

Directors & Officers application

376 Broadway, PO Box 1038
 Schenectady, NY 12301
 MerriamInsurance.com
 (877)MERRIAM (637-7426)
 Fax: (518) 346-0996
 insurance@MerriamInsurance.com

NOTICE: THIS POLICY IS WRITTEN ON A CLAIMS MADE BASIS AND COVERS ONLY THOSE CLAIMS FIRST MADE DURING THE POLICY PERIOD AND REPORTED IN WRITING TO THE UNDERWRITER PURSUANT TO THE TERMS HEREIN. THIS POLICY PROVIDES A LIMIT OF LIABILITY AVAILABLE TO PAY JUDGMENTS OR SETTLEMENTS THAT SHALL BE REDUCED BY AMOUNTS INCURRED AS DEFENSE COSTS. FURTHER NOTE THAT DEFENSE COSTS PAID SHALL BE APPLIED AGAINST THE RETENTION AMOUNT.

Instructions

- Whenever used in this Application the term **Applicant** shall mean the Named Corporation and its wholly-owned/controlled Subsidiaries and their respective Directors, Officers, Trustees or Governors.
- The **Applicant** is required to complete Sections 1 and 5.
- The **Applicant** should complete the other applicable Section(s) for which coverage is desired. (See chart below)

Check Coverage Desired	Application Section	Requested Limit	Requested Retention	Requested Effective Date
General Information	1	N/A	N/A	N/A
<input type="checkbox"/> Directors & Officers	2	\$	\$	
<input type="checkbox"/> Employment Practices	3	\$	\$	
<input type="checkbox"/> Fiduciary Liability	4	\$	\$	
General Summary	5	N/A	N/A	N/A

SECTION 1 – GENERAL INFORMATION
(The Applicant must complete this section.)

1. Name of Applicant: _____

2. Address: _____

Telephone: _____ Website Address: www. _____

3. Standard Industrial Classification (SIC) Code: _____

3a. Federal Employer Identification Number (FEIN): _____

4. Date Established: _____ State of Incorporation: _____

Form of Incorporation (Inc., Ltd., LLC, etc.): _____

5. Please describe the nature of the **Applicant's** operations: _____

6. The Officer of the **Applicant** designated to receive any and all notices from the Underwriter or their authorized representative concerning this insurance is: Name: _____

Section 2 - DIRECTORS & OFFICERS INFORMATION

(Complete this section **only** if Directors & Officers Liability coverage is desired.)

7. Directors and Officers Liability Insurance has been continuously in force since: _____

8. Ownership Information:

a) Number of common shares outstanding: _____ If LLC, number of membership shares: _____

b) Number of common shareholders: _____ Number of active members: _____

c) Total number of shares owned directly or beneficially by Directors & Officers or Board of Managers: _____

d) Does any shareholder(s) or group of affiliated shareholders (including an employee stock ownership plan) own more than five (5)% of the voting shares directly or beneficially? Yes No **If yes, please provide details.**

e) Are the common shares publicly traded? Yes No **If yes, specify the exchange & symbol.** _____

f) Does the **Applicant** have any public debt? Yes No **If yes, please attach details.**

g) Are there any other securities which are convertible to common stock? Yes No **If yes, please attach details.**

h) Is the **Applicant** owned by another entity? Yes No **If yes, indicate the name and principal address of the other entity:** _____

9. Provide a list of all direct and indirect subsidiaries.

Name: _____ Type of Business: _____

Percent Owned by the **Applicant**: _____% Date Created/Acquired: _____

Name: _____ Type of Business: _____

Percent Owned by the **Applicant**: _____% Date Created/Acquired: _____

Name: _____ Type of Business: _____

Percent Owned by the **Applicant**: _____% Date Created/Acquired: _____

If additional space is needed, please attach a separate page or use the additional information page provided at the end of the application.

10. In the past twenty four (24) months or in the next twelve (12) months, has the **Applicant** or will the **Applicant** be involved in any of the following: **If yes, provide details by attachment.**

- | | |
|---|--|
| Merger, acquisition or consolidation with another entity? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| Sales, distribution or divestiture of any assets other than in the ordinary course of business? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| Changes in the board of directors or senior management (other than death or retirement)? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| Change in the Applicant's independent auditors? | <input type="checkbox"/> Yes <input type="checkbox"/> No |

Directors & Officers Liability cont'd

11. Offering of Securities Information

- a) In the past thirty-six (36) months, has the **Applicant** completed or agreed to any private offering of debt or equity of securities, whether or not such transactions were or will be completed? Yes No
- b) Within the next twelve (12) months, is the **Applicant** contemplating any private or public offering of debt or equity of securities? Yes No

Note: If the Applicant answered yes to 11(a) or (b), please attach the offering memorandum or prospectus describing the essential terms of each transaction, including the effective date, the professionals used, the amount of the offering and the current status of each such transaction.

