

**NIC INSURANCE COMPANY**

**DECLARATIONS**

Attaching to and forming part of

EMPLOYED LAWYERS PROFESSIONAL LIABILITY INSURANCE POLICY NUMBER:

This Insurance is effected with  
NIC Insurance Company

THIS IS A CLAIMS-MADE PROFESSIONAL LIABILITY INSURANCE POLICY.  
PLEASE READ CAREFULLY.

**1. NAMED INSURED:**

**ADDRESS:**

**2. PERIOD OF INSURANCE:**

**FROM:**

**TO:**

**12.01 AM STANDARD TIME AT THE ADDRESS SHOWN IN NUMBER 1. ABOVE**

**3. LIMIT OF LIABILITY**

**A. \$**

Each and every Claim, including Claims Expenses

**B. \$**

All claims in the aggregate, including Claims Expenses

**4. DEDUCTIBLE**

Each Claim deductible including Claims Expenses with  
Respect to coverage under Clause I. Paragraph A1.

Each Claim deductible including Claims Expenses with  
Respect to coverage under Clause I. Paragraph A2.

**5. PREMIUM:**

**6. NOTICE OF CLAIM:**

**NIC Insurance Company  
One Penn Plaza, 55<sup>th</sup> Floor  
New York, NY 10119  
Attention: Navigators Pro Claims Department**

**7. NOTICE OF ELECTION:**

**8. DATE OF APPLICATION:**

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## NIC INSURANCE COMPANY

### EMPLOYED LAWYERS PROFESSIONAL LIABILITY INSURANCE

**NOTICE:** This is a claims made form. Except to such extent as may otherwise be provided herein, the coverage afforded under this insurance policy is limited to liability for only those Claims that are first made against the Employed Lawyer and reported to the Insurer while the insurance is in force. The Limit of Liability available to pay Damages shall be reduced and may be completely exhausted by payment of Claims Expenses. Damages and Claims Expenses shall be applied against the deductible. Please review the coverage afforded under this insurance policy carefully and discuss the coverage hereunder with your insurance agent or broker.

#### I. INSURING AGREEMENTS

NIC Insurance Company (hereinafter the “Insurer”) agrees with the Employed Lawyer(s) of the Company, named in the Declarations made a part hereof, in consideration of the payment of the premium and reliance upon the statements in the application which is made a part of this insurance policy (hereinafter “policy” or “insurance”) and subject to the Limit of Liability, exclusions, conditions and other terms of this insurance:

##### A. Professional Liability

This policy is to indemnify the Employed Lawyer for all Damages and Claims Expenses which the Employed Lawyer shall become legally obligated to pay because of any Claim, first made against the Employed Lawyer and reported in writing to the Insurer during the Period of Insurance or Extended Reporting Period, arising out of any act, error or omission of the Employed Lawyer in rendering or failing to render Professional Services as a lawyer, but solely for acts on behalf of the Company and except for such Damages or Claims Expenses which the Company shall indemnify or shall be permitted to indemnify the Employed Lawyer, and except as excluded or limited by the terms, conditions or exclusions of this policy.

##### B. Defence and Settlement (Including in the Limit of Liability)

1. The Employed Lawyer, and not the Insurer, shall have the right and duty to defend, any Claim against the Employed Lawyer seeking Damages which are payable under the terms of this insurance. However, the Employed Lawyer shall not formally appoint defence counsel without the written consent of the Insurer, such consent not to be unreasonably withheld.

2. It is agreed that the Limit of Liability available to pay Damages shall be reduced and may be completely exhausted by payment of Claims Expenses. Damages and Claims Expenses shall be applied against the deductible.
3. The Insurer shall have the right to make any investigation it deems necessary, including, without limitation, any investigation with respect to the application and statements made in the application and with respect to coverage.
4. If the Employed Lawyer shall refuse to consent to any settlement or compromise recommended by the Insurer and acceptable to the claimant and elects to contest the Claim, the Insurer's liability for any Damages and Claims Expenses, after subtracting the remaining deductible, shall not exceed the amount for which the Claim could have been settled, plus the Claims Expenses incurred up to the time of such refusal, or the applicable Limit of Liability, whichever is less.
5. It is further provided that the Insurer shall not be obligated to pay any Damages or Claims Expenses after the applicable limit of the Insurer's liability has been exhausted by payment of Damages or Claims Expenses or after deposit of the applicable policy limit in a court of competent jurisdiction.

