

**Darwin Professional Underwriters, Inc.**

for:

**Capitol Indemnity Corporation  
Capitol Specialty Insurance Corporation  
Platte River Insurance Company**

**APPLICATION FOR TECHNOLOGY AND INFORMATION E&O  
LIABILITY INSURANCE  
Tech//404<sup>sm</sup>**

**SUBJECT TO ITS TERMS, THIS POLICY PROVIDES COVERAGE FOR CLAIMS FIRST MADE DURING THE POLICY PERIOD OR EXTENDED REPORTING PERIOD, IF APPLICABLE. THE APPLICABLE LIMITS OF LIABILITY AVAILABLE TO PAY DAMAGES OR SETTLEMENTS WILL BE REDUCED AND MAY BE EXHAUSTED BY THE PAYMENT OF DEFENSE EXPENSES. PLEASE READ AND REVIEW THE POLICY CAREFULLY.**

- Whenever used in this Application, the terms “You” or “Your Company” shall mean the party proposed as the Named Insured and any subsidiaries and their respective directors, officers, trustees, and governors.
- You are required to complete sections 1 - 6, and 9.
- You should complete the other applicable section(s) for the coverage(s) requested.
- If additional space is required for a response, include such response in an attachment to this Application, clearly identifying the Application question for which a response is being provided.

**1. COVERAGE REQUESTED**

- Technology E&O, Data Privacy, and Network Coverage (Insuring Agreements A-C)
- Media and Electronic Content Personal Injury (Insuring Agreement D)
- Intellectual Property Infringement Liability (Insuring Agreement E)

**2. GENERAL INFORMATION**

a) Applicant’s Name: \_\_\_\_\_

Officer of the Applicant designated to receive all notices from the **Insurer**:

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

Phone Number: \_\_\_\_\_ Email Address: \_\_\_\_\_

b) Principal Address:

Street: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

c) State of Incorporation (if different from state identified in b. above): \_\_\_\_\_

d) Year Organization Established: \_\_\_\_\_ Current Number of Employees \_\_\_\_\_

e) Website Addresses: \_\_\_\_\_

If any of these web sites have a password protected or member / subscriber area, please provide temporary passwords and ID's lasting no longer than 2 weeks from the date of this application. \_\_\_\_\_

f) Risk Manager's Name: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_ Email Address: \_\_\_\_\_

g) Are you a public company, or a public reporting company under the Securities Exchange Act of 1934? Yes  No

h) Business Description (please select all that apply):

	% Revenues
<input type="checkbox"/> Application Service Provider (ASP)	_____
<input type="checkbox"/> Business Software & Services (CRM, ERP, HR, BI)	_____
<input type="checkbox"/> Healthcare Information Software and Data Services	_____
<input type="checkbox"/> Information Services Provider (data processor, data storage)	_____
<input type="checkbox"/> Technology Services (installation, training, integration, advice)	_____
<input type="checkbox"/> Internet Technology Service (e-Commerce, online business)	_____
<input type="checkbox"/> Other Technology Services _____	
<input type="checkbox"/> Other Information Services _____	
<input type="checkbox"/> Other _____	

i) Do you have a Parent Entity? Yes  No   
If yes, provide the following:

Parent Entity Name: \_\_\_\_\_

Street: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

j) Has your company been involved in any of the following actions:

(1) Any actual or attempted merger, acquisition or divestment:  
 Past 24 months? Yes  No   
 Next 12 months? Yes  No

### 3. FINANCIALS and OPERATIONS

a) Provide the following information.

	Prior Fiscal Year	Current Fiscal Year (est.)
Total Assets (\$'s)		
Total Revenue (\$'s)		
Net Income/(Loss) (\$'s)		
Average Contract Size (in \$'s)		

Average Duration of Contracts (in weeks)		
Longest Contract Duration (in weeks)		
Customer retention % year over year		

Do you have venture capital or private equity backing? \_\_\_\_\_

Please provide name (if applicable) \_\_\_\_\_

b) In support of your business description in section 2h, what are your primary relationships with Technology?

