

# THE HARTFORD

## EMPLOYMENT PRACTICES LIABILITY POLICY

In consideration of, and subject to, the payment of the premium, and in reliance upon the particulars, statements, attachments and exhibits contained in and submitted with the Proposal and which shall be the basis of this Policy and shall be deemed to be incorporated herein, and subject to all the terms and conditions of this Policy, the Insurer and the **Insureds** agree as follows:

### I. INSURING AGREEMENT

The Insurer will pay on behalf of the **Insureds Loss** which the **Insureds** shall become legally obligated to pay as a result of a **Claim** first made during the **Policy Period** or **Discovery Period**, if applicable, against the **Insureds** for a **Wrongful Act** which takes place during or prior to the **Policy Period**; provided, however, as a condition precedent to any such coverage, the **Insureds** shall report any such **Claim** to the Insurer as soon as practicable but in no event later than sixty (60) days after the termination of the **Policy Period** or **Discovery Period**, if applicable.

### II. EXTENSIONS

#### (A) DISCOVERY PERIOD

If the Insurer or the **Parent Company** fails or refuses to renew this Policy or if the **Parent Company** cancels this Policy, any **Insured** shall have the right, upon payment of the Discovery Period Premium set forth in Item E of the Declarations, to an extension of the coverage granted by this Policy for the period set forth in Item E of the Declarations following the effective date of such cancellation or non-renewal but only with respect to any **Wrongful Act** taking place before the date of such cancellation or non-renewal. A written request for this extension, together with payment of the Discovery Period Premium, must be made within thirty (30) days after the effective date of cancellation or non-renewal of the Policy. Such Discovery Period Premium shall be deemed to be fully earned as of such date. This extension shall not apply if this Policy is terminated by the Insurer for failure to pay any premium when due.

#### (B) DEATH, INCAPACITY OR BANKRUPTCY

In the event of the death, incapacity or bankruptcy of an **Insured Person**, any **Claim** made against the estate, legal representatives, heirs or the assigns of such **Insured Person** for a **Wrongful Act** of such **Insured Person** shall be deemed to be a **Claim** against such **Insured Person**.

#### (C) SPOUSAL EXTENSION

If a **Claim** against an **Insured Person** includes a claim against the lawful spouse of such **Insured Person** solely by reason of (a) such spousal status, or (b) such spouse's ownership interest in property or assets that are sought as recovery for **Wrongful Acts**, any loss for which such spouse becomes legally obligated to pay on account of such **Claim** shall be deemed **Loss** which such **Insured Person** or the spouse becomes legally obligated to pay as a result of such **Claim**.

All terms and conditions of this Policy, including the Retention, applicable to **Loss** sustained by such **Insured Person** in the **Claim** shall also apply to such spousal loss.

The extension of coverage afforded by this Section II. (C) shall not apply to the extent the **Claim** alleges any wrongful act or omission by such spouse.

### III. DEFENSE, SETTLEMENTS AND COOPERATION

- (A) Unless otherwise provided by written endorsement to this Policy, the Insurer does not assume any duty to defend any **Claim**. However, the **Company** may at its sole option tender to the Insurer the defense of a **Claim** for which coverage is provided under this Policy. Regardless of whether the Insurer assumes the defense of such **Claim**, the Insurer shall have the right to associate itself in the defense and settlement of any **Claim** that appears reasonably likely to involve this Policy. The Insurer may make any investigation it deems appropriate.
- (B) No **Claims Expenses** shall be incurred or settlements made, contractual obligations assumed or liability admitted 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 any **Claims Expenses**, settlement, assumed obligation or admission to which it has not consented.
- (C) The Insurer shall advance on behalf of the **Insureds Claims Expenses** which the **Insureds** have incurred in connection with **Claims** made against them, prior to the final disposition of such **Claims**, provided always that to the extent it is established that any such **Claims Expenses** are not covered under this Policy, the **Insureds**, as appropriate, agree to repay to the Insurer such non-covered **Claims Expenses**.
- (D) The **Insureds** shall, as a condition precedent to their rights under this Policy, give to the Insurer all information and cooperation as the Insurer may reasonably require and shall do nothing that may prejudice the Insurer's position or its potential or actual rights of recovery.