## **II. PERSONS COVERED BY THIS POLICY**

Each of the following is afforded coverage under this insurance to the extent set forth below:

- (a) any person admitted to practice law who is, was or becomes employed as a full time and salaried lawyer by the Company designated in Item 1 of the Declarations (hereafter referred to as an Employed Lawyer), but solely for acts on behalf of the Company designated in Item 1 of the Declarations.
- (b) any non-lawyer employees of the Company who are, were or become assistants of Employed Lawyers, while acting under the direction and control of such Employed Lawyers while they perform Professional Services on behalf of the Company. The term "Employed Lawyer" shall be deemed to include such non-lawyer employees for the purposes of the coverage afforded by this insurance.
- (c) the estate, heirs, executors, administrators, assigns and legal representatives of any Employed Lawyer in the event of such Employed Lawyer's death, incapacity or bankruptcy, but only to the extent that such Employed Lawyer would otherwise be provided coverage under this insurance.

### III. TERRITORY

This insurance applies to acts, errors or omissions which take place anywhere in the world and to Claims brought anywhere in the world, provided that Claim is first made against an Employed Lawyer during the Period of Insurance or Extended Reporting Period when purchased in accordance with Clause IX.

### IV. EXCLUSIONS

The coverage under this insurance does not apply to Damages or Claims Expenses incurred with respect:

- (a) to any Claim where the Company actually indemnifies the Employed Lawyer, in whole or in part, for his acts or any Claim where the Company is permitted by law or the Company bylaws, to indemnify the Employed Lawyer, regardless of whether actual indemnification takes place, unless the Company is Insolvent, as defined herein.
- (b) to any Claim arising out of any criminal, dishonest, fraudulent or malicious act, error or omission of any Employed Lawyer, in fact committed with actual, criminal, dishonest, fraudulent or malicious purpose or intent.
- (c) to punitive or exemplary damages, fines, penalties, sanctions or any damages which are a multiple of compensatory damages, except that if a Claim shall have been brought against the Employed Lawyer seeking both compensatory and either punitive or exemplary damages, fines, penalties, sanctions or damages which are a multiple of compensatory damages, then any coverage which may be afforded by this policy will apply to any Claims Expenses incurred, without liability, however, for such punitive or exemplary damages, fines, penalties, sanctions or damages which are a multiple of compensatory damages;
- (d) to any Claim made by one Employed Lawyer against another, or made by or on behalf of the Company or any Affiliate of the Company or the Employed Lawyer, or security holder of the Company or any its Affiliates. However, this exclusion shall not apply to any Claim brought by a security holder of the Company or any of its Affiliates, in the name of and for the benefit of the Company or any of its Affiliates, provided the Claim is instigated and continued totally independent of, and totally without the solicitation, assistance, active participation, or intervention of the Company or any of its Affiliates, a director or officer of the Company or any of its Affiliates, or the Employed Lawyer or any Affiliate of the Employed Lawyer;
- (e) to any Claim for bodily injury to, or sickness, disease or death of any person, or to injury to or destruction of any tangible property, including the loss of use thereof;
- (f) to any loss sustained by an Employed Lawyer as a beneficiary or distributee of any trust or estate;

- (g) to any Claim arising out of any Employed Lawyer's activities and/or capacity as a Fiduciary under the Employee Retirement Income Security Act of 1974 and any amendments thereto, except if the Employed Lawyer is deemed to be a Fiduciary solely by reason of legal advice rendered with respect to any employee benefit plan;
- (h) to any Claim or circumstance which might lead to a Claim in respect of which any Employed Lawyer or the Company has given notice to the insurer of any other policy in force previous to the effective date of this policy;
- (i) to any Claim alleging, arising out of, based upon, attributable to, or in any way involving directly or indirectly:
  - (i) the actual, alleged or threatened discharge, dispersal, release or escape of pollutants; or
  - (ii) any direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralise pollutants,

including but not limited to any Claim alleging damages to the Company or its shareholders.

Pollutants include (but are not limited to) any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes (but is not limited to) materials to be recycled, reconditioned or reclaimed;

## V. CONDITIONS

Definitions: Wherever used in this policy:

A. "Professional Services" means:

any services for which a person would have to be admitted to practice before a court and shall include allegations of false arrest, detention or imprisonment, wrongful entry or eviction or other invasion of the right of private occupance, libel or slander or malicious prosecution;

B. "Claims Expenses" means:

- (1) fees charged by an attorney designated by the Employed Lawyer and consented to by the Insurer, with such consent not to be reasonably withheld; and