12. Financial Information

- a) In the past thirty-six (36) months, has the **Applicant** been the subject of or agreed to a bankruptcy, reorganization or arrangement with creditors under federal or state law? Yes No
- b) Within the next twelve (12) months, is the **Applicant** contemplating any bankruptcy, reorganization or arrangement with creditors under federal or state law? Yes No
- c) Is the **Applicant** in violation of any of its debts or loan covenants? Yes No
- d) In the past thirty-six (36) months, did an Independent CPA render a "going concern" opinion? Yes No

Note: If the Applicant answered yes to 12 (a), (b), (c), or (d) please attach details including the most recent financial audit, review or compilation with the auditors notes.

13. Has the **Applicant**, a director or officer or other person proposed for this insurance been involved in any of the following: **If yes, attach complete details.**

- Anti-trust, copyright or patent infringement litigation? Yes No
- Administrative proceeding charging violation of a federal or state law or regulation? Yes No
- Representative actions, class actions or derivative suits? Yes No
- Administrative, criminal, legislative or regulatory investigation? Yes No
- Any action where a license was revoked or suspended? Yes No

It is agreed that with respect to Question #13, if such circumstances exist, any claim arising from such circumstances is excluded from the proposed insurance.

14. Indicate the following areas in which the board has implemented formal written policies and/or procedures:

- | | | |
|---|----------------------------------|------------------------|
| _____ Merger/Acquisition Procedures | _____ Investment Policy | _____ Audit Policy |
| _____ Selection of New Directors | _____ Related Party Transactions | _____ Personnel Policy |
| _____ Conflict of Interest Policy | _____ Operations Procedures | _____ Compensation |
| _____ Affiliated Party Stock Transactions | _____ Other Policies _____ | |

15. Outside Directorship

Does the **Applicant** direct or request any individual to serve as director, officer, governor or trustee of any other entity? Yes No **If yes, please complete question a - g below.**

- a) Name of individual director, officer, governor or trustee: _____ Position held: _____
 b) Name of outside entity: _____

Directors & Officers Liability cont'd

- c) Nature of entity's business: _____
 d) Percentage of ownership by **Applicant**: _____% Domestic or Foreign: _____
 e) Does the outside entity provide indemnification to its Directors and Officers? Yes No
 f) Complete the following information regarding the Directors and Officers Liability Insurance carried by the outside entity: Insurer: _____ Limit of Liability \$ _____ Policy Period: _____
 g) Has the outside entity or its Directors and Officers been involved in any Directors and Officers Liability litigation? Yes No

Section 3 - EMPLOYMENT PRACTICES INFORMATION

(Complete this section **only** if Employment Practices Liability coverage is desired.)

16. Employment Practices Liability Insurance has been continuously in force since: _____
 17. Please provide the following employee count information:

	Currently	One Year Ago	Two Years Ago
U.S. based employees:			
Total Full Time:	_____	_____	_____
Total Part Time:	_____	_____	_____
Volunteers:	_____	_____	_____
Temporary:	_____	_____	_____
Leased:	_____	_____	_____
Total Non U.S. based employees:	_____	_____	_____
TOTAL SUM OF ABOVE:	_____	_____	_____

Number of employees per the following states:

CA:	_____	_____	_____
FL:	_____	_____	_____
NJ:	_____	_____	_____
NY:	_____	_____	_____
TX:	_____	_____	_____

18. Total number of current employees with annual compensation greater than \$100,000: _____
 19. How many employees have been terminated or demoted in the past twelve (12) months?
 Voluntary: _____ Involuntary: _____ Laid Off: _____
 20. Is any reduction of employees or change of status anticipated or being contemplated in the next year?
 Yes No **If yes, number estimated:** _____

21. Does the **Applicant** anticipate any plant, facility, branch, office, or department closing, consolidation, reorganization or layoff within the next twenty-four (24) months? Yes No **If yes, attach details.**

22. Does the **Applicant** have a human resources department? Yes No **If no, describe how this function is handled.**

Employment Practices Liability (continued)

23. Human Resource Policies and Procedures

Does the **Applicant**:

- have a standard employment application for all applicants? Yes No
- have an employment handbook? Yes No
- document the receipt of the employee handbook by the employee? Yes No
- have an "At Will" provision in the employment application? Yes No
- have a written policy with respect to sexual harassment? Yes No
- have a written policy with respect to discrimination? Yes No
- have written annual evaluations for employees? Yes No
- have a written policy on progressive discipline for employees? Yes No
- have a written policy for Family Medical Leave Act? Yes No
- have a written policy for Americans with Disabilities Act? Yes No
- have a written human resources manual or guidelines? Yes No
- use outside counsel for employment advice? Yes No
- use any tests to screen applicants or employees for continued employment? Yes No
- utilize any form of alternative dispute resolution (ADR) or an arbitration policy? Yes No
- offer severance arrangements in return for a release from future litigation? Yes No
- provide formal training for its supervisors in administering employment procedures? Yes No
- provide formal diversity or cultural sensitivity training for all of its employees? Yes No

Please provide an explanation by attachment for all no answers.