### IV. DEFINITIONS

SPECIMEN

(A) "**Claim**" means:

- (1) a written demand or notice for monetary or non-monetary relief commenced by the **Insureds'** receipt of such demand;
- (2) a civil proceeding commenced by the service of a complaint or similar pleading; or
- (3) an arbitration or formal administrative or regulatory proceeding, including but not limited to a proceeding before the Equal Employment Opportunity Commission, or similar state agency, commenced by the filing of a demand for arbitration, notice of charges, formal investigative order or similar document;

brought or submitted by or on behalf of an **Employee** or an applicant for employment with the **Company**, including any appeal therefrom.

(B) "**Claims Expenses**" means that portion of **Loss** consisting of reasonable and necessary fees (including attorneys' fees and experts' fees) and expenses incurred in the defense or appeal of a **Claim**, pre and post judgment interest and the premiums for any appeal, attachment or similar bond, but the Insurer shall have no obligation to apply for or furnish such bond. **Claims Expenses** shall not include the wages, salaries, benefits or expenses of any **Insured**.

(C) "**Company**" means any company named in Item A of the Declarations and any **Subsidiary**.

(D) "**Discovery Period**" means the period set forth in Item E of the Declarations.

(E) "**Employee**" means:

- (1) any past, present or future employee of the **Company**, 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;
- (2) any natural person who is a leased or loaned employee to the **Company**; provided that such natural person shall be deemed an **Employee** only if, and to the extent that, the **Company** provides

indemnification to such natural person for services rendered as if they were rendered by an actual employee of the **Company** in his/her capacity as such; and

(3) any natural person who is an independent contractor contracted to perform services for the **Company**; provided that such natural person shall be deemed an **Employee** only if, and to the extent that, the **Company** provides indemnification to such natural person for services rendered as if they were rendered by an actual employee of the **Company** in his/her capacity as such, and provided further that such natural person is scheduled by written endorsement to this Policy.

(F) "**Executive Officer**" means the president, chief executive officer, chief operating officer, chief financial officer, in-house general counsel, managing director, any executive vice president and any equivalent executive officer of the **Company**.

(G) "**Insured(s)**" means one or more **Insured Persons** and the **Company**.

(H) "**Insured Persons**" means:

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

(2) **Employees**.

(I) "**Interrelated Wrongful Acts**" means **Wrongful Acts** that have as a common nexus any fact, circumstance, situation, event, transaction, cause or series of causally connected facts, circumstances, situations, events, transactions or causes.

(J) "**Loss**" means sums which the **Insureds** are legally liable to pay solely as a result of any **Claim** insured by this Policy, including **Claims Expenses**, compensatory damages, including front pay and back pay, settlement amounts, and legal fees and costs awarded pursuant to judgments. If granted pursuant to Item G of the Declarations, **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.

With respect to the insurability of punitive, exemplary, multiple or liquidated damages, if such coverage is granted, the Insurer will not contend for any reason, unless appropriate to do so as a matter of law, regulation or public policy, that such damages are uninsurable; and the insurability of such damages shall be governed by the internal laws of any applicable jurisdiction which permits coverage of such damages.

**Loss** shall not include civil or criminal fines, penalties or taxes; any amounts paid or payable pursuant to an express written employment contract (other than an employee handbook); stock options, perquisites, deferred compensation, or any other benefits or compensation other than salaries, wages or bonuses; 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 other matters uninsurable pursuant to any applicable law, including but not limited to willful violations of law.

(K) "**Parent Company**" means the **Company** first named in Item A of the Declarations.

(L) "**Policy Period**" means the period from the inception date set forth in Item B of the Declarations to the earlier of the expiration date set forth in Item B of the Declarations or the effective date of cancellation of this Policy pursuant to Section VIII. (B).

(M) "**Subsidiary**" means any corporation which utilizes the same employment-related policies and procedures as are utilized by the **Parent Company**, and in which more than fifty percent (50%) of the outstanding securities or voting rights representing the present right to vote for election of directors or an equivalent position is owned, in

any combination, by one or more **Companies**.

(N) "**Wrongful Act**" means 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 **Company** to create, provide for or enforce adequate or consistent employment-related policies or procedures;
- (6) retaliatory treatment against an **Employee** of the **Company** 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; or
- (8) violation of the Family and Medical Leave Act.

## V. EXCLUSIONS

The Insurer shall not be liable to make any payment for **Loss** in connection with any **Claim** made against the **Insureds**:

- (A) for bodily injury, sickness, disease, death, false arrest or imprisonment, abuse of process, malicious prosecution, trespass, nuisance or wrongful entry or eviction, or for injury to or destruction of any tangible property including loss of use thereof;
- (B) for any actual or alleged **Wrongful Act** by **Insured Persons** of any **Subsidiary** in their capacities as such, or by any **Subsidiary**, if such **Wrongful Act** actually or allegedly occurred when such corporation was not a **Subsidiary**;
- (C) based upon, arising from, or in any way related to any **Insured Person'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;
- (D) for, based upon, arising from, or in any way related to a 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, exclusions (C) and (D) above shall not apply to any **Claim** for any actual or alleged retaliatory treatment of an **Employee** by the **Company** by reason of such **Employee's** exercise of rights pursuant to any such laws, rules or regulations;

- (E) for, based upon, arising from, or in any way related to any claim, **Wrongful Act**, or circumstance if notice

thereof is given under any other insurance policy, the term of which incepted prior to the Inception Date of this Policy;

- (F) for, based upon, arising from, or in any way related to any deliberately dishonest, malicious or fraudulent act or omission by such **Insured** if a judgment or other final adjudication adverse to the **Insured** establishes such an act or omission;
- (G) for, based upon, arising from, or in any way related to any demand, suit, or other proceeding against any **Insured** which was pending on or existed prior to the Prior Litigation Date specified in Item F of the Declarations, or the same or substantially the same facts, circumstances or allegations which are the subject of or the basis for such demand, suit, or other proceeding; or
- (H) 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; provided that this exclusion shall not apply to **Claims Expenses**.

The **Wrongful Act** of any **Insured Person** shall not be imputed to any other **Insured Person** for purposes of applying the exclusions set forth in this Section V.

## VI. LIMITS OF LIABILITY AND RETENTION

- (A) The Insurer's aggregate Limit of Liability for all **Loss** otherwise covered under this Policy shall be the amount shown under Item C of the Declarations, whether such **Loss** is covered under one or more Insuring Agreements. The Limit of Liability in the **Discovery Period** shall be a part of, and not in addition to, the Limit of Liability shown under Item C of the Declarations.
- (B) Except as provided in paragraph (C) below, the Insurer's liability in respect of **Loss** arising from each **Claim** shall apply only to that part of **Loss** which is excess of the applicable Retention set forth in Item D of the Declarations.
- (C) If in a **Claim** all defendant **Insureds** obtain by reason of a motion to dismiss, motion for summary judgment or trial a final non-appealable judgment of no liability in their favor, there shall be no Retention applicable to any **Claims Expenses** resulting from such **Claim**.
- (D) All **Claims** arising out of the same **Wrongful Act** or **Interrelated Wrongful Acts** of one or more of the **Insureds** shall be considered a single **Claim**. Such **Claims** shall be deemed to be first made on the date the first such **Claim** is made or deemed to be made pursuant to Section VII.(A) of this Policy, regardless of whether such date is before or during the **Policy Period**.
- (E) The Limit of Liability available to pay judgments or settlements shall be reduced by **Claims Expenses**.

