

Return application to:
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HARTFORD FINANCIAL PRODUCTS

APPLICATION FOR REPRESENTATIONS & WARRANTIES INSURANCE

NOTICE: THIS IS AN APPLICATION FOR A CLAIMS-MADE POLICY. THE POLICY FOR WHICH THIS APPLICATION IS MADE, SUBJECT TO ITS TERMS AND CONDITIONS, IS LIMITED TO LIABILITY FOR ACTS FOR WHICH CLAIMS ARE FIRST MADE AGAINST THE INSURED AND/OR FOR LOSSES FIRST INCURRED BY THE INSURED WHILE THE POLICY IS IN FORCE.

FOR PURPOSES OF THIS APPLICATION,

- “**Acquired Company**” shall mean the company or companies whose stock, membership interests or assets has been or will be acquired in the subject transaction;
- “**Buyer**” shall mean the acquirer(s) of the **Acquired Company**, or the surviving company in a forward merger transaction;
- “**Seller**” shall mean the owner(s) of the **Acquired Company** immediately prior to the subject transaction.

I. THE SUBMISSION

A. APPLICANT’S IDENTITY:

Please identify each party desiring to be insured. (E.g., “John Doe, representative for all selling shareholders”)

Legal Name _____
Contact Person _____
Address _____
Telephone _____
Email _____
Facsimile _____

In connection with the subject transaction, is the applicant [check below]:

- the **Seller**
- the **Buyer**
- the **Acquired Company**
- other (please explain)

B. GENERAL INFORMATION:

(1) Acquired Company:

Name of company _____
Nature of business _____
Total assets _____
Total net sales _____
Total equity _____
Total twelve months earnings before interest, taxes, depreciation and amortization _____
Total number of employees _____

(2) As to the Buyer:

Name of company _____
Nature of business (If newly created acquisition company, please describe business of the parent company. _____

Name of the equity fund management companies that are investing or lending funds for the transaction. _____

Please summarize the experience of the **Buyer** in the **Acquired Company's** industry. _____

Has the **Buyer** ever alleged that a representation and warranty made in an acquisition or merger agreement had been breached? If so, please explain. _____

Summarize the key reasons for deciding to buy the **Acquired Company**. _____

(3) As to the Seller:

Approximately how long has the **Seller** owned their respective shares of stock, membership interests or assets being sold? _____

Has **Seller** ever alleged that a representation and warranty made in an acquisition or merger agreement had been breached? If so, please explain. _____

Summarize the key reasons why the **Seller** decided to sell the **Acquired Company**. _____

(4) Transaction terms:

Proposed purchase price \$ _____

Apparent basis for purchase price (e.g. discounted cash flow, multiple of EBITBA)

Proposed escrow \$ _____

Proposed basket \$ _____

Proposed indemnification cap \$ _____

Proposed post – closing adjustment (e.g. net worth or working capital) \$ _____

Date of execution of nondisclosure (confidentiality) agreement _____

Date parties first agreed in principle to the transaction (letter of intent) _____

Anticipated (or actual) signing date of definitive agreement _____

Anticipated (or actual) closing date _____

Was an auction conducted? Yes: _____ No: _____

If reasonably available to the applicant, please attach the opening balance sheet for the **Acquired Company** following the closing.

C. **BROKER:**

- (1) Broker's name: _____
- (2) Firm name: _____
- (3) Phone number: _____
- (4) Broker's National Producer Number: _____
- (5) Does the broker hold a surplus lines license in the proposed insured State? ()Yes ()No

II. **REQUESTED COVERAGE:**

- Limit of liability for entire program _____
- Retention _____
- Attachment point (if submitted for excess position) _____
- Effective date _____
- Policy period _____

A. Why is Representations & Warranties Insurance (“R&W Insurance”) being sought (e.g., reduce escrow, transfer risk of identified concerns, etc.)? _____

B. Who is the individual(s) who has ultimate authority to decide whether to purchase R&W Insurance?

C. If applicant previously has purchased R&W Insurance, please list the insurer and amount of limits.

III. DUE DILIGENCE PROFESSIONALS:

As to **Acquired Company** and **Buyer**, respectively, either below or on a schedule attached to this application, (i) provide the name, title and email address of the in-house and outside professionals responsible for each subject matter described below; and (ii) as to each such individual, set forth his or her approximate years of tenure with the company and dates of due diligence performance on the transaction.

