



# Application for Directors & Officers Liability Insurance

**THIS IS AN APPLICATION FOR A CLAIMS MADE POLICY. THE LIMIT OF LIABILITY AVAILABLE TO PAY DAMAGES OR SETTLEMENTS WILL BE REDUCED AND MAY BE EXHAUSTED BY THE PAYMENT OF DEFENSE EXPENSES, AND THE INSURER HAS NO DUTY TO DEFEND THE INSUREDS.**

- **This application must be completed in full, including all required attachments.**
- **Attach a separate sheet of paper if more space is needed to answer any question.**
- **“Insured Entity” means the entity proposed for insurance.**
- **We treat all applications as confidential. If additional assurances of confidentiality are required, we are willing to address the applicant’s needs.**

## 1. GENERAL INFORMATION

- a) Name of Insured Entity: \_\_\_\_\_  
\_\_\_\_\_
- b) Address: \_\_\_\_\_  
\_\_\_\_\_

## 2. ADDITIONAL INFORMATION

- a) Is the Insured Entity currently involved in or considering any merger or acquisition with any other entity within the next 12 months? Yes  No
- b) Has any third party formally or informally approached the Insured Entity regarding a potential sale of all or part of the Insured Entity? Yes  No
- c) Is the Insured Entity currently involved in or considering any restructuring, consolidation or legal or financial reorganization or filing for bankruptcy? Yes  No
- d) Is the Insured Entity currently involved in or considering any restatements of financials or the sale, distribution or divestiture of assets where such sale, distribution or divestiture constitutes 10% or more of total assets? Yes  No
- e) Is the Insured Entity currently, or has it at any time over the last 12 months, been in any actual or alleged breach or violation of any debt covenant or loan agreement or any other material contractual obligation? Yes  No
- f) Who is the Insured Entity’s outside auditor? \_\_\_\_\_  
\_\_\_\_\_

1. Has the Insured Entity changed auditors in the past three years or does it expect a change in auditors? Yes  No
  2. Has the Insured Entity's auditors informed the Insured Entity of any disagreements or weaknesses with its accounting practices, procedures or internal controls? Yes  No
  3. Does the auditor also provide consulting services to the Insured Entity? Yes  No
- g) Has the Insured Entity retained or does it currently plan on retaining an investment banker or financial advisor to increase or maximize shareholder or investor value? Yes  No
  - h) Is the Insured Entity currently considering a private or public offering of any securities within the next 12 months? Yes  No
  - i) Does the Insured Entity have any off balance sheet liabilities which individually exceed 5% of net worth, or special purpose entities ("SPE"(s))? Yes  No
  - j) (Skip this question if you have no SPE):  
If the Insured Entity has any SPE(s), does any director or officer have a financial interest in the SPE(s)? Yes  No

**If the answer to any of the questions in Section 2 is yes, please attach a separate sheet referencing the question and providing details.**

**3. ADDITIONAL INFORMATION FOR PRIVATELY HELD INSURED ENTITIES**  
(If publicly held, proceed directly to Item 4)

- a) Stock Ownership:
  1. Total number of common shares held directly or beneficially by Directors and Officers  
  
\_\_\_\_\_
  2. Identify holders of all equity securities that own 5% or more of each type of security, i.e. common and preferred shares. (Attach response to Application.)

b) Subsidiary Information:

1. List all subsidiary companies

| Name | Nature of Business | Date Acquired or Created | Percentage Owned | State/Country of Corporation |
|------|--------------------|--------------------------|------------------|------------------------------|
|      |                    |                          |                  |                              |
|      |                    |                          |                  |                              |
|      |                    |                          |                  |                              |

2. Do you want coverage to include all Subsidiaries? Yes  No   
If yes, attach a complete listing of all Directors and Officers for each Subsidiary.  
If no, coverage is waived under the policy.

c) Employee Information:

1. Has there been any turnover, resignation or termination of any officer, director or key employee, during the past 3 years for reasons other than death or retirement? Yes  No

(Skip to 2 if the answer is no. If the answer is yes, is the Insured Entity in any dispute with the former officer, director or key employee?)

2. Do you anticipate any loss, resignation or termination of any officer, director or key employee? Yes  No

3. Has any officer, director or key employee signed a non-compete agreement with any outside corporation or other entity other than the Insured Entity during the last five years? Yes  No

(Skip to 4 if the answer is no. If the answer is yes, is the other entity a competitor of the Insured Entity or does it use similar technology?)

4. Are you planning, or do you expect layoffs in excess of 5% of your workforce during the next 12 months? Yes  No

**If the answer to any of the questions in Section 3 is yes, please attach a separate sheet referencing the question and providing details.**

**4. PREVIOUS INSURANCE**

- a) Has the Insured Entity or any Subsidiary previously purchased any Directors and Officers Liability Insurance or similar insurance? Yes  No

If yes, please provide the following details.

| Insurer | Limit | Deductible | Period From/To | Premium |
|---------|-------|------------|----------------|---------|
|         |       |            |                |         |
|         |       |            |                |         |
|         |       |            |                |         |

- b) Provide details of any prior actual or potential Claims filed under such insurance (if none, so state). **Without limiting the rights of the underwriter, anything disclosed or required to be disclosed in b) is not covered by any insurance proposed by the underwriter.**

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- c) Has any Insurer canceled or refused to renew any Directors and Officers Liability Insurance or similar insurance within the past 5 years? Yes  No

If yes, please provide complete details.