- (2) all other fees, costs and expenses resulting from the investigation, adjustment, defense and appeal of a Claim, suit or proceeding arising in connection therewith, if incurred by the Employed Lawyer with the written consent of the Insurer;
  - (3) Claims Expenses does not include any salary, overhead or other charges by the Employed Lawyer or the Company for any time spent in cooperating in the defense and investigation of any Claim or circumstance which might lead to a Claim notified under this insurance.
- C. "Period of Insurance" means the period of time between the inception date shown in the Declarations and the effective date of termination, expiration or cancellation of this insurance and specifically excludes any Extended Reporting Period hereunder.
- D. "Extended Reporting Period," if applicable, means the 12 month period of time after the end of the Period of Insurance for reporting Claims arising out of acts, errors or omissions which take place prior to the end of the Period of Insurance and otherwise covered on this insurance.
- E. "Claim" shall mean:
- 1) a written demand received by any Employed Lawyer for money or services including the service of suit or institution of arbitration proceedings against the Employed Lawyer and reported the Insurer pursuant to provision XI; or
  - 2) a civil, criminal, administrative or arbitration proceeding made against any Insured seeking monetary or non-monetary relief and commenced by the service of a complaint or similar pleading, the return of an indictment, or the receipt or filing of notice of charges or similar document, including any proceeding initiated against any Insured before the Securities and Exchange Commission, Equal Employment Opportunity Commission or any similar governmental body; or
  - 3) brought by a security holder of the Company, arising solely with respect to such security holder's interest in such securities of the Company, whether directly, by class action, or derivatively on behalf of the Company.

All claims arising out of the same, related or continuing Professional Services shall be deemed to be one single Claim under the terms of this policy.

- F. "Fiduciary" except as set forth in Clause IV(i), means an Employed Lawyer's capacity as an administrator, conservator, executor, guardian, trustee, receiver, escrow agent or any similar capacity.
- G. "Damages" means a monetary judgement, award or settlement.

- H. “Insolvency” means that the Company has become a debtor in possession, or there has been the appointment of a receiver, conservator, liquidator, trustee, rehabilitator or similar official to control, supervise, manage or liquidate the Company.

## **VI. LIMIT OF LIABILITY**

- A. The Limit of Liability stated in the Declarations as “each and every claim” is the limit of the Insurer’s liability for all Damages and Claims Expenses arising out of the same, related or continuing professional services without regard to the number of Employed Lawyers, Claims or claimants.
- B. The Limit of Liability stated in the Declarations as “aggregate” is the total limit of the Insurer’s liability for all Damages and Claims Expenses arising out of all Claims or circumstances which might lead to a Claim which are covered under the terms and conditions of this policy.
- C. The Limit of Liability for the Extended Reporting Period shall be part of, and not in addition to, the Limit of Liability of the Insurer for the Period of Insurance.

## **VII. DEDUCTIBLE**

- A. The deductible amount stated in the Declarations at Item 4 shall be satisfied by payments by the Employed Lawyer of Damages and Claims Expenses resulting from all Claims first made and reported to the Insurer during the Period of Insurance and the Extended Reporting Period as a condition precedent to the payment by the Insurer of any amounts hereunder and the Insurer shall be liable only for amounts in excess of such Deductible subject to the Insurer’s total liability not exceeding the limit set forth in Item 3 of the Declarations. The Employed Lawyer shall make direct payments within the deductible to appropriate other parties designated by the Insurer.

## **VIII. INNOCENT EMPLOYED LAWYER**

Whenever coverage under this insurance would be excluded, suspended or lost:

- (1) because of any exclusion relating to criminal, dishonest, fraudulent or malicious acts, errors or omissions by an Employed Lawyer and with respect to which any other Employed Lawyer did not personally participate or personally acquiesce or remain passive after having personal knowledge thereof; or
- (2) because of non-compliance with any condition relating to the giving of notice to the Insurer with respect to which any other Employed Lawyer shall be in default solely because of the failure to give such notice or

concealment of such failure by one or more Employed Lawyer responsible for the loss or damage otherwise insured hereunder,

the Insurer agrees that such insurance as would otherwise be afforded under this policy shall cover and be paid with respect to those Employed Lawyers who did not personally commit or personally participate in committing or personally acquiesce in or remain passive after having personal knowledge of (a) one or more of the acts, errors or omissions described in any such exclusion; or (b) such failure to give notice, provided that if the condition be one with which such Employed Lawyer can comply, after receiving knowledge thereof, the Employed Lawyer entitled to the benefit of Clause VIII shall comply with such condition promptly after obtaining knowledge of the failure of any other Employed Lawyer to comply therewith.