Subject Matter	Name / email address	Title / (yrs. of tenure)	In-House or Firm Name	Dates due diligence performed
INTERNAL DEAL TEAM LEADERS				
Head of Legal				
Head of Financial Operations				
Head of Insurance				
OUTSIDE LEGAL FIRM				
OUTSIDE ACCOUNTING FIRM				
OTHER SPECIALISTS AND CONSULTANTS				
Market Analysis				
Insurance				
Environmental				
Actuaries				
Real Estate				
Financial Advisors				
Investment Banker				

IV. PRIOR ACTS:

A. To the best of applicant's knowledge, during the last five years, has the **Seller** or **Buyer**, or the **Acquired Company**, or any of their subsidiaries or affiliates, or any of their respective officers, directors or other executive or management-level employees, been involved in any of the following:

- civil or criminal antitrust, fair trade or intellectual property litigation, proceeding or investigation; Yes ___ No ___
- civil or criminal litigation, proceeding or investigation in connection with any violation or alleged violation of any securities law, rule or regulation; Yes ___ No ___
- class action or shareholder derivative lawsuits; Yes ___ No ___
- litigation, dispute, disagreement, settlement, release, proceeding or investigation in connection with a breach or an alleged breach of a contractual representation and/or warranty, or any discussions with an adverse or potentially adverse party regarding a breach or an alleged breach or contractual representation and/or warranty; Yes ___ No ___
- audit, litigation, dispute, disagreement, settlement, release, proceeding or investigation involving any governmental or regulatory authority? Yes ___ No ___

If "Yes" to any of the above questions, please attach an explanation.

B. To the best of the applicant's knowledge, during the last five years, has the **Seller** or the **Acquired Company**, or any of their subsidiaries or affiliates:

- made any material changes to their method of accounting; Yes ___ No ___
- changed their auditing or accounting firm; Yes ___ No ___
- engaged in any material acquisitions or divestitures; or Yes ___ No ___
- engaged in any corporate restructurings or material layoffs? Yes ___ No ___

If "Yes" to any of the above questions, please attach an explanation.

V. AFFIRMATION:

A. The following statement relates to the time period beginning upon submission of this application by the applicant and ending upon the issuance of the policy, if issued. Accordingly, it is understood that the applicant has a duty to update the insurance company regarding the completeness of this application following its submission.

B. The applicant hereby represents, warrants and affirms that it has taken, and will continue to take, no less than the same degree of care and effort in its due diligence and/or investigation of matters that would ordinarily take place in the absence of representation and warranty insurance and that, to the best of its knowledge, information and belief, the same is true with respect to the other party (ies) to the subject transaction. It is understood that this affirmation is material to the underwriting of the requested insurance.

VI. MATERIALS REQUESTED: As an attachment to this application, please include the following (where applicable and if not already submitted):

A. As to each **Acquired Company**:

- (1) Complete organizational list.
- (2) Latest available interim financial statements.
- (3) Letters or reports to management from and tax opinions from the company's auditors for the past three years, together with any responses made thereto.
- (4) Any fairness opinion obtained in connection with the subject acquisition.
- (5) Any strategic plan adopted by the Board calling for a sale or reorganization of the company.
- (6) Three years' audited financial statements
- (7) Three years' federal tax returns and a list of states in which income, corporate, franchise, sales and/or real estate taxes are paid and/or tax returns are filed.