24. Third Party Policies and Procedures

Does the **Applicant**:

- a) have policies or procedures outlining employee conduct when dealing with customers, clients, vendors, the general public or other third parties, including non-discrimination and non harassment statements? Yes No
- b) have policies or procedures for responding to complaints of harassment, discrimination, or civil rights violations from its customers, clients, vendors, the general public or other third parties? Yes No
- c) have employees who work at customer locations or perform a majority of their functions off-site? Yes No

If yes, please provide the following:

a) Number of employees: _____ Number of locations: _____

b) Describe the services performed / provided:

25. Has the **Applicant**, a director or officer or other person proposed for this insurance been involved in any of the following: **If yes, attach complete details.**

Any discriminatory practice violation or litigation? Yes No

Any disciplinary action by any regulatory agency or association, including the EEOC? Yes No

Section 4 - FIDUCIARY LIABILITY COVERAGE

(Complete this section **only** if Fiduciary Liability coverage is desired.)

26. Fiduciary Liability Insurance has been continuously in force since: _____

27. List all plans for which coverage is requested (use attachment if necessary):

Plan Name	Year Established	Assets/Contributions	Type*	Participants	Administrator
Example: The ABC Manufacturing Corp 401K Plan	2000	\$1,000,000	3	75	self

- a)
 - b)
 - c)
 - d)
- * 1 = Employee Welfare Benefit Plan (as defined by ERISA), 2 = Defined Contribution Plan (as defined by ERISA), 3 = Defined Benefit Plan (as defined by ERISA), 4 = Other. **If "Type" is an ESOP a Fiduciary Liability - ESOP Supplement must be completed.**

If additional space is needed, please attach a separate page or use the additional information page provided at the end of the application.

28. Do any plan(s) employ the investment, trustee, actuarial, legal, administrative, custodial or benefits consulting services of any outside provider? Yes No **If yes, provide details by attachment.**

29. Do the plan trustee(s) and administrator meet on a regular basis? Yes No **If yes, indicate how often such meetings are held:** _____

30. Does the plan(s) have prepared audited financial statements? Yes No **If yes, please attach a copy of the latest audited financial statement and indicate when the next such statement is expected to be prepared:** _____

31. Do any plans hold any contract with a guaranteed return (including Guaranteed Investment Contracts (GIC's), Guaranteed Annuity Contracts (GAC's) or Bank Investment Contracts (BIC's)? Yes No **If yes, provide details by attachment.**

32. Has any plan requested or contemplated filing a request for termination? Yes No **If yes, provide details by attachment.**

33. Within the past three (3) years, has any party in interest (as defined by ERISA) with respect to any plan engaged in any transaction prohibited by ERISA, including but not limited to:

- The sale, exchange or lease of property between the plan and such party? Yes No
- The lending of money or the extending of credit between the plan and such party? Yes No
- The furnishing of goods, services or facilities between the plan and such party? Yes No
- The transfer to, or use of plan assets by or for, any such party? Yes No
- The investment in or acquisition by the plan of securities or real property of any such person? Yes No

If yes to any question, provide details by attachment.

34. Has any amendment to any plan been made or contemplated within the past two (2) years, or is any amendment now contemplated, which has resulted or might result in any reduction of benefits including, but not limited to, an increase in participants' share of costs? Yes No **If yes, provide details by attachment. If there has been any amendment, please attach copies of amendment(s).**
35. Has any plan been spun-off (sold), transferred or terminated? Yes No **If yes, provide details by attachment.**
36. Are all defined benefit plans funded in accordance with the requirements of ERISA (or other applicable law) as attested to by a qualified actuary? Yes No **If no, provide details by attachment.**
37. Are there any overdue employer contributions for any plan, or has any plan requested or contemplated filing a request for a waiver of contributions? Yes No **If yes, provide details by attachment.**
38. Are there or have there been within the last three (3) years any known or alleged violations of ERISA or any similar statutory or common law (including applicable amendments, rules and regulations) of the United States, Canada or any state or other jurisdiction to which a plan is subject? Yes No **If yes, provide details by attachment.**
39. Has there been any indication from any government agency with respect to any plan that such agency is investigating or examining any aspect of such plan, including but not limited to the funding, administration or investment strategies of such plan? Yes No **If yes, provide details by attachment.**
40. Is Form 5500 filed on an annual basis for each plan? Yes No **If no, provide details by attachment.**

**SECTION 5 - GENERAL SUMMARY
(The Applicant must complete this section.)**

41. Please provide details on the following insurance coverage currently in place:

COVERAGES	Insurance Company	Limit of Liability	Deductible	Policy Effective Dates	Premium
D&O		\$	\$		\$
EPLI		\$	\$		\$
Fiduciary		\$	\$		\$
General Liability		\$	\$		\$
Professional Liability		\$	\$		\$

- a) With respect to the above coverage, has any Underwriter refused, canceled or non-renewed coverage? (Not Applicable in Missouri) Yes No **If yes, provide details by attachment.**
- b) With respect to the above coverage, has any Underwriter indicated any intent not to offer renewal terms to the **Applicant**? (Not Applicable in Missouri) Yes No **If yes, provide details by attachment.**
- c) With respect to the above coverage, has the **Applicant** given notice of any claim, circumstance or potential claim to any Underwriter? Yes No **If yes, a Supplemental Claim form must be completed.**
42. Has the **Applicant** given written notice under the provisions of any prior policies providing similar insurance or claims, or of specific facts or circumstances which might give rise to a claim being made against any person or entity applying for this insurance? Yes No **If yes, a Supplemental Claim form must be completed.**
43. No person applying for this coverage is aware of any facts or circumstances which he or she has reason to presume might give rise to a future claim that would fall within the scope of any of the proposed coverages for which the **Applicant** has applied, except: **None** or as noted below: **(Provide attachment if necessary)**

—

Without prejudice to any other rights and remedies of the Underwriter, any claim arising from any claims, facts, circumstances or situations whether or not disclosed in #41, #42, and #43 above is excluded from the proposed insurance.

Material Change

If there is any material change to the answers of this Application's questions prior to the policy inception date, the Applicant must notify the Underwriter in writing. Any outstanding quotation may be modified or withdrawn.

False Information

WARNING: 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.

NOTICE TO 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.

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

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.

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 CONTAINING ANY FALSE OR MISLEADING INFORMATION IS GUILTY OF A FELONY OF THE THIRD DEGREE.

NOTICE TO 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.

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

NOTICE TO 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 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 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.

Signature

The Undersigned represents that to the best of his/her knowledge and belief the statements set forth herein are true. The Undersigned further declares that any occurrence or event that takes place prior to the effective date of the insurance for which application is being made which may render inaccurate, untrue, or incomplete any statement made, will immediately be reported in writing to the Underwriter. The Underwriter may withdraw or modify any outstanding quotations and/or authorization or agreement to bind the insurance. The Underwriter is hereby authorized to make any investigation and inquiry in connection with the information, statements and disclosures provided in this Application. The signing of this Application does not bind the Undersigned to purchase the insurance, nor does the review of this Application bind the insurance company to issue a policy. It is agreed that this Application shall be the basis of the contract should a policy be issued. This Application will be attached and become a part of the policy.

Name (Please Print)

Title **(Must be signed by the President, Chairman or Chief Executive Officer)**

Signature

Date

As part of this Application, please submit the following documents:

- a) **Applicant's latest fiscal year end financial statement (CPA prepared) and latest interim financial statement**
- b) List of the **Applicant's** current Directors & Officers
- c) Copies of the most recently filed Forms 5500 (and attachments) for all ERISA plans for which coverage requested (If Fiduciary Liability coverage is being requested)
- d) Copies of the latest versions of the **Applicant's** employee handbook and employment applications
- e) Copy of the **Applicant's** current Directors & Officers/ EPLI Policy (optional)

THE INFORMATION CONTAINED IN AND SUBMITTED WITH THIS APPLICATION IS ON FILE WITH THE UNDERWRITER AND ALONG WITH THE APPLICATION IS CONSIDERED PHYSICALLY ATTACHED TO AND PI-PRD-New App (09/06)

PART OF THE POLICY, SHOULD ONE BE ISSUED. THE UNDERWRITER WILL HAVE RELIED UPON THIS APPLICATION AND ATTACHMENTS IN ISSUING ANY POLICY.

Produced by: (Section to be completed by Agent/Broker)

Agent

Agency

Agency Taxpayer ID or SS Number

Agency License Number

Address (Street, City, State, Zip)

ADDITIONAL INFORMATION

This page may be used to provide additional information to any question on this application. Please identify the question number to which you are referring.

Signature

Date