

**MULTI-EMPLOYER PENSION AND BENEFIT PLAN  
FIDUCIARY 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 Application which has been received by the Insurer and which shall be the basis of this contract and shall be deemed to be incorporated herein, and subject to all the terms, conditions, limitations and any endorsements to this Policy, the Insurer and the Insureds agree as follows:

**I. INSURING AGREEMENT**

The Insurer shall pay on behalf of the Insureds all Loss which the Insureds shall become legally obligated to pay as a result of a Claim first made against the Insureds during the Policy Period or Discovery Period, if applicable, for a Wrongful Act taking place during or prior to the Policy Period by any Insured or by any person for whose Wrongful Acts the Insured is legally responsible, provided that such Claim is reported 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. DEFENSE AND SETTLEMENT**

**SPECIMEN**

- (A) The Insurer shall have the right and duty to defend any Claim covered by this Policy even if the allegations are groundless, false or fraudulent. At the Insurer's option, and with the Insurer's written consent, the Insured may select defense counsel. The Insurer's duty to defend shall cease upon exhaustion of the Insurer's applicable Limit of Liability set forth in Item C of the Declarations.
- (B) Claims Expenses incurred by the Insurer shall be part of and not in addition to the Limit of Liability set forth in Item C of the Declarations. The Insurer's payment of Claims Expenses shall reduce such applicable Limit of Liability.
- (C) The Insureds shall have the right to associate with the Insurer in the defense and settlement of any Claim. The Insureds, and any defense counsel which may be selected by the Insureds, pursuant to II. (A) above, 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 the Insureds will do nothing that may prejudice the Insurer's position or its potential or actual rights of recovery.
- (D) The Insureds agree not to settle any Claim, incur any Claims Expenses or otherwise assume any contractual obligation or admit any liability with respect to any Claim without the Insurer's written consent, which shall not be unreasonably withheld. The Insurer shall not be liable for any settlement, Claims Expenses, assumed obligation or admission to which it has not consented.

- (E) The Insurer may, with the written consent of the Insured, settle a Claim for solely a monetary amount that the Insurer deems reasonable. If the Insured withholds consent to such settlement, the Insurer's liability for all Loss on account of such Claim shall not exceed the amount for which the Insurer could have settled such Claim plus Claims Expenses accrued as of the date such settlement was proposed to the Insured in writing by the Insurer.

### **III. EXTENSIONS OF COVERAGE**

#### **(A) DEATH, INCAPACITY OR BANKRUPTCY**

Subject to the other terms and conditions of this Policy, in the event of the death, incapacity or bankruptcy of a natural person Insured, this Policy shall provide insurance for Loss as a result of a Claim made against the estate, legal representatives, heirs or the assigns of such natural person Insured.

#### **(B) SPOUSAL LIABILITY**

In the event that a covered Claim made against an Insured who is a natural person includes a Claim against such natural person Insured's lawful spouse 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, then any and all Loss for which such spouse becomes legally obligated to pay on account of such Claim shall be deemed Loss which the natural person Insured of the spouse becomes legally obligated to pay.

In no event shall this extension of coverage apply to any Claim in which there is any allegation of wrongdoing on the part of the spouse.

#### **(C) DISCOVERY PERIOD**

If the Insurer or the Insured Representative named in Item A 2. of the Declarations fails or refuses to renew this Policy or cancels this Policy, the Insured Representative 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 Discovery 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 such Discovery Period Premium, must be made within thirty (30) days after the effective date of cancellation or non-renewal of the Policy. This extension shall not apply if this Policy is terminated by the Insurer for nonpayment of premium. The Discovery Period Premium shall be fully earned at inception of the Discovery Period, and such Discovery Period shall not be cancelable.

### **IV. DEFINITIONS**

- (A) "Claim" shall mean:
- (1) a written demand for monetary or injunctive relief commenced by any Insured's receipt of such demand;
  - (2) a civil proceeding commenced by the service of a complaint or similar pleading; or
  - (3) a formal administrative or regulatory proceeding commenced by the filing or service of a notice of charges, formal investigative order or similar document.
- (B) "Claims Expenses" shall mean that portion of Loss consisting of reasonable and necessary costs, charges, fees (including attorneys' fees and experts' fees) and expenses incurred in the defense of a Claim and the premium for appeal, attachment or similar bonds, but with no obligation to apply for or furnish such bond. Claims Expense shall not include the wages, salaries or expenses of any trustees, officers or employees of any Insured.
- (C) "Discovery Period" shall mean the period set forth in Item E of the Declarations.
- (D) "Employee Benefit Plan" shall mean any employee welfare benefit plan or any employee pension benefit plan as defined in ERISA.
- (E) "ERISA" shall mean the Employee Retirement Income Security Act of 1974, as amended.
- (F) "Insured(s)", either in the singular or plural, shall mean:
- (1) one or more natural persons who were, now are or shall hereafter be a trustee, officer or employee of the Insured Plan or Trust, acting solely in his or her capacity as a fiduciary of the Insured Plan or Trust;
  - (2) any other natural persons who were, now are or shall hereafter be a fiduciary of the Insured Plan or Trust and included by specific written endorsement attached to this Policy, acting solely in his or her capacity as a fiduciary of the Insured Plan or Trust;
  - (3) the administrator of the Insured Plan or Trust, provided that such administrator is a natural person employed by the Insured Plan or Trust, acting solely in his or her capacity as administrator of the Insured Plan or Trust for Wrongful Acts; or
  - (4) the Insured Plan or Trust.

