

# Scottsdale Indemnity Company

Home Office:

One Nationwide Plaza • Columbus, Ohio 43215

Administrative Office:

8877 North Gainey Center Drive • Scottsdale, Arizona 85258

1-800-423-7675

## APPLICATION FOR DIRECTORS AND OFFICERS AND ENTITY LIABILITY INSURANCE

**THIS POLICY APPLIES ONLY TO CLAIMS FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD OR DISCOVERY PERIOD. THE LIMIT OF LIABILITY AVAILABLE TO PAY JUDGMENTS OR SETTLEMENTS SHALL BE REDUCED BY PAYMENT OF DEFENSE COSTS. DEFENSE COSTS ARE SUBJECT TO THE APPLICABLE RETENTION. PLEASE READ AND REVIEW THE POLICY CAREFULLY.**

Fully answer all questions and submit all requested information. Terms appearing in bold in this Application are defined in the Policy and have the same meaning in this **Application** as in the Policy. The **Company** will hold this **Application**, including all materials submitted herewith, in confidence.

### GENERAL INFORMATION

1. The Applicant (to be identified as the **Named Insured** in **Item 1.** of the Declarations): \_\_\_\_\_  
Principal Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_
2. Officer designated to receive correspondence and notices from the **Company**:  
Name: \_\_\_\_\_ Title: \_\_\_\_\_
3. Nature of Business: \_\_\_\_\_
4. Date of Incorporation: \_\_\_\_\_ State of Incorporation: \_\_\_\_\_
5. FEIN: \_\_\_\_\_ SIC Code: \_\_\_\_\_
6. Stock Symbol and Exchange (if applicable): \_\_\_\_\_
7. Applicant's website address (if applicable): \_\_\_\_\_

### STOCK OWNERSHIP

1. Total number of Applicant's common shares outstanding: \_\_\_\_\_
2. Total number of Applicant's common shareholders: \_\_\_\_\_
3. Are any securities of Applicant or any Subsidiary publicly traded?.....  Yes  No  
If "Yes," specify the exchange on which they are listed: \_\_\_\_\_
4. Please state the names and percentage ownership of any shareholders who hold, directly, beneficially, or as an affiliated group, five percent (5%) or more of Applicant's outstanding common shares: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
5. Please list the number of common shares of Applicant or any of its subsidiaries sold (directly or beneficially) by each director and officer of the Applicant or any of its subsidiaries in the last twelve (12) months: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
6. Did the Applicant or any of its subsidiaries repurchase shares directly from its directors or officers in the last twelve (12) months?.....  Yes  No  
If "Yes," please attach details and indicate whether such shares were purchased at the then current market value.

**CHANGES IN APPLICANT**

- 1. Has the Applicant or any of its subsidiaries publicly revealed in the past twenty-four (24) months, or does it presently contemplate that within the next twelve (12) months it will be involved in, any:
  - a. acquisition, consolidation or merger with any other entity? .....  Yes  No
  - b. tender offer, acquisition or disposition of any stock, assets or interest in any other corporation, partnership, or joint venture?.....  Yes  No
  - c. sale, distribution or divestiture of any assets or stock other than in the ordinary course of business?  Yes  No
  - d. bankruptcy proceeding or legal or financial reorganization or arrangement with creditors under federal or state law? .....  Yes  No

If "Yes" to a., b., c. or d. above, please attach complete details.

- 2. Has the Applicant or any of its subsidiaries filed in the past eighteen (18) months, or does the Applicant or any of its subsidiaries contemplate filing within the next twelve (12) months, any registration statement with any government authority for a public offering or private placement of securities?.....  Yes  No

If "Yes," please provide applicable prospectus.

- 3. Is the Applicant or any of its subsidiaries presently considering any acquisition, merger, tender offer, or divestiture that will change the asset and/or revenue base of the Applicant by five percent (5%) or more?  Yes  No

If "Yes," please attach details.

- 4. Has the Applicant suspended its dividend payments in the last twenty-four (24) months or is the Applicant, presently considering such a suspension?.....  Yes  No

If "Yes," please attach details.

**PAST ACTIVITIES**

- 1. In the last twelve (12) months has the Applicant's outside auditor stated that there is a material weakness in the Applicant's system of internal controls? .....  Yes  No

- 2. In the last three (3) years has the Applicant:

- a. changed independent auditors? .....  Yes  No
- b. restated its financial statements?.....  Yes  No
- c. had any changes in the Board of Directors or Senior Management? .....  Yes  No

- 3. Does any proposed **Insured** have knowledge of any matter which may cause the Applicant or any of its subsidiaries to restate its financial statements in the next twelve (12) months?.....  Yes  No

- 4. In the last three (3) years did the Applicant or any of its subsidiaries engage in any transaction (other than a routine transaction in the ordinary course of business) with any proposed **Insured Person**, any natural person who is related to a proposed **Insured Person** or any organization which controls, is controlled by, is under common control with, or is otherwise affiliated with the Applicant, any of its subsidiaries or any proposed **Insured Person**?.....  Yes  No

If "Yes," please attach details.

- 5. In the last twelve (12) months has the Applicant or any of its subsidiaries terminated, rescinded, or declined any acquisition, merger, tender offer or divestiture? .....  Yes  No

If "Yes," please attach details.

- 6. Is the Applicant or any of its subsidiaries currently or has it at any time over the last twelve (12) months been in material breach of any of its debt covenants, loan agreements, contractual obligations, or does it anticipate any such breach occurring in the next twelve (12) months?.....  Yes  No

If "Yes," please attach details.

**CORPORATE GOVERNANCE**

- 1. Has the President, Chief Executive Officer, Chief Financial Officer or any Executive Vice President of the Applicant left office within the last three (3) years for any reason other than poor health, death or retirement at normal retirement age? .....  Yes  No  
If "Yes," please attach details.
- 2. Does the Applicant's Board of Directors at least annually conduct a formal self-evaluation? .....  Yes  No  
If "Yes," please attach details.
- 3. Has the Applicant's Board of Directors adopted:
  - a. a code of ethics? .....  Yes  No
  - b. an insider trading policy? .....  Yes  No
  - c. a conflict of interest policy? .....  Yes  No
  - d. a revenue recognition policy? .....  Yes  No
  - e. a legal compliance program? .....  Yes  NoIf "Yes" to any of the above, attach details regarding the Applicant's distribution and enforcement of each such policy or program.
- 4. Does the Applicant's Board of Directors have a Governance Committee?.....  Yes  No  
If "Yes," please attach details regarding the Committee's responsibilities and operations.
- 5. Has the Applicant's Board of Directors or the Applicant's Audit Committee discussed any of the following with its independent auditors in the last twenty-four (24) months? .....  Yes  No
  - a. Any violation of the Applicant's revenue recognition policy? .....  Yes  No
  - b. Any disagreement by the independent auditors regarding the Applicant's accounting issues?.....  Yes  No
  - c. Any limitation on the scope of the audit, as imposed by management?.....  Yes  No
  - d. Any illegal act which came to the attention of the auditors required to be reported to the SEC?.....  Yes  No
  - e. Any material weakness in internal controls of the Applicant?.....  Yes  No
  - f. Any override of the independent auditors by Applicant's management?.....  Yes  NoIf "Yes" to any of the above, attach details.
- 6. Has the Applicant's independent auditors recommended any past audit adjustments?.....  Yes  No  
If "Yes," attach details.

**LOSS/CLAIMS HISTORY**

- 1. Has the Applicant exercised any extended reporting period coverage under any previous insurance, whether primary or excess, within the past three (3) years? .....  Yes  No
- 2. During the last three (3) years, has the Applicant or any of its subsidiaries or any other proposed **Insureds** been involved, or are they currently involved in, or received notice of any of the following:
  - a. any civil or criminal litigation, administrative proceeding, formal or informal inquiry, questioning, probe, investigation, inspection, examination or review, whether preliminary or otherwise, by any federal, state, or local or foreign administrative agency including but not limited to the SEC? .....  Yes  No
  - b. any antitrust, copyright or patent litigation? .....  Yes  No
  - c. any other criminal actions? .....  Yes  No
  - d. any representative actions, class actions or derivative suits? .....  Yes  No
  - e. any other material litigation? .....  Yes  No
  - f. any claim or potential claim noticed under any insurance? .....  Yes  NoIf "Yes," please attach complete details including amounts paid by any insurers.

3. Is there any pending proceeding or litigation or written demand against any person or entity proposed for this insurance that may fall within the scope of coverage afforded by any similar insurance presently or previously in effect? .....  Yes  No  
If "Yes," please summarize each and state the amount paid by any insurers.
4. Has any person or entity proposed for this insurance given notice under the provisions of any other previous or current similar insurance policy of any facts or circumstance which may give rise to a **Claim**?.....  Yes  No  
If "Yes," please attach complete details.
5. Does any person or entity proposed for this insurance have any knowledge or information of any actual or alleged 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," please attach complete details.

**AS TO QUESTIONS 2.-5. ABOVE, IT IS UNDERSTOOD AND AGREED THAT IF ANY SUCH PROCEEDING, LITIGATION, DEMAND, NOTICE, KNOWLEDGE OR INFORMATION EXISTS, THEN ANY SUCH PROCEEDING, LITIGATION AND DEMAND AND ANY CLAIM THAT MIGHT ARISE FROM ANY SUCH PROCEEDING, LITIGATION, DEMAND, NOTICE, KNOWLEDGE OR INFORMATION IS EXCLUDED FROM COVERAGE UNDER THE PROPOSED INSURANCE.**

**MATERIALS REQUESTED**

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

1. Most recent audited and interim financial statements of the Applicant with any notes and schedules.
2. Any registration statements of the Applicant filed with the Securities Exchange Commission or any private placement memoranda within the last twelve (12) months and any subsequent filings.
3. Most recent annual report and SEC Form 10-K of the Applicant and any subsequent SEC filings by the Applicant (e.g., Forms 10-Q, 8-K or 13D).
4. The Applicant's bylaws and articles of incorporation relating to indemnification.
5. Most recent proxy statement submitted to shareholders.
6. The prospectus for any securities offering planned or expected within the next year.
7. A copy of the Applicant's internal revenue recognition policy and insider trading policy.

The persons signing this **Application** declare that to the best of their knowledge the statements set forth herein and the information in the materials submitted herewith are true and correct and that reasonable efforts have been made to obtain sufficient information from all proposed **Insureds** to facilitate the proper and accurate completion of this **Application** for the proposed policy. Signing this **Application** does not bind the undersigned to purchase the insurance, but this **Application** shall be the basis of the contract should a policy be issued.

It is agreed by all concerned that the particulars and statements contained in this **Application** are true and shall be deemed material to the decision of the **Company** to issue the insurance. The undersigned agree that if after the date of this **Application** and prior to the effective date of any policy based on this **Application**, any occurrence, event or other circumstance should render any of the information contained in this **Application** inaccurate or incomplete, then the undersigned shall notify the **Company** of such occurrence, event or circumstance and shall provide the **Company** with information that would compete, update or correct such information. In such event, the **Company** in its sole discretion may modify or withdraw any outstanding quotation.

The **Company** shall maintain on file this **Application**, including material submitted therewith, which shall be considered to be physically attached to and part of the Policy, if issued.

The information requested in this **Application** is for underwriting purposes only and does not constitute notice to the **Company** under any policy of a **Claim** or potential claim. All such notices must be submitted to the **Company** pursuant to the terms of the Policy, if and when issued.

**Notice to Arizona Applicants:** For your protection, Arizona law requires the following statement to appear on this form. Any person who knowingly presents a false or fraudulent claim for payment of a loss is subject to criminal and civil penalties.

**Notice to 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.

**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 Applicants:** WARNING: 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.

**Notice to 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 in the third degree.

**Notice to Kentucky Applicants:** Any person who knowingly and with intent to defraud any insurance company or other person files a statement of claim containing materially false information concerning any fact material thereto commits a fraudulent insurance act, which is a crime.

**Notice to 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.

**Notice to 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.

**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 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 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 is subject to a civil penalty not to exceed \$5,000.00 and the stated value of the claim for each such violation.

**Notice to 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.

**Notice to 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.

**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 Tennessee and 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.

**Notice to 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.

This **Application** must be signed by the Chairman of the Board and the President of the Applicant. If the Chairman of the Board and President are the same individual, the **Application** must also be signed by the Chief Financial Officer, Chief Operating Officer or General Counsel.

Date: \_\_\_\_\_ Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_ Signature: \_\_\_\_\_

Title: \_\_\_\_\_

**A POLICY CANNOT BE ISSUED UNLESS THIS APPLICATION IS PROPERLY SIGNED AND DATED.**

For Agents in Florida and Iowa:

Agent Name: \_\_\_\_\_ License Number: \_\_\_\_\_