What are your primary relationships with technology? (check all that apply if more than one)	Select	List key 3 <sup>rd</sup> party suppliers or providers that help enable this provision or use of technology
<b>Builder</b> of a packaged technology product (like software or hardware) for business customers		
<b>Provider</b> of onsite technical or consulting services for system design, implementation, integration, custom software, training, or IT maintenance		
<b>Operator</b> of an internet-based or hosted <i>business-to-business</i> or <i>business-to-government</i> service such as an ASP, data processor, data storage		
<b>Operator</b> of an internet-based <i>consumer business</i> such as e-commerce, ISP, web portal, or media / publisher (online and dynamic content intensive business)		
<b>User</b> of technology (in support of primary business model) with information automation, multiple web sites, and significant aggregation of third party data		

#### 4. DATA PRIVACY AND HOW YOU MANAGE IT

- a) Within the last three years, have you ever been accused of a **privacy violation** by a business customer, a consumer, or a government agency? Yes  No

Explain the nature of the complaint and the outcome:

\_\_\_\_\_

- b) Do you have a third party **endorsement or certification** of your privacy process and practices?

Yes  No

Name privacy endorsement (ie, TRUSTe, eTrust) and date of last assessment: \_\_\_\_\_

\* Optional: Provide results of any privacy audit. (Reduction in premium could apply)

- c) Complete the table below to explain the **nature of the 3<sup>rd</sup> party data** your company accesses or hosts when servicing clients?

Nature of 3 <sup>rd</sup> party data	<u>Accessed</u> by Applicant while performing services	Data <u>Hosted</u> by the Applicant
Business Client / Financial related	Yes <input type="checkbox"/> No <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>
Personal Client / Financial related	Yes <input type="checkbox"/> No <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>
Personal / HR related	Yes <input type="checkbox"/> No <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>
Personal / Health related	Yes <input type="checkbox"/> No <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>
Company / IP related	Yes <input type="checkbox"/> No <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>
Government related	Yes <input type="checkbox"/> No <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>
Company / Sales related	Yes <input type="checkbox"/> No <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>
Company / Product design related	Yes <input type="checkbox"/> No <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>
Company / Accounting related	Yes <input type="checkbox"/> No <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>
Consumer related (ie, e-commerce data)	Yes <input type="checkbox"/> No <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>
Other:	Yes <input type="checkbox"/> No <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>

- d) Do you require **users** to actively acknowledge and accept your privacy policy? Yes  No
- e) Has your privacy policy been **reviewed by an attorney**? Yes  No
- f) Do you annually assess your compliance processes and **employee practices** against any regulatory data protection standards (such as HIPAA, GLB, and state provisions like CA1386)? Yes  No
- g) Do you have specific **privacy provisions in your sub-contracting agreements**? Yes  No
- \* Please provide a copy of the most recent agreement used by you.
- h) Do you always require **independent contractors and vendors** to provide proof of:  
 Errors and Omissions Insurance  Network Security Insurance  Other

## 5. NETWORK SECURITY AND HOW YOU MANAGE IT

**Please have a senior IT member (such as CIO or Chief Security Officer) complete this section.**

- a) Do you utilize and regularly review results of **automated data auditing** which continually monitors, records, analyzes, and reports on your database activity? Yes  No
- b) Have you conducted a **third party audit** of your network security process and practices? Yes  No

Name security audit firm and date of last assessment: \_\_\_\_\_

\* Optional: Provide full results of your network security audit. (Reduction in premium could apply)

- c) Please indicate the **security maturity** of your organization below. Please write "N/A" if you feel it is not applicable to your business.

Security Controls	Phase of implementation		
	Not Started	In Progress	Complete and implemented
ISO 17799 procedures			
HIPAA procedures			
GLB procedures			
Firewall in place?*			
Information security response plan formalized?			
Assigned one person or group responsible for IT security?			
Technologies in place to detect any network intrusion? **			

\* Name Firewall Technologies \_\_\_\_\_

\*\* Name Detection Technologies \_\_\_\_\_

Name your data encryption technologies \_\_\_\_\_

Please add any **other IT security measures** already implemented: \_\_\_\_\_

d) Do you encrypt all company confidential information as well as personally sensitive data? Yes  No

