be liable for or as a result of any offer to settle, settlement, **Claim Expenses**, assumed obligation, admission or stipulated judgment to which it has not given its prior consent;

Provided, however, if the **Insured** is able to fully and finally settle all **Claims** in their entirety, which are subject to a single retention, for an aggregate amount including **Claim Expenses** not exceeding fifty percent (50%) of such retention, the Insurer's consent will not be required for the settlement of such **Claims**.

2. The Insurer shall have the right and shall be given the opportunity to make any investigation it deems necessary and to effectively associate with the **Insureds** in the investigation, defense and settlement, including but not limited to the negotiation of a settlement, of any **Claim** that is or reasonably could be covered in whole or in part by the **Liability Coverage Part**.
3. The Insurer may, with the consent of the **Insured**, make any settlement of any **Claim** covered under a **Liability Coverage Part** which the Insurer deems appropriate.

SECTION VIII – ALLOCATION

Subject to this Section VIII, if in any **Claim** under a **Liability Coverage Part** the **Insureds** incur both **Loss** covered by this Policy and loss not covered by this Policy either because the **Claim** against the **Insureds** includes both covered and uncovered matters or because the **Claim** is made against both **Insureds** who are afforded coverage for such **Claim** and others, including **Insureds**, who are not afforded coverage for such **Claim**, the **Insureds** and the Insurer shall use their best efforts to allocate such amount between covered **Loss** and uncovered loss based upon the relative legal and financial exposures of the parties to covered and uncovered matters and covered and uncovered parties.

Provided, however, with respect to any **Liability Coverage Part**, if *Duty to Defend* coverage is selected, or the defense is tendered to the Insurer pursuant to Section VII above, then one hundred percent (100%) of any **Claim Expenses** shall be allocated to covered **Loss** under such **Liability Coverage Part**.

In any arbitration, suit or other proceeding among the Insurer and the **Insureds** or the **Company**, no presumption shall exist concerning what is a fair and proper allocation between covered **Loss** and uncovered loss.

SECTION IX - COOPERATION

With respect to all Coverage Parts, the **Insureds** agree to provide the Insurer with all information, assistance and cooperation which the Insurer reasonably requests and agree that in the event of a **Claim** or **Coverage Event**, the **Insureds** will do nothing that shall prejudice the Insurer's position or its potential or actual rights of recovery. The failure of any **Insured** to comply with this Section IX shall not be imputed to or create a coverage defense under this Policy with respect to any other **Insured Person**.

SECTION X – CHANGES IN EXPOSURE

A. NEW ORGANIZATIONS OR PLANS

If before or during the **Policy Period** the **Company** acquires or creates a new **Subsidiary** or a new **Plan** or acquires an entity by merger or consolidation, coverage under this Policy shall automatically apply to the new organization or **Plan** and its **Insureds**, provided such coverage shall apply only:

1. with respect to any **Liability Coverage Part**, solely for **Claims** for **Wrongful Acts** taking place after such acquisition or creation;
2. with respect to the Crime Coverage Part, solely after the effective date of such acquisition subject to Section X - Liability For Honor Losses of the Crime Coverage Part;

This Section X.A does not apply to, and no coverage is afforded under, this Policy for any **Subsidiary** acquired during the **Policy Period** and its **Insureds** if such **Subsidiary** is a registered issuer of securities pursuant to the Securities Exchange Act of 1934, as amended, unless the Insurer agrees by endorsement to this Policy to afford coverage for such **Subsidiary** and its **Insureds**.

B. ACQUISITION OF SAME INSURED

In the event of a **Change in Control** coverage under this Policy shall continue until the termination of this Policy, provided such coverage shall apply only with respect to **Claims** for **Wrongful Acts** (under a **Liability Coverage Part**) or a **Coverage Event** (under a **Non-Liability Coverage Part**) taking place prior to such **Change in Control**. The entire premium for this Policy shall be deemed fully earned as of the effective date of such **Change in Control**.

C. RUN-OFF PURCHASE OPTION

In the event of a **Change in Control** during the **Policy Period**, the **Named Insured** shall have the right, upon payment of the additional premium set forth in ITEM 5 of the Declarations, to an extension of coverage granted by the **Liability Coverage Parts** for the Run-Off Coverage Period set forth in ITEM 5 of the Declarations, which shall commence as of the effective date of the **Change in Control** ("Run-Off Period"). This extension of coverage shall apply: (i) to any **Claim** deemed first made during the Run-Off Period but only for **Wrongful Acts** taking place prior to the effective date of the Run-Off Period, and (ii) only to coverage

provided under the **Liability Coverage Parts** selected in ITEM 8 of the Declarations. The **Named Insured** shall have the right to elect only one of the Run-Off Coverage Periods referenced in ITEM 5 of the Declarations.

If the **Named Insured** elects to purchase a Run-off Period, they shall submit to the Insurer: (i) a written request to purchase the Run-Off Period, and (ii) payment of the additional premium for such Run-Off Period, no later than sixty (60) days following the effective date of such **Change in Control**. The premium paid for the Run-Off Period shall be deemed fully earned at the inception of the Run-Off Period.

This extension of coverage shall in no way increase the Insurer's Aggregate Limit of Liability under the **Liability Coverage Part(s)** selected or the Insurer's Combined Aggregate Limit of Liability under the Policy. If a Run-Off Period is purchased, Sections XIV (Extended Reporting Period) and XX (Cancellation and Nonrenewal) shall be deleted.

D. CESSATION OF SUBSIDIARIES

If before or during the **Policy Period** an organization ceases to be a **Subsidiary**, coverage with respect to such **Subsidiary** and its **Insureds** shall continue until termination of this Policy, provided such coverage shall apply (i) with respect to any **Liability Coverage Parts**, only with respect to **Claims** for **Wrongful Acts** taking place prior to the date such organization ceased to be a **Subsidiary**, and (ii) with respect to any **Non-Liability Coverage Part**, only with respect to **Coverage Events** taking place prior to the date such organization ceased to be a **Subsidiary**.

E. CESSATION OF PLANS

If before or during the **Policy Period** a **Plan** is terminated, coverage for such **Plan** and its **Insureds** under the Fiduciary Liability Coverage Part, if purchased, shall continue until termination of such Coverage Part with respect to **Wrongful Acts** taking place prior to the termination of such **Plan**.

SECTION XI – REPRESENTATIONS, SEVERABILITY AND NON-RESERVABLE COVERAGES

A. REPRESENTATIONS

The **Insureds** represent and acknowledge that the statements and information contained in the **Application** are true and accurate, and are the basis of this Policy and are to be considered incorporated into and constituting a part of this Policy. This Policy is issued in reliance upon the truth and accuracy of such representations.

B. SEVERABILITY

The **Application** shall be construed as a separate application for coverage by each of the **Insureds**. If with respect to any Coverage Part the **Application** contains any misrepresentation or omission which materially affects either the acceptance of the risk or the hazard assumed by the Insurer under such Coverage Part, then the Insurer shall not be liable under such Coverage Part to pay any **Loss** on account of, and shall not be obligated to defend any **Claim** based upon, arising out of or attributable to the facts that were not truthfully and accurately disclosed in the **Application** to the extent such **Loss** is incurred by:

1. any **Insured Person** who knew the facts that were not truthfully disclosed in the **Application**;
2. any **Company** that grants indemnification to an **Insured Person** who knew the facts that were not truthfully disclosed in the **Application**; and
3. any **Company** or **Plans** if an **Executive Officer** of such **Company** knew the facts that were not truthfully disclosed in the **Application**;

whether or not such **Executive Officer** or **Insured Person** knew the **Application** contained such misrepresentation or omission. No knowledge of one **Insured Person** shall be imputed to any other **Insured Persons** for purposes of this Section XI.

C. NON-RESCINDABLE POLICY

The Insurer shall not have the right to rescind or void this Policy or any Coverage Part, in whole or in part, for any reason.

SECTION XII – PRESUMPTIVE INDEMNIFICATION

The **Named Insured** and any other **Company** agree to indemnify the **Insured Persons**, including the advancement of **Claim Expenses** incurred by the **Insured Persons** to the fullest extent permitted by law, or the certificate or articles of incorporation, charter, by-laws or limited liability company agreement or limited partnership agreement, if applicable, of a **Company**, or the functional or foreign equivalent of any of the foregoing.

SECTION XIII – OTHER INSURANCE

Solely with respect to any **Liability Coverage Part**, if any **Loss** resulting from any **Claim** is insured by any other valid and collectible insurance issued to any **Insured**, then this Policy shall apply only excess of the amount of any deductibles, retentions and limits of liability under such other policy whether such other policy is stated to be primary, contributory, excess, contingent or otherwise, unless such other policy is written specifically excess of this Policy. However, this Policy shall apply on a primary basis with respect to (i) any personal umbrella or other personal liability policy available to an **Insured Person**, or (ii) any private equity or venture capital liability, general partner liability or other similar management or professional liability insurance policy available to an **Insured Person**.

SECTION XIV - EXTENDED REPORTING PERIOD

If the Insurer or the **Named Insured** terminates or refuses to renew this Policy other than for nonpayment of premium, the **Insureds** shall have the right, upon payment of the additional premium set forth in ITEM 4.A of the Declarations, to an extension of the coverage granted by the **Liability Coverage Parts** for the **Extended Reporting Period** set forth in ITEM 4.B of the Declarations following the effective date of termination or nonrenewal, but only with respect to any **Wrongful Act** taking place prior to the effective date of such termination or nonrenewal. This right of extension shall lapse unless written notice of such election, together with payment of the additional premium due, is given by the **Insureds** to the Insurer within sixty (60) days following the effective date of termination or nonrenewal.

The offer of renewal terms and conditions or premiums different from those in effect prior to renewal shall not constitute refusal to renew.

The entire additional premium for the **Extended Reporting Period** shall be deemed fully earned at the inception of the **Extended Reporting Period**.

The Limit of Liability for the **Extended Reporting Period** shall be part of and not in addition to the applicable Limits of Liability for the **Policy Period**.

SECTION XV - ESTATES, LEGAL REPRESENTATIVES, SPOUSES AND DOMESTIC PARTNERS

The estates, heirs, legal representatives, assigns, spouses and **Domestic Partners** of **Insured Persons** shall be considered an **Insured Person** under the **Liability Coverage Parts** but only for a **Claim** arising solely out of their status as such and, in the case of a spouse or **Domestic Partner**, where such **Claim** seeks damages from marital community property, jointly held property or property transferred from the **Insured Person** to the spouse or **Domestic Partner**. No coverage is provided for any wrongful act or omission of an estate, heir, legal representative, assign, spouse or **Domestic Partner**. All provisions in these General Terms and Conditions and the respective **Liability Coverage Part** applicable to **Loss** incurred by the **Insured Person** shall also apply to covered loss incurred by such estates, heirs, legal representatives, assigns, spouses and **Domestic Partners**.

SECTION XVI – TERRITORY AND VALUATION

Coverage under any **Liability Coverage Part** shall extend to **Claims** made and **Wrongful Acts** anywhere in the world.

All premiums, limits, retentions, **Loss** and other amounts under this Policy are expressed and payable in the currency of the United States of America. If judgment is rendered, settlement is denominated or another element of **Loss** under this Policy is stated in a currency other than United States dollars, payment under this Policy shall be made in United States dollars at the rate of exchange published in *The Wall Street Journal* on the date the final judgment is reached, the amount of the settlement is agreed upon or the other element of **Loss** is due, respectively.

Any **Loss** incurred by a **Company** in a **Foreign Jurisdiction** shall be deemed, at the written direction of the **Named Insured**, a **Loss** of the **Named Insured** payable to the **Named Insured** at the address shown on the Declarations. Any such payment by the Insurer to the **Named Insured** pursuant to this paragraph shall fully discharge the Insurer's liability under this Policy for such **Loss**. Any **Loss** incurred by an **Insured Person** in a **Foreign Jurisdiction** and which is not indemnified or paid by a **Company** shall, to the extent permissible under applicable law, be paid to such **Insured Person** in a jurisdiction mutually acceptable to such **Insured Person** and the Insurer.

SECTION XVII – SUBROGATION

Solely with respect to any **Liability Coverage Part**, the Insurer shall be subrogated to all of the **Insureds'** rights of recovery regarding any payment of **Loss** under this Policy. The **Insureds** shall do everything reasonably necessary to secure and preserve such rights, including, without limitation, the execution of all documents necessary to enable the Insurer to effectively bring suit in the name of the **Insureds**. The **Insureds** shall do nothing to prejudice the Insurer's position or any rights of recovery. The Insurer shall not subrogate against any **Insured Person**.

Any recoveries by the Insurer, less the cost of obtaining the recovery, will be distributed as follows:

1. to the **Insured** until reimbursed for any **Loss** that they sustain that exceeds the sum of this Policy's and all policies issued specifically excess of this Policy's applicable Limit of Liability and applicable Retention, if any;
2. to the insurer of any other policy specifically excess of this Policy, until they are reimbursed for any **Loss** that they sustain that exceeds the sum of this Policy's applicable Limit of Liability and applicable Retention, if any;
3. then to the Insurer, until the Insurer is reimbursed for the payment made under this Policy; and
4. then to the **Insureds**, until they are reimbursed for their payment of any applicable Retention.

In the event the Insurer recovers amounts paid under this Policy, the Insurer will reinstate the applicable Limit(s) of Liability of this Policy to the extent of such recovery less the Insurer's costs incurred in obtaining such recovery. The Insurer assumes no duty to seek a recovery of any amounts paid under this Policy.

SECTION XVIII – ALTERATION, ASSIGNMENT AND HEADINGS

By acceptance of this Policy, all **Insureds** and the Insurer agree that this Policy (including the Declarations, **Application**, all purchased Coverage Parts and any written endorsements attached to this Policy) constitute the entire agreement between the parties. The terms, conditions and limitations of this Policy can be waived or changed only by written endorsement hereto.

This Policy and any and all rights hereunder are not assignable without the prior written consent of the Insurer, which consent shall be in the sole and absolute discretion of the Insurer.

The titles and headings to the various sections, subsections and endorsements of this Policy and schedule of endorsements attached to this Policy, are included solely for ease of reference and do not in any way limit, expand or otherwise affect the provisions or existence of such sections, subsections or endorsements.

SECTION XIX – PAYMENT PRIORITY

If the **Loss** due and owing by the Insurer under a **Liability Coverage Part** exceeds the then-remaining Limit of Liability applicable to such **Loss**, the Insurer shall pay such **Loss**, subject to the applicable Limits of Liability, in the following priority:

1. First, the Insurer shall pay such **Loss** which is **Non-Indemnifiable Loss** incurred by **Insured Persons**;
2. Second, the Insurer shall pay all other **Loss** covered under the **Liability Coverage Part**.

Subject to the foregoing paragraph, the Insurer shall, upon receipt of a written request from the **Named Insured**, delay any payment of **Loss** due and owing to the **Company** until such time as the **Named Insured** designates, provided the Insurer's liability with respect to any such delayed **Loss** payment shall not be increased, and shall not include any interest, on account of such delay.

SECTION XX – CANCELLATION AND NONRENEWAL

The **Named Insured** may cancel this Policy or any Coverage Part by mailing or delivering to the Insurer advance written notice of cancellation. The Insurer may cancel this Policy or any Coverage Part only for nonpayment of premium. In such event, the Insurer shall mail or deliver to the **Named Insured** written notice of cancellation at least twenty (20) days before the effective date of such cancellation, but such cancellation shall not become effective if the **Insureds** pay such premium in full during such twenty (20) day period. Any notice of cancellation will state the effective date of cancellation. The **Policy Period** will end on that date. If this Policy is cancelled, the Insurer will send to the **Named Insured** the premium refund, computed pro rata. The cancellation will be effective even if the Insurer has not made or offered a premium refund.

If the Insurer decides not to renew this Policy, the Insurer will mail or deliver to the **Named Insured** written notice of non-renewal at least sixty (60) days prior to the end of the **Policy Period**.

SECTION XXI – AUTHORIZATION CLAUSE

By acceptance of this Policy, the **Named Insured** agrees to act on behalf of the **insureds** with respect to giving and receiving notices, paying premiums and receiving any return of premiums that may become due under this Policy, and agreeing to endorsements, and the **Insureds** agree that the **Named Insured** may act on their behalf with respect to such matters.

SECTION XXII – BANKRUPTCY

Bankruptcy or insolvency of any **Insured** or of the estate of any **Insured** shall not relieve the Insurer of its obligations nor deprive the **Insured** of its rights or defenses under this Policy.

In the event a liquidation or reorganization proceeding is commenced by or against a **Company** pursuant to the United States Bankruptcy Code, as amended, or any similar foreign, state or local law, the **Insureds** hereby (i) waive and release any automatic stay or injunction which may apply in such proceeding to this Policy or its proceeds under such bankruptcy law, and (ii) agree not to oppose or object to any efforts by the Insurer, the **Company** or any **Insured** to obtain relief from any such stay or injunction.

SECTION XXIII – ACTION AGAINST INSURER

No action may be taken against the Insurer unless, as a condition precedent thereto, there shall have been full compliance with all of the terms of this Policy. No person or entity shall have the right under this Policy to join the Insurer as a party to any action against any **Insured** to determine such **Insured's** liability nor shall the Insurer be impleaded by such **Insured** or legal representative of such **Insured**.

SECTION XXIV – COMPLIANCE WITH APPLICABLE TRADE AND ECONOMIC SANCTION LAWS

This Policy does not provide coverage that would be in violation of any applicable laws or regulations concerning trade or economic sanctions, including, but not limited to, those administered and enforced by the U.S. Treasury's Office of Foreign Asset Control (OFAC). Payment of **Loss** under this Policy shall be made only if such payment is in full and complete compliance with all economic or trade sanction laws or regulations, including, but not limited to, sanctions, laws and regulations administered and enforced by OFAC.

SECTION XXV – PRIOR POLICY LIBERALIZATION

If this Policy is a direct or indirect renewal of a prior policy purchased by the **Named Insured** from the Insurer and if such prior policy was the Insurer's "Private Company Liability Policy" (Form Number ESU 20 00 06 13) ("Prior Policy Form"), then to the extent **Loss** resulting from a **Claim** first made or **Coverage Event** taking place during the **Policy Period** is not covered under this Policy but would be covered if this Policy included the Prior Policy Form, then this Policy is amended to follow and be subject to the broader terms and conditions in the Prior Policy Form, provided this Section XXV shall not amend or apply to: (i) any provision in this Policy addressing limits of liability, retentions or coverages specifically not purchased under this Policy, or (ii) any endorsements to this Policy.

SECTION XXVI – STATE AMENDATORY ENDORSEMENTS

In the event there is an inconsistency between a state amendatory endorsement attached to this Policy and any term or condition of this Policy, then, where permitted by law, the Insurer shall apply those terms and conditions of either the state amendatory endorsement or this Policy which are more favorable to the **Insured**.

SECTION XXVII – ALTERNATIVE DISPUTE RESOLUTION

Only if requested by the **Company**, the Insurer shall submit any dispute, controversy or claim arising out of or relating to this Policy or the breach, termination or invalidity thereof to final and binding arbitration pursuant to such rules and procedures as the parties may agree. If the parties cannot so agree, the arbitration shall be administered by the American Arbitration Association in accordance with its then prevailing commercial arbitration rules. The arbitration panel shall consist of one arbitrator selected by the **Company**, one arbitrator selected by the Insurer, and a third independent arbitrator selected by the first two arbitrators. In any such arbitration, each party will bear its own legal fees and expenses. The **Company** shall act on behalf of all **Insureds** in deciding to proceed with arbitration under this clause.

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