## **IX. EXTENDED REPORTING PERIOD**

- A. In the event of cancellation or non-renewal of this insurance by the Company or Insurer, the Company designated in Item 1 of the Declarations shall have the right, upon payment in full and not proportionally or otherwise in part of 100% of the Premium set forth in Item 5. of the Declarations to have issued an endorsement providing a 12 month Extended Reporting Period for Claims first made against any Employed Lawyer and reported to the Insurer during the Extended Reporting Period, subject to the conditions set forth in the definition of Extended Reporting. The payment of premium for the Extended Reporting Period must be paid to the Insurer within 30 days of the non-renewal or cancellation.
- B. The Limit of Liability for the Extended Reporting Period shall be part of, and not in addition to, the Limit of Liability of the Insurer for the Period of Insurance.
- C. The quotation by the Insurer of a different premium or deductible or Limit of Liability or changes in policy language for the purpose of renewal shall not constitute a refusal to renew by the Insurer.
- D. The right to the Extended Reporting Period shall not be available to the Company where cancellation or non-renewal by the Insurer is due to non-payment of premium or failure of the Employed Lawyer or the Company to pay such amounts in excess of the applicable Limit of Liability or within the amount of the applicable deductible.
- E. All notices and premium payments with respect to the Extended Reporting option shall be directed to the Insurer through the entity named in Item 9 of the Declarations.
- F. At the commencement of the Extended Reporting Period the entire premium shall be deemed earned, and in the event the Company terminates the Extended Reporting Period for any reason prior to its

natural expiration, the Insurer will not be liable to return any premium paid for the Extended Reporting Period.

#### **X. OTHER INSURANCE**

- A. This insurance shall apply in excess of any other valid and collectible insurance available to any Employed Lawyer or the Company.
- B. This Insurance is specifically written in excess of the Directors and Officers policies that are listed in Item        of the Declarations.

#### **XI. NOTICE OF CLAIM, OR CIRCUMSTANCE THAT MAY LEAD TO A CLAIM**

- A. If any Claim is made against any Employed Lawyer, the Employed Lawyer shall immediately forward to the Insurer through persons named in Item 7 of the Declarations every demand, notice, summons or other process received by him or his representative.
- B. If during the Period of Insurance an Employed Lawyer first becomes aware of any act, error or omission that could reasonably be the basis for a Claim, he must give written notice to the Insurer through persons named in Item 7 of the Declarations during the Period of Insurance of:
  - (1) the specific act, error or omission; and
  - (2) the injury or damage which may result or has resulted from the act, error or omission; and
  - (3) the circumstance by which the Employed Lawyer first became aware of the act, error or omission.

Any subsequent Claim made against the Employment Lawyer which is the subject of the written notice shall be deemed to have been made at the time written notice was first given to the Insurer.

- C. A Claim shall be considered to be reported to the Insurer when notice is first given to the Insurer through persons named in Item 7 of the Declarations of the Claim or of an act, error or omission which could reasonably be expected to give rise to a Claim.
- D. All Claims arising out of the same, continuing or related Professional Services shall be considered a single Claim and deemed to have been made at the time the first of the related Claims is reported to the Insurer and shall be subject to one Limit of Liability.

- E. If any Employed Lawyer or the Company shall make any Claim under this policy knowing such claim to be false or fraudulent, as regards amount or otherwise, this policy shall become null and void and all coverage hereunder shall be forfeited.

## **XII. ASSISTANCE AND COOPERATION**

The Employed Lawyer and the Company shall cooperate with the Insurer in all investigations, including investigations regarding the application and coverage under this insurance and, upon the Insurer's request, assist in making settlements, in the conduct of suits and in enforcing any right of contribution or indemnity against any person or organisation other than an employee of the Company who may be liable to the Employed Lawyer or Company because of acts, errors or omissions with respect to which insurance is afforded under this policy; and the Employed Lawyer and the Company shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses. The Employed Lawyer and the Company shall not, except at their own cost, admit liability, make any payment, assume any obligation, incur any expense, enter into any settlement, stipulate to any judgement or award or otherwise dispose of any Claim without the consent of the Insurer.

## **XIII. ACTION AGAINST THE INSURER**

No action shall lie against the Insurer unless, as a condition precedent thereto, there shall have been full compliance with all terms of this insurance, nor until the amount of the Employed Lawyer's obligation to pay shall have been finally determined either by judgement or award against the Employed Lawyer after actual trial or arbitration or by written agreement of the Company, the claimant and the Employed Lawyer.

Any person or organisation or the legal representative thereof who has secured such judgement, award or written agreement shall thereafter be entitