



LIBERTY SURPLUS INSURANCE CORPORATION

ENDORSEMENT NO.

This endorsement, effective **forms part of**
Policy No. **issued to**

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY

EXECUTIVE ADVANTAGE PRIVATE COMPANY ENDORSEMENT

It is agreed that this Policy shall be amended as follows:

I. Section 1.3 (Insuring Agreements) is deleted and replaced with the following:

Insured Organization Liability: The Insurer shall pay on behalf of the **Insured Organization** all **Loss** which it shall become legally obligated to pay as a result of a **Claim**, including an **Employment Practices Action** or a **Securities Action**, first made during the **Policy Period** or **Discovery Period**, if applicable, against the **Insured Organization** for a **Wrongful Act** which takes place before or during the **Policy Period**.

II. Section 5 (Exclusions) is amended as follows:

A. Exclusion 5.1 shall include the following:

provided that this exclusion shall not apply with respect to emotional distress, mental anguish, outrage, humiliation, employment-related defamation (libel and slander) or violation or invasion of any right of privacy or private occupancy alleged as part of an **Employment Practices Action**;

B. Exclusion 5.4 is deleted and replaced with the following:

for violation of the Worker Adjustment and Retraining Notification Act, the National Labor Relations Act, the Fair Labor Standards Act (except the Equal Pay Act), the Occupational Safety and Health Act, the Consolidated Omnibus Budget Reconciliation Act of 1985, the Employee Retirement Income Security Act of 1974, or rule or regulation promulgated thereunder, or similar federal, state, local, or common laws, rules or regulations;

however, this exclusion shall not apply to any **Employment Practices Action** for any actual or alleged retaliatory treatment of an **Employee** by the **Insured Organization** by reason of such **Employee's** exercise of rights pursuant to any such laws, rules or regulations;

C. Exclusion 5.6 (b) is deleted and replaced with the following:

(b) an **Employment Practices Action** brought by an **Employee**.

III. Section 5 (Exclusions) is amended to include the following additional exclusions which shall apply to all Insuring Agreements:

5.11 based upon, arising from, or in any way related to any **Employee's** actual or alleged entitlement to insurance or other benefits under any workers' compensation, unemployment compensation, disability, retirement, or social security laws, rules or regulations;

however, this exclusion shall not apply to any **Employment Practices Action** for any actual or alleged retaliatory treatment of an **Employee** by the **Insured Organization** by reason of such **Employee's** exercise of rights pursuant to any such laws, rules or regulations;

5.12 for, based upon, arising from, or in any way related to any public offering of securities by the **Insured Organization** or the purchase or sale of such securities subsequent to such public offering; however, this exclusion shall not apply to the private placement of the **Insured Organization's** securities directly sold to a limited number of investors and exempted from the registration requirements of the Securities Act of 1933.

IV. This policy is amended to include Section 5A (Exclusions), which shall be applicable only to the **Insured Organization** under Insuring Agreement 1.3:

Under Section 5A, the Insurer shall not be liable to make any payment for **Loss** in connection with any **Claim** made against the **Insured Organization**:

5A.1 based upon, arising from, or in any way related to any request for injunctive relief, declaratory relief, disgorgement, job reinstatement, or any other equitable remedy; however, this exclusion shall not apply to **Defense Costs**;

- 5A.2 based upon, arising from, or in any way related to any actual or alleged infringement or violation of copyright, patent, trademark, trade secret, or other intellectual property rights;
- 5A.3 based upon, arising from, or in any way related to any actual or alleged violation of any law, rule, or regulation relating to anti-trust, restraint of trade, unfair business practice or interference with another's business, contractual or economic relationships or interests;
- 5A.4 based upon, arising from, or in any way related to a labor dispute, negotiation or any proceeding in connection with a collective bargaining agreement;
- 5A.5 based upon, arising from, or in any way related to the actual or alleged rendering of or failure to render any professional service to a customer or client of the **Insured Organization**; however, this exclusion shall not apply to any **Securities Action** or **Employment Practices Action**; or
- 5A.6 based upon, arising from, or in any way related to any actual or alleged obligation of the **Insured Organization** under any express contract or agreement (other than an employee handbook); however, solely with respect to an **Employment Practices Action**, this exclusion shall not apply to **Defense Costs**.

V. Solely with respect to an **Employment Practices Action**, Item IV of the Declarations is amended as follows:

Insuring Agreements 1.2 and 1.3 \$100,000 in the aggregate each
Employment Practices Action

VI. Section 25 (Definitions), is amended as follows:

- A. The definition of **"Claim"**, set forth in Section 25.3, shall be deleted and replaced with the following:
 - (a) a written demand for monetary or non-monetary relief against an **Insured Person** or, with respect to Insuring Agreement 1.3, against the **Insured Organization**;
 - (b) a civil or criminal proceeding or arbitration against an **Insured Person** or, with respect to Insuring Agreement 1.3, against the **Insured Organization**;
 - (c) an arbitration or formal administrative or regulatory proceeding against an **Insured Person** or, with respect to Insuring Agreement 1.3, against the **Insured Organization**, including but not limited to a proceeding before the Equal Employment Opportunity Commission, or similar state agency; or

- (d) a formal criminal, administrative or regulatory investigation against an **Insured Person** or, with respect to Insuring Agreement 1.3, against the **Insured Organization**, including but not limited to an investigation by the Equal Employment Opportunity Commission or similar state agency;

including any appeal therefrom. A **Claim** will be deemed first made on the date an **Insured** receives a written demand, complaint, indictment, notice of charges, or order of formal investigation.

- B. The definition of **Insured Persons(s)**, set forth in Section 25.10, is deleted and replaced with the following:

- (a) one or more natural persons who were, now are, or shall hereafter be duly elected or appointed directors or officers of the **Insured Organization**, or, with respect to a **Subsidiary** operating outside the United States, their functional equivalent, regardless of title; and

- (b) any other natural persons who were, now are, or shall hereafter be **Employees** of the **Insured Organization**.

- C. The definition of "**Loss**", set forth in Section 25.12, is deleted and replaced with the following:

sums which the **Insured Persons** or, with respect to Insuring Agreement 1.3, the **Insured Organization**, are legally obligated to pay solely as a result of any **Claim** insured by this Policy, including **Defense Costs**, damages, front pay and back pay, judgments, settlement amounts, legal fees and costs awarded pursuant to judgments, punitive or exemplary damages, and the multiple portion of any multiplied damage award. **Loss** shall also include punitive and exemplary damages, the multiple portion of any multiplied damage award, and liquidated damages under the Age Discrimination in Employment Act, unless such damages are uninsurable pursuant to applicable law.

Loss shall not include: (a) fines, penalties, taxes, dividends, or distributions of profits or other assets of the **Insured Organization**; (b) any amount allocated to uncovered loss pursuant to Section 13; (c) amounts for which there is no legal recourse against the **Insureds**; (d) stock options, perquisites, deferred compensation, or any other benefits or compensation other than salaries, wages or bonuses; (e) damages, costs or expenses incurred by an **Insured** in making physical changes, modifications, alterations or improvements as part of an accommodation of any disabled person pursuant to the Americans with Disabilities Act of 1990 or any similar federal, state or local law; or (f) other matters uninsurable pursuant to any applicable law.

With respect to any **Claim** alleging that the price or consideration paid or proposed to be paid for the acquisition of any securities issued by or assets owned by any natural person or entity is inadequate, excessive, or improper, **Loss** shall not include the portion of any judgment or settlement relating to the amount by which such price or consideration was changed or modified as a result of such **Claim**.

D. Section 25 (Definitions) is amended to include the following:

25.21 “**Employee**” means:

- (1) any past, present or future employee of the **Insured Organization** (including any officers of the **Insured Organization**), whether such employee is in a supervisory, co-worker, subordinate or other position, including any part-time, seasonal and temporary employee in his/her capacity as such; and
- (2) solely with respect to an **Employment Practices Action**, any natural person who is a leased or loaned employee to the **Insured Organization**; provided that such natural person shall be deemed an **Employee** only if, and to the extent that, the **Insured Organization** provides indemnification to such natural person for services rendered as if they were rendered by an actual employee of the **Insured Organization** in his/her capacity as such.

25.22 “**Employment Practices Action**” means a **Claim** brought by or on behalf of an **Employee** or an applicant for employment with the **Insured Organization** which, in whole or in part, is based upon or arises from any actual or alleged:

- (1) wrongful dismissal, discharge or termination (whether actual, constructive or retaliatory) of employment, wrongful failure or refusal to hire or promote, wrongful discipline or demotion, failure to grant tenure, or negligent employment evaluation;
- (2) sexual or other workplace harassment, including quid pro quo and hostile work environment;
- (3) unlawful employment discrimination, including discrimination based upon age, gender, race, color, national origin, religion, sexual orientation or preference, pregnancy, disability, or other protected class or characteristic established under applicable federal, state or local law;

- (4) invasion of privacy, employment-related defamation (including libel and slander), employment-related wrongful infliction of emotional distress, or any employment-related misrepresentation made to an **Employee** or an applicant for employment;
- (5) failure of the **Insured Organization** to create, provide for or enforce adequate or consistent employment-related policies or procedures;
- (6) retaliatory treatment against an **Employee** of the **Insured Organization** on account of such **Employee's** exercise or attempted exercise of his or her employment-related rights under law;
- (7) violation of a natural person's employment-related civil rights relating to any of the above; and
- (8) violation of the Family and Medical Leave Act;

All other terms, conditions, and exclusions of this Policy remain unchanged.