- (G) "Insured Plan or Trust" shall mean the Employee Benefit Plan or Trust named in Item A1. of the Declarations and any Employee Benefit Plan or Trust specifically listed by endorsement to this Policy as an additional Insured under the Policy.
- (H) "Insured Representative" shall mean the natural person(s) or entity named in Item A2. of the Declarations authorized to act on behalf of all Insureds.
- (I) "Interrelated Wrongful Acts" shall mean 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" shall mean sums which the Insureds are legally obligated to pay solely as a result of any covered Claim, including Claims Expenses, compensatory damages, settlement amounts and legal fees and costs awarded pursuant to judgments, but excluding fines, penalties, taxes, punitive or exemplary damages, the multiple portion of any multiplied damage award or matters uninsurable pursuant to any applicable law, except that "Loss" shall include the five (5) percent or less and the twenty (20) percent or less penalties imposed upon a natural person Insured under Section 502(i) and Section 502(l) of ERISA, as amended, with respect to covered settlements or judgments.
- (K) "Personal Injury" shall mean false arrest, detention or imprisonment, or malicious prosecution; the publication or utterance of a libel or slander or of other defamatory or disparaging material; a publication or utterance in violation of an individual's right of privacy; wrongful entry or eviction; or the invasion of the right of private occupancy.
- (L) "Policy Period" shall mean the period set forth in Item B of the Declarations or any shorter period that may occur as a result of a cancellation of this Policy.
- (M) "Wrongful Act" shall mean:
- (1) any actual or alleged breach of the responsibilities, obligations or duties imposed upon fiduciaries of an Insured Plan or Trust by ERISA or any similar law of any state or other jurisdiction of the United States;
  - (2) any actual or alleged negligent act, error or omission in handling records, counseling employees, effecting enrollment of participants, and termination or cancellation of benefits in connection with an Insured Plan or Trust; or
  - (3) any other matter claimed against any natural person Insured solely by reason of his/her serving as a fiduciary or an administrator of an Insured Plan or Trust.

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 Personal Injury, bodily injury, sickness, disease, emotional distress, mental anguish, outrage, humiliation or death of any person, or damage to or destruction of any tangible property including loss of use thereof;
- (B) for, based upon, arising from, or in any way related to any Claim, Wrongful Act, or circumstance if notice thereof has been given under any fiduciary liability or similar policy, the term of which incepted prior to the Inception Date of this Policy;
- (C) for, based upon, arising from, or in any way related to liability of others assumed by the Insured under any oral or written contract or agreement, except to the extent that the Insured would have been liable in the absence of the contract or agreement or unless the liability was assumed in accordance with or under the agreement or declaration of trust pursuant to which the Insured Plan or Trust was established;
- (D) for, based upon, arising under, or in any way related to any law governing workers' compensation, unemployment insurance, social security, disability insurance or any government-mandated insurance program including any Claim related to the failure of the Insured to comply with any such law or laws;
- (E) for, based upon, arising from, or in any way related to:
  - (i) the actual, alleged or threatened discharge, dispersal, release or escape of pollutants; or
  - (ii) any direction, request or voluntary decision to test for, abate, monitor, clean up, remove, contain, treat, detoxify or neutralize pollutants, nuclear material or nuclear waste;

Pollutants include, but are not limited to, any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, odors, noise, lead, oil or oil products, radiation, asbestos or asbestos-containing products and waste, and any electric, magnetic or electromagnetic field of any frequency. Waste includes, but is not limited to, material to be recycled, reconditioned or reclaimed;
- (F) for, based upon, arising from, or in any way related to a natural person Insured serving as a fiduciary or administrator of any plan, trust, fund or program which is not an Insured Plan or Trust;

- (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 continuity date specified in Item F of the Declarations, or the same or substantially similar facts, circumstances or allegations which are the subject of or the basis for such demand, suit or other proceeding;
- (H) for, based upon, arising from, or in any way related to the Insureds gaining in fact any personal profit, remuneration or advantage to which they were not legally entitled;
- (I) for, based upon, arising from, or in any way related to the committing in fact of any deliberately dishonest, malicious or fraudulent act or omission or any willful violation of law;
- (J) for, based upon, arising from, or in any way related to the failure to procure or maintain insurance or bonds on assets or property of the Insured Plan or Trust;
- (K) for, based upon, arising from, or in any way related to the failure to fund an Insured Plan or Trust in accordance with ERISA or the Insured Plan's or Trust's document or to collect contributions owed to an Insured Plan or Trust; or
- (L) for benefits due or to become due under the terms of an Insured Plan or Trust unless, and to the extent that: (1) the Insured is a natural person and the benefits are payable by such Insured as a personal obligation, and (2) recovery for the benefits is based upon a covered Wrongful Act.