B. As to **Buyer**:

- (1) **Buyer's** due diligence request list for documents and information from **Acquired Company** (marked to show what was received, what is non-existent, what is forthcoming and what is refused).
- (2) A copy of **Acquired Company's** data room index.
- (3) All reports and memoranda indicating the results of the due diligence investigation done by or on behalf of the **Buyer** in connection with the acquisition (including reports prepared by outside counsel, financial advisors, accountants, consultants, and any other reports, studies or opinions prepared in connection with the due diligence investigation of the proposed acquisition).
- (4) Copies of the Retainer/Engagement Letters for **Buyer's** legal, accounting, financial and any other professional services engaged for the subject transaction.

C. As to the transaction:

- (1) True copy of the executed acquisition agreement, including all schedules, exhibits and attachments.
- (2) The pro-forma financials prepared by the **Buyer** setting forth the expected net worth, income and cash flow from the contemplated business combination.
- (3) A summary of the material changes requested to the purchase price, escrow and indemnification provisions, the dates requested and the reasons advanced in favor and against such change.
- (4) Letter of Intent, Memorandum of Understanding or Term Sheet with Confidentiality Agreement, etc. first setting forth the agreement in principle initially reached between the parties.
- (5) Closing Letter (to be supplied after closing).

ALL MATERIALS PROVIDED PURSUANT TO THIS APPLICATION ARE DEEMED TO BE A PART OF THIS APPLICATION, REGARDLESS OF WHETHER SUCH MATERIALS ARE SUPPLIED WITH OR SUBSEQUENT TO THE SIGNING OF THIS APPLICATION, AND ARE DEEMED TO BE MATERIAL TO THE RISK.

THE UNDERSIGNED AUTHORIZED OFFICERS OF THE APPLICANT DECLARES THAT THE FACTUAL MATTERS SET FORTH HEREIN ARE TRUE AND COMPLETE. THE UNDERSIGNED AUTHORIZED OFFICER AGREES THAT IF THE INFORMATION SUPPLIED ON THIS APPLICATION FORM CHANGES BETWEEN THE DATE OF THIS APPLICATION FORM AND THE EFFECTIVE DATE OF THE INSURANCE, HE/SHE (UNDERSIGNED) WILL, IN ORDER FOR THE INFORMATION TO BE ACCURATE ON THE EFFECTIVE DATE OF THE INSURANCE, IMMEDIATELY NOTIFY THE INSURER OF SUCH CHANGES, AND THE INSURER MAY WITHDRAW OR MODIFY ANY OUTSTANDING QUOTATIONS AND/OR AUTHORIZATIONS OR AGREEMENTS TO BIND THE INSURANCE.

SIGNING OF THIS APPLICATION FORM DOES NOT BIND THE APPLICANT OR THE INSURER TO COMPLETE THE INSURANCE, BUT IT IS AGREED THAT THIS APPLICATION FORM SHALL BE THE BASIS OF THE CONTRACT SHOULD A POLICY BE ISSUED AND IT WILL BE ATTACHED TO AND BECOME A PART OF THE POLICY.

FRAUD WARNING STATEMENTS

ARKANSAS APPLICANTS: ANY PERSON WHO KNOWINGLY PRESENTS A FALSE OR FRAUDULENT CLAIM FOR PAYMENT OF A LOSS OR BENEFIT OR KNOWINGLY PRESENTS FALSE INFORMATION IN AN APPLICATION FOR INSURANCE IS GUILTY OF A CRIME AND MAY BE SUBJECT TO FINES AND CONFINEMENT IN PRISON.