Please name the encryption technologies used by your firm \_\_\_\_\_

e) What other data do you regularly encrypt?  
 \_\_\_\_\_  
 \_\_\_\_\_

f) Within the last three years, have you ever had an improper **network security breach by an internal employee**?  
 Never  1-3 times  more than 3  more than 10

Result / impact of the breach:  
 \_\_\_\_\_  
 \_\_\_\_\_

g) Do you have **physical security measures** in place to control and monitor human access to your main servers and most sensitive information? Yes  No

Please list measures: \_\_\_\_\_  
 \_\_\_\_\_

h) Within the last three years, have you experienced a network security breach that resulted from the unauthorized access of a third party (ie, "hacker") Yes  No

If yes, please explain (by attachment) the cause, date of occurrence, damage to client, and remedial actions to prevent the same occurrence.

i) Indicate the **acceptable unplanned down time of your computer system** based on your customers' needs.

Less than 1 hour  Less than 12 hours  Less than 24 hours  Not important

j) How long does it take you to restore **your operations after a computer attack or unplanned system outage?**

Less than 1 hour       Less than 12 hours       Less than 24 hours       Not important

## 6. ERRORS AND OMISSIONS

a) Within the last three years have you experienced a technology product recall?      Yes       No

If "Yes," explain (# of clients effected, \$ cost to you, circumstances):

\_\_\_\_\_

b) To what extent do you provide contractual **warranties or indemnification** in connection with your technology products and services?

\_\_\_\_\_

c) To what extent do you use **contractual limitation of liability provisions** in connection with your technology products and services?

\_\_\_\_\_

d) Within the last three years have you given a refund for your products or services?      Yes       No

If "Yes," explain: \_\_\_\_\_

\_\_\_\_\_

e) Please select the quality control measures you employ:

Formal customer acceptance procedures       Pre-release testing for malicious code or security flaws   
Alpha or Beta testing       Documented and active customer complaint resolution procedures

## 7. MEDIA AND ONLINE CONTENT (COMPLETE ONLY IF YOU ARE APPLYING FOR THIS COVERAGE)

a) **How many** externally facing websites do you manage (ie, websites for customers, partners, or investors)?

1-3       4-7       More than 7

b) Describe **the function** of these externally facing websites (check all that apply):

- Basic Informational:** just information and content about what you do
- Content aggregation:** content from different 3<sup>rd</sup> party sources
- Interactive:** visitors can interact with the site for customer service, informational requests, etc.
- e-Commerce:** for the buying / selling of goods and services
- Transactional:** banking transactions to include the trading of securities

c) Do you have a formal and active review process to **screen your online content**, to include content of 3<sup>rd</sup> parties, for the following offenses prior to any dissemination, publication, broadcast, or distribution? (check all that apply):

- Privacy Violations
- Libel or Slander
- Defamation.
- Domain Name Infringement
- Copyright Infringement

d) Do you have a formal and active review process to **screen your mass emails** for the following offenses prior to any dissemination, publication, broadcast, or distribution? (check all that apply):

- Privacy Violations
- Libel or Slander
- Defamation.
- Verification of "opt-in" status of recipients

e) Does your website(s) allow for 3<sup>rd</sup> parties or employees to **post their own comments and content** via a chatroom or bulletin board included in your site? Yes  No

If yes, please check all that apply:

- All Content is reviewed by website owner prior to publication Yes  No
- All Content is reviewed by web site owner after publication Yes  No
- A procedure is in place (and actively used) to remove infringing, libelous, or otherwise controversial materials. Yes  No

f) Do you have an individual or a group solely responsible for the timeliness, appropriateness, and legality of the content posted on your website? Yes  No

## 8. INTELLECTUAL PROPERTY COVERAGE (COMPLETE ONLY IF YOU ARE APPLYING FOR THIS COVERAGE)

a) In the past three (3) years, have you been given notice of your potential infringement of another party's intellectual property (IP) rights, including, but not limited to, patent, copyright, trademark, or domain name infringement? Yes  No   
Did it lead to a claim? Yes  No

**If yes to either, attach a copy of each and every notice of such infringement during the last three years.**

- b) Do you have a dedicated law firm for your IP activities including but not limited to trademark, copyright, and patent issues? Yes  No
- c) Do you have a dedicated internal legal counsel that manages your trademark, copyright, and patent filings? Yes  No
- d) How many patents do you currently own / manage? \_\_\_\_\_
- e) How many trademarks do you currently own / manage? \_\_\_\_\_
- f) How many copyrights do you currently own / manage? \_\_\_\_\_

g) Do you use software to help manage your Intellectual Property applications? Yes  No

h) What % of your annual revenues do you spend on R&D?