## VII. NOTICE

- (A) If during the **Policy Period** the **Insureds** become aware of a specific **Wrongful Act** that may reasonably be expected to give rise to a **Claim** against any **Insured**, and if such **Wrongful Act** is reported to the Insurer during the **Policy Period** in writing with particulars as to the reasons for anticipating such a **Claim**, the nature and dates of the alleged **Wrongful Act**, the alleged damages sustained, the names of potential claimants, any **Insured** involved in the alleged **Wrongful Act** and the manner in which the **Insureds** first became aware of the specific **Wrongful Act**, then any **Claim** subsequently arising from such duly reported **Wrongful Act** shall be deemed under this Policy to be a **Claim** made during the **Policy Period** in which the **Wrongful Act** is first duly reported to the Insurer.
- (B) Notice of any **Claim** or specific **Wrongful Act** shall be given in writing to **The Hartford, Hartford Plaza, Hartford CT 06115 Attention: Financial Institutions, Financial Products Division**. All other notices under this Policy shall be given to the same addressee but to the attention of Financial Products Underwriters.

- (C) All notices under this Policy shall refer to the Policy Number, shall be in writing, shall be given by mail, prepaid express courier or facsimile (at **212-858-6686**) properly addressed and shall be effective upon receipt.

## VIII. GENERAL CONDITIONS

### (A) TERRITORY

This Policy extends to **Wrongful Acts** taking place or **Claims** made anywhere in the world.

### (B) CANCELLATION OF POLICY

The Insurer may cancel this Policy for non-payment of premium by sending not less than ten (10) days notice to the **Parent Company** at its last known address. The Insurer may not otherwise cancel this Policy. The **Parent Company** may cancel this Policy by sending contemporaneous notice to the Insurer, provided the **Parent Company** may not cancel this Policy after the effective date of the acquisition of the **Parent Company** as described in Section VIII.(H)(2) of this Policy. In the event the **Parent Company** cancels this Policy, the Insurer shall retain the customary short rate premium. Payment of any unearned premium by the Insurer shall not be a condition precedent to the effectiveness of cancellation but such payment shall be made as soon as practicable.

### (C) SUBROGATION

In the event of any payment under this Policy, the Insurer shall be subrogated to the extent of such payment to all rights of recovery thereof, and the **Insureds** shall execute all papers required and shall do everything that may be necessary to secure and preserve such rights including the execution of such documents necessary to enable the Insurer effectively to bring suit in the name of the **Insureds**.

### (D) COMPANY AUTHORIZATION

By acceptance of this Policy, the **Insureds** agree that the **Parent Company** shall act on behalf of all **Insureds** with respect to the giving and receiving of notice of **Claim** or cancellation, the payment of premiums and the receiving of any return premium, the negotiation, agreement to and acceptance of any endorsements to this Policy, and the exercising of the **Discovery Period** option.

### (E) OTHER INSURANCE

If any **Loss** arising from any **Claim** is insured by another valid and collectible policy or policies, then this Policy shall apply only in excess of the amount of any deductibles, retentions and limits of liability under such other policy or policies, whether such other policy or policies are stated to be primary, contributory, excess, contingent or otherwise, unless such other insurance is written specifically excess of this Policy by reference in such other policy to this Policy's Policy Number.

### (F) ALTERATION, ASSIGNMENT AND TITLE LIMITATION

No change in, modification of, or assignment of interest under this Policy shall be effective except when made by written endorsement signed by an authorized representative of the Insurer.

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

### (G) ACTION AGAINST INSURER

No action shall 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, and the amount of the **Insureds'** obligation to pay shall have been finally determined either by judgment against the **Insureds** after actual trial, or by written agreement of

the **Insureds**, the claimant and the Insurer.

No person or organization shall have the right under this Policy to join the Insurer as a party to any action against the **Insureds** to determine the **Insureds'** liability, nor shall the Insurer be impleaded by the **Insureds** or their legal representative. Bankruptcy or insolvency of an **Insured** or of an **Insured's** estate shall not relieve the Insurer of any of its obligations hereunder.