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**5. PREVIOUS EXPERIENCE**

Has the Insured Entity or anyone for whom insurance is intended, been involved in the following:

- a) Any antitrust, copyright or patent litigation? Yes  No
- b) Any civil or criminal action or administrative proceeding, securities investigation or informal inquiry involving an actual or alleged or potential violation of any federal or state security law or regulation? Yes  No
- c) Any class action, shareholder suit or representative derivative suits? Yes  No
- d) Is there any potentially material litigation currently filed or existing against the Insured Entity or any of its Directors or Officers? Yes  No

**If the answer to any of the questions in Section 5 is yes, please attach a separate sheet referencing the question and providing details.**

**6. PRIOR KNOWLEDGE**

**(Question 6 need not be answered if Darwin so advises in writing.)**

Does anyone for whom insurance is intended have any knowledge or information of any act, error, omission, fact or circumstance which may give rise to a Claim which may fall within the scope of the proposed insurance? Yes  No

If yes, provide complete details.

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**IT IS UNDERSTOOD AND AGREED THAT, WITHOUT LIMITING ANY RIGHTS OF THE UNDERWRITER, IF SUCH KNOWLEDGE OR INFORMATION EXISTS, ANY CLAIM ARISING THEREFROM IS EXCLUDED FROM THIS PROPOSED INSURANCE.**

**7. MATERIALS REQUESTED**

As an attachment to this Application, please include the following (where applicable):

- 10K, 10Q, Annual Proxy Statement (Public companies)
- Most recent insider trading policies and procedures
- Copy of any LLC management agreement if coverage is requested for an LLC (Private and public companies)

**THE UNDERSIGNED AUTHORIZED DIRECTOR OR OFFICER AGREES THAT IF THE INFORMATION SUPPLIED ON THIS APPLICATION CHANGES BETWEEN THE DATE THE APPLICATION IS EXECUTED AND THE TIME THE PROPOSED INSURANCE POLICY IS BOUND OR COVERAGE COMMENCES, THE INSURED ENTITY WILL IMMEDIATELY NOTIFY DARWIN IN WRITING OF SUCH CHANGES. DARWIN RESERVES ITS RIGHTS TO MODIFY OR WITHDRAW ITS PROPOSAL.**

**THE UNDERSIGNED AUTHORIZED DIRECTOR OR OFFICER DECLARES ON BEHALF OF THE INSURED ENTITY AND ITS DIRECTORS AND OFFICERS THAT TO THE BEST OF HIS/HER KNOWLEDGE AND BELIEF AFTER DILIGENT INQUIRY, THE STATEMENTS SET FORTH HEREIN AND ATTACHED HERETO ARE TRUE. IT IS UNDERSTOOD THAT THE STATEMENTS IN THIS APPLICATION, INCLUDING MATERIALS SUBMITTED TO OR OBTAINED BY THE UNDERWRITER ARE MATERIAL TO THE ACCEPTANCE OF THE RISK, AND RELIED UPON BY THE UNDERWRITER.**

**NOTICE TO ARKANSAS, MINNESOTA, AND OHIO APPLICANTS: ANY PERSON WHO, WITH INTENT TO DEFRAUD OR KNOWING THAT HE/SHE 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, WHICH IS A CRIME.**

**NOTICE TO 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.**

**NOTICE TO DISTRICT OF COLUMBIA, MAINE, TENNESSEE, AND 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 MAY INCLUDE IMPRISONMENT, FINES, OR A DENIAL OF INSURANCE BENEFITS.**

**NOTICE TO FLORIDA APPLICANTS: ANY PERSON WHO, KNOWINGLY AND WITH INTENT TO INJURE, DEFRAUD, OR DECEIVE ANY EMPLOYER OR EMPLOYEE, INSURANCE COMPANY, OR SELF-INSURED PROGRAM, FILES A STATEMENT OF CLAIM OR AN APPLICATION CONTAINING ANY FALSE OR MISLEADING INFORMATION IS GUILTY OF A FELONY OF THE THIRD DEGREE.**

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

**NOTICE TO LOUISIANA AND 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.**

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

**NOTICE TO NEW JERSEY 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 SUCH VIOLATION.**

**NOTICE TO OKLAHOMA APPLICANTS: 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.**

**NOTICE TO OREGON AND TEXAS APPLICANTS: ANY PERSON WHO MAKES AN INTENTIONAL MISSTATEMENT THAT IS MATERIAL TO THE RISK MAY BE FOUND GUILTY OF INSURANCE FRAUD BY A COURT OF LAW.**

**NOTICE TO 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.**

**A POLICY CANNOT BE ISSUED UNLESS THE APPLICATION IS PROPERLY SIGNED AND DATED BY ONE OF THE FOLLOWING INDIVIDUALS WHO IS AUTHORIZED TO SIGN ON BEHALF OF ALL INSUREDS INCLUDING THE INSURED ENTITY AND ANY PERSONS FOR WHOM THE INSURANCE IS TO BE PROVIDED: THE CHAIRMAN OF THE BOARD, PRESIDENT OR CEO.**

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

DATE: \_\_\_\_\_