COLORADO APPLICANTS: IT IS UNLAWFUL TO KNOWINGLY PROVIDE FALSE, INCOMPLETE, OR MISLEADING FACTS OR INFORMATION TO AN INSURANCE COMPANY FOR THE PURPOSE OF DEFRAUDING OR ATTEMPTING TO DEFRAUD THE COMPANY. PENALTIES MAY INCLUDE IMPRISONMENT, FINES, DENIAL OF INSURANCE, AND CIVIL DAMAGES. ANY INSURANCE COMPANY OR AGENT OF AN INSURANCE COMPANY WHO KNOWINGLY PROVIDES FALSE, INCOMPLETE, OR MISLEADING FACTS OR INFORMATION TO A POLICY HOLDER OR CLAIMANT FOR THE PURPOSE OF DEFRAUDING OR ATTEMPTING TO DEFRAUD THE POLICY HOLDER OR CLAIMANT WITH REGARD TO A SETTLEMENT OR AWARD PAYABLE FROM INSURANCE PROCEEDS SHALL BE REPORTED TO THE COLORADO DIVISION OF INSURANCE WITHIN THE DEPARTMENT OF REGULATORY AGENCIES.

DISTRICT OF COLUMBIA APPLICANTS: IT IS A CRIME TO PROVIDE FALSE OR MISLEADING INFORMATION TO AN INSURER FOR THE PURPOSE OF DEFRAUDING THE INSURER OR ANY OTHER PERSON. PENALTIES INCLUDE IMPRISONMENT AND/OR FINES. IN ADDITION, AN INSURER MAY DENY INSURANCE BENEFITS IF FALSE INFORMATION MATERIALLY RELATED TO A CLAIM WAS PROVIDED BY THE APPLICANT."

FLORIDA APPLICANTS: ANY PERSON WHO KNOWINGLY AND WITH INTENT TO INJURE, DEFRAUD OR DECEIVE ANY INSURER FILES A STATEMENT OF CLAIM OR AN APPLICATION CONTAINING ANY FALSE, INCOMPLETE, OR MISLEADING INFORMATION IS GUILTY OF A FELONY OF THE THIRD DEGREE.

HAWAII APPLICANTS: FOR YOUR PROTECTION, HAWAII LAW REQUIRES YOU TO BE INFORMED THAT PRESENTING A FRAUDULENT CLAIM FOR PAYMENT OF A LOSS OR BENEFIT IS A CRIME PUNISHABLE BY FINES OR IMPRISONMENT, OR BOTH.

KENTUCKY APPLICANTS: ANY PERSON WHO KNOWINGLY AND WITH INTENT TO DEFRAUD ANY INSURANCE COMPANY OR OTHER PERSON FILES AN APPLICATION FOR INSURANCE CONTAINING ANY MATERIALLY FALSE INFORMATION OR CONCEALS FOR THE PURPOSE OF MISLEADING, INFORMATION CONCERNING ANY FACT MATERIAL THERETO COMMITS A FRAUDULENT INSURANCE ACT, WHICH IS A CRIME.

LOUISIANA APPLICANTS: ANY PERSON WHO KNOWINGLY PRESENTS A FALSE OR FRAUDULENT CLAIM FOR PAYMENT OF A LOSS OR BENEFIT OR KNOWINGLY PRESENTS FALSE INFORMATION IN AN APPLICATION FOR INSURANCE IS GUILTY OF A CRIME AND MAY BE SUBJECT TO FINES AND CONFINEMENT IN PRISON.

MAINE APPLICANTS: IT IS A CRIME TO KNOWINGLY PROVIDE FALSE, INCOMPLETE OR MISLEADING INFORMATION TO AN INSURANCE COMPANY FOR THE PURPOSE OF DEFRAUDING THE COMPANY. PENALTIES MAY INCLUDE IMPRISONMENT, FINES OR A DENIAL OF INSURANCE BENEFITS.

MARYLAND APPLICANTS: ANY PERSON WHO KNOWINGLY AND WILLFULLY PRESENTS A FALSE OR FRAUDULENT CLAIM FOR PAYMENT OF A LOSS OR BENEFIT OR WHO KNOWINGLY AND WILLFULLY PRESENTS FALSE INFORMATION IN AN APPLICATION FOR INSURANCE IS GUILTY OF A CRIME AND MAY BE SUBJECT TO FINES AND CONFINEMENT IN PRISON.

NEW JERSEY APPLICANTS: ANY PERSON WHO INCLUDES ANY FALSE OR MISLEADING INFORMATION ON AN APPLICATION FOR AN INSURANCE POLICY IS SUBJECT TO CRIMINAL AND CIVIL PENALTIES.

NEW MEXICO APPLICANTS: ANY PERSON WHO KNOWINGLY PRESENTS A FALSE OR FRAUDULENT CLAIM FOR PAYMENT OF A LOSS OR BENEFIT OR KNOWINGLY PRESENTS FALSE INFORMATION IN AN APPLICATION FOR INSURANCE IS GUILTY OF A CRIME AND MAY BE SUBJECT TO CIVIL FINES AND CRIMINAL PENALTIES.

OHIO APPLICANTS: ANY PERSON WHO, WITH INTENT TO DEFRAUD OR KNOWING THAT HE IS FACILITATING A FRAUD AGAINST AN INSURER, SUBMITS AN APPLICATION OR FILES A CLAIM CONTAINING A FALSE OR DECEPTIVE STATEMENT IS GUILTY OF INSURANCE FRAUD.

OKLAHOMA APPLICANTS: WARNING: ANY PERSON WHO KNOWINGLY, AND WITH INTENT TO INJURE, DEFRAUD OR DECEIVE ANY INSURER, MAKES ANY CLAIM FOR THE PROCEEDS OF AN INSURANCE POLICY CONTAINING ANY FALSE, INCOMPLETE OR MISLEADING INFORMATION IS GUILTY OF A FELONY.

OREGON APPLICANTS: ANY PERSON WHO KNOWINGLY AND WITH INTENT TO DEFRAUD OR SOLICIT ANOTHER TO DEFRAUD AN INSURER: (1) BY SUBMITTING AN APPLICATION OR; (2) FILING A CLAIM CONTAINING A FALSE STATEMENT AS TO ANY MATERIAL FACT MAY BE VIOLATING STATE LAW.

PENNSYLVANIA APPLICANTS: ANY PERSON WHO KNOWINGLY AND WITH INTENT TO DEFRAUD ANY INSURANCE COMPANY OR OTHER PERSON FILES AN APPLICATION FOR INSURANCE OR STATEMENT OF CLAIM CONTAINING ANY MATERIALLY FALSE INFORMATION OR CONCEALS FOR THE PURPOSE OF MISLEADING, INFORMATION CONCERNING ANY FACT MATERIAL THERETO COMMITS A FRAUDULENT INSURANCE ACT, WHICH IS A CRIME AND SUBJECTS SUCH PERSON TO CRIMINAL AND CIVIL PENALTIES.

PUERTO RICO APPLICANTS: ANY PERSON WHO KNOWINGLY AND WITH INTENT TO DEFRAUD AN INSURANCE COMPANY PRESENTS FALSE INFORMATION IN AN INSURANCE APPLICATION, OR PRESENTS, HELPS, OR CAUSES THE PRESENTATION OF A FRAUDULENT CLAIM FOR THE PAYMENT OF A LOSS OR ANY OTHER BENEFIT, OR PRESENTS MORE THAN ONE CLAIM FOR THE SAME DAMAGE OR LOSS, SHALL INCUR A FELONY AND, UPON CONVICTION, SHALL BE SANCTIONED FOR EACH VIOLATION WITH THE PENALTY OF A FINE OF NOT LESS THAN FIVE THOUSAND (5,000) DOLLARS AND NOT MORE THAN TEN THOUSAND (10,000) DOLLARS, OR A FIXED TERM OF IMPRISONMENT FOR THREE (3) YEARS, OR BOTH PENALTIES. IF AGGRAVATED CIRCUMSTANCES PREVAIL, THE FIXED ESTABLISHED IMPRISONMENT MAY BE INCREASED TO A MAXIMUM OF FIVE (5) YEARS; IF EXTENUATING CIRCUMSTANCES PREVAIL, IT MAY BE REDUCED TO A MINIMUM OF TWO (2) YEARS.

RHODE ISLAND APPLICANTS: "ANY PERSON WHO KNOWINGLY PRESENTS A FALSE OR FRAUDULENT CLAIM FOR PAYMENT OF A LOSS OR BENEFIT OR KNOWINGLY PRESENTS FALSE INFORMATION IN AN APPLICATION FOR INSURANCE IS GUILTY OF A CRIME AND MAY BE SUBJECT TO FINES AND CONFINEMENT IN PRISON."

TENNESSEE APPLICANTS: IT IS A CRIME TO KNOWINGLY PROVIDE FALSE, INCOMPLETE OR MISLEADING INFORMATION TO AN INSURANCE COMPANY FOR THE PURPOSE OF DEFRAUDING THE COMPANY. PENALTIES INCLUDE IMPRISONMENT, FINES AND DENIAL OF INSURANCE BENEFITS.

VIRGINIA APPLICANTS: IT IS A CRIME TO KNOWINGLY PROVIDE FALSE, INCOMPLETE OR MISLEADING INFORMATION TO AN INSURANCE COMPANY FOR THE PURPOSE OF DEFRAUDING THE COMPANY. PENALTIES INCLUDE IMPRISONMENT, FINES AND DENIAL OF INSURANCE BENEFITS.

VERMONT APPLICANTS: ANY PERSON WHO KNOWINGLY PRESENTS A FALSE STATEMENT IN AN APPLICATION FOR INSURANCE MAY BE GUILTY OF A CRIMINAL OFFENSE AND SUBJECT TO PENALTIES UNDER STATE LAW.

WASHINGTON APPLICANTS: IT IS A CRIME TO KNOWINGLY PROVIDE FALSE, INCOMPLETE, OR MISLEADING INFORMATION TO AN INSURANCE COMPANY FOR THE PURPOSE OF DEFRAUDING THE COMPANY. PENALTIES INCLUDE IMPRISONMENT, FINES, AND DENIAL OF INSURANCE BENEFITS."

WEST VIRGINIA APPLICANTS: ANY PERSON WHO KNOWINGLY PRESENTS A FALSE OR FRAUDULENT CLAIM FOR PAYMENT OF A LOSS OR BENEFIT OR KNOWINGLY PRESENTS FALSE INFORMATION IN AN APPLICATION FOR INSURANCE IS GUILTY OF A CRIME AND MAY BE SUBJECT TO FINES AND CONFINEMENT IN PRISON.

NEW YORK APPLICANTS: ANY PERSON WHO KNOWINGLY AND WITH INTENT TO DEFRAUD ANY INSURANCE COMPANY OR OTHER PERSON FILES AN APPLICATION FOR INSURANCE OR STATEMENT OF CLAIM CONTAINING ANY MATERIALLY FALSE INFORMATION, OR CONCEALS FOR THE PURPOSE OF MISLEADING, INFORMATION CONCERNING ANY FACT MATERIAL THERETO, COMMITS A FRAUDULENT INSURANCE ACT, WHICH IS A CRIME, AND SHALL ALSO BE SUBJECT TO A CIVIL PENALTY NOT TO EXCEED FIVE THOUSAND DOLLARS AND THE STATED VALUE OF THE CLAIM FOR EACH SUCH VIOLATION."

A POLICY CANNOT BE ISSUED UNLESS THE APPLICATION FORM IS PROPERLY SIGNED AND DATED BY TWO OFFICERS WITH KNOWLEDGE OF THE MATTERS CONTAINED HEREIN.

DATE _____

SIGNATURE _____

TITLE _____

DATE _____

SIGNATURE _____

TITLE _____