With respect to a Claim which alleges those excluded matters identified in Exclusions (K) and (L) only, the Insurer will pay Claims Expenses.

The Wrongful Act of a natural person Insured shall not be imputed to any other natural person Insured 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 covered under this Policy shall be the amount shown under Item C of the Declarations. The Limit of Liability in the Discovery Period shall be a part of, and not in addition to, such Limit of Liability.
- (B) The Retention amount shall be applicable to each and every Claim, but only as respects Claims Expenses. Under no circumstances will any Insured who is a natural person be liable to pay the Retention.

- (C) 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 when the first such Claim is made, or is deemed to be made pursuant to Section VII.(A) of this Policy.
- (D) The Limit of Liability available to pay judgments or settlements shall be reduced by Claims Expenses.

**VII. NOTICE**

- (A) If during the Policy Period or Discovery Period, if applicable, 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 or Discovery Period, if applicable, in writing with particulars as to the reasons for anticipating such a Claim, the nature and dates of the alleged Wrongful Act, the alleged injuries or 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 specific Wrongful Act duly reported in accordance with this paragraph shall be deemed under this Policy to be a Claim made during the Policy Period or Discovery Period, if applicable, in which the Wrongful Act is first reported to the Insurer.
- (B) Notice of any Claim or specific Wrongful Act shall be given in writing, with reference to the Policy Number indicated in the Declarations, to The Hartford, Hartford Plaza, Hartford, CT 06115, ATTENTION: FIDUCIARY LIABILITY CLAIMS. 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 be in writing and given by mail, prepaid express courier or electronic service properly addressed and shall be effective upon receipt.

**VIII. GENERAL CONDITIONS**

(A) CANCELLATION OF POLICY

The Insurer may cancel this Policy for non-payment of premium by sending not less than 10 days notice of such cancellation to the Insured Representative at his or her last known address. The Insurer may not otherwise cancel this Policy. The Insured Representative may cancel this Policy by sending contemporaneous notice to the Insurer. Cancellation shall be effective upon receipt of notice by the Insurer. In the event the Insured Representative 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.

(B) 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. 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.

In the event the premium for this Policy has been paid by an Insured Plan or Trust, the Insurer shall have all rights of recourse permitted by law.

(C) AUTHORIZATION

By acceptance of this Policy, the Insured Representative named in Item A.2. of the Declarations agrees to 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 issued to form part of this Policy, and the exercising of the Discovery Period option; and the Insureds agree that the Insured Representative named in Item A.2. of the Declarations shall act on their behalf.

(D) OTHER INSURANCE

**SPECIMEN**

If any Loss arising from any Claim is insured by another valid 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 the Policy Number indicated on this Policy's Declarations.

(E) ALTERATION AND ASSIGNMENT

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.

(F) 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.

(G) AMENDMENT TO INSURED PLAN OR TRUST – CHANGE OF INSURED REPRESENTATIVE

It shall be the responsibility of the Insureds to provide notice to the Insurer of any amendment to the Insured Plan or Trust, any amendment or modification of any collective bargaining agreement that materially affects the Insured Plan or Trust, or of a change in the Insured Representative identified in the Declarations. Such notice must be provided within 60 days of the effective date of such amendment, modification, or change in the Insured Representative identified in the Declarations. Upon receipt of the notice, the Insurer may assess a reasonable additional premium, request additional underwriting information, and/or amend the terms and conditions of the Policy with respect to any amendment, modification or change noticed.

The Insureds' compliance with the notice required by the preceding paragraph is a condition of coverage and this Policy will not respond to any Claim which arises from, is based upon or is in any way related to, directly or indirectly, any amendment or modification described in the preceding paragraph for which notice is not provided.

(H) REPRESENTATIONS AND SEVERABILITY

**SPECIMEN**

The Insureds represent that the particulars and statements contained in the Application are true and agree that those particulars and statements are the basis of this Policy and are to be considered as incorporated into and constituting a part of this Policy.

The Insureds agree that the statements made in the Application are the representations of the Insureds and that they shall be deemed material to the acceptance of the risk or the hazard assumed by the Insurer under this Policy and that this Policy is issued in reliance upon the truth of such representations.

With respect to such particulars and statements, no statements made or knowledge possessed by any Insured who is a natural person (other than knowledge or information possessed by the Insured actually executing the Application or request) shall be imputed to any other Insured who is a natural person to determine whether coverage is available for any Claim made against such other Insured.