## (H) CHANGES IN EXPOSURE

### (1) Acquisition or Creation of Corporation; Assets Acquisition; Assumption of Liabilities

If before or during the **Policy Period** the **Company**:

- (a) acquires securities or voting rights in another corporation or creates another corporation, which as a result of such acquisition or creation becomes a **Subsidiary**, or
- (b) acquires any corporation by merger into or consolidation with the **Company**,

such corporation and its **Insured Persons** shall be **Insureds** under this Policy but only with respect to **Wrongful Acts** taking place after such acquisition or creation. However, coverage shall be provided to such newly created or acquired **Subsidiary** with respect to a **Claim** only if such **Subsidiary** utilizes the same employment-related policies and procedures as are utilized by the **Parent Company**.

If the total number of existing employees of such newly created or acquired **Subsidiary** (who would otherwise qualify as **Employees** of the **Company**) is greater than 20% of the total number of **Employees** of the **Company**, the **Parent Company**, as a condition precedent to coverage with respect to such new **Insureds** or to coverage for **Wrongful Acts** relating to such transaction and occurring subsequent to such transaction, shall give written notice of such transaction to the Insurer as soon as practicable but in no event more than ninety (90) days after the effective date of such transaction, together with such information as the Insurer may require, and shall pay any additional premium so required by the Insurer. If the **Parent Company** fails to comply with such condition precedent, coverage otherwise afforded by this Section VIII.(H)(1) shall terminate as of ninety (90) days after the effective date of such acquisition or assumption.

### (2) Acquisition of Parent Company

If during the **Policy Period** (i) the **Named Insured** merges into or consolidates with another entity such that the **Parent Company** is not the surviving entity, or (ii) another entity, or person or group of entities and/or persons acting in concert acquires securities or voting rights which result in ownership or voting control by the other entity(ies) or person(s) of more than 50% of the outstanding securities representing the present right to vote for the election of directors of the **Parent Company**, then coverage under this Policy shall continue until the later of:

- (a) termination of the **Policy Period**, or
- (b) any subsequent date to which the Insurer may agree by endorsement,

but only with respect to **Claims** for **Wrongful Acts** taking place prior to such merger, consolidation or acquisition. Any coverage extension pursuant to (b), above, shall be conditioned upon any premium paid or to be paid under this Policy being deemed fully earned upon inception of such coverage extension. Any **Claim** made during such coverage extension shall be deemed to have been made during the **Policy Period** in which such merger, consolidation or acquisition occurred.

The **Parent Company** shall give written notice of such merger, consolidation or acquisition to the Insurer as soon as practicable, together with such information as the Insurer may reasonably require.

**(3) Cessation of Subsidiaries**

If before or during the **Policy Period** a corporation ceases to be a **Subsidiary**, coverage with respect to such **Subsidiary** and its **Insured Persons** shall continue until termination of this Policy but only with respect to **Claims** for **Wrongful Acts** taking place prior to the date such corporation ceased to be a **Subsidiary**.

**(I) REPRESENTATIONS AND SEVERABILITY**

The **Insureds** represent that the particulars and statements contained in the Proposal are true and shall be deemed material to the acceptance of the risk or the hazard assumed by the Insurer under this Policy. This Policy is issued in reliance upon the truth of such representations.

The **Insureds** agree that in the event that the particulars and statements contained in the Proposal are untrue, this Policy shall not afford any coverage with respect to any of the following **Insureds**:

- (1)** any **Insured Persons** who knew as of the Inception Date of this Policy the facts that were not truthfully disclosed in the Proposal,
- (2)** the **Company**, if a director or any **Executive Officer** knew as of the Inception Date of this Policy the facts that were not truthfully disclosed in the Proposal,

whether or not such **Insured Person** or **Executive Officer** knew of such untruthful disclosure in the Proposal.

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**(J) INSPECTION AND AUDIT**

The Insurer shall be permitted but not obligated to inspect the Company's operations at any time. Neither the Insurer's right to make inspections nor the making thereof nor any report thereon shall constitute an undertaking on behalf of or for the benefit of the Insurer or others to determine or warrant that such property or operations are in compliance with any law, rule, or regulation.