Less than 5%  5-20%  More than 20%

i) What % of your annual revenues do you dedicate exclusively to the management and protection of your IP?

Less than 1%  1-3%  More than 3%

j) Select the IP protections you employ in your business:

IP Controls	Stage of Use		
	Not Started	In Progress	Complete and regularly in use
IP protection within Employee Agreements			
IP protection within Non-Disclosure Agreements (NDA) with all 3 <sup>rd</sup> parties			
Trade secret agreements with 3 <sup>rd</sup> parties where applicable			
Prior Act Searches by legal professional (internal or external)			
Acquisition of all necessary IP rights via licenses, releases, or consents			
Annual training of employees regarding patent, copyright, and trademark issues			
Acquire written permission of sites you link to or frame			

## 9. ACTUAL OR POTENTIAL PROFESSIONAL LIABILITY CLAIMS

a) During the last five years, have any claims been made against any party proposed for coverage? Yes  No

b) Within the last five years, has any party proposed for coverage given notice of any fact or circumstance which could give rise to a claim? Yes  No

c) Is any party proposed for coverage, aware of any fact or circumstance which could give rise to a claim? Yes  No

**WITHOUT PREJUDICE TO ANY OTHER RIGHTS AND REMEDIES OF THE INSURER, IT IS AGREED THAT ANY MATTER REQUIRED TO BE DISCLOSED IN RESPONSE TO THE ABOVE QUESTIONS, AND ANY CLAIM ARISING FROM OR RELATED TO SUCH MATTER, IS EXCLUDED FROM ALL PROPOSED INSURANCE.**

## 10. ADDITIONAL APPLICATION MATERIALS

At the discretion of the **Insurer**, and as is relevant to the requested coverage(s), the following materials may be required.

- Any specific claim information per section 9
- The most recent fiscal year-end and interim financial statements

- The latest edition of the Applicant's Internet and Network Security Policy
- The latest edition of the Applicant's Privacy Policy
- A copy of a typical customer contract

## 11. NOTICE TO APPLICANT

The Undersigned warrants that to the best of his/her knowledge and belief, the statements set forth herein are true. The **Insurer** will have relied upon this **Application** in issuing any policy. The **Insurer** is hereby authorized to make any investigations and inquiry in connection with the information, statements and disclosures provided in this **Application**.

The signing of the **Application** does not bind the Undersigned to purchase the insurance, nor does review of this **Application** bind the **Insurer** to issue a policy. It is agreed that this **Application** shall be the basis of the contract should a policy be issued. This **Application** shall be attached and will become part of the policy. All written statements and materials furnished to the **Insurer** in conjunction with this **Application** are hereby incorporated by reference into this **Application** and made a part hereof.

The Undersigned declares that the person(s) and entity(ies) proposed for this insurance understand that:

- The **Policy** shall apply only to **Claims** made during the **Policy Period** or Extended Reporting Period (if applicable);
- The limit of liability contained in the **Policy** shall be reduced, and may be completely exhausted, by **Defense Expenses**, and, in such event, the **Insurer** shall not be liable for **Defense Expenses** or for the amount of any judgment or settlement to the extent that such cost exceeds the limit of liability in the **Policy**; and
- **Defense Expenses** that are incurred shall be applied against the retention amount.

## 12. MATERIAL CHANGE

The Undersigned further declares that if 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, such occurrence or event will immediately be reported in writing to the **Insurer**. The **Insurer** may withdraw or modify any outstanding quotations and/or authorization or agreement to bind the insurance.

## 13. FRAUD WARNINGS

**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 INSURED 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: \_\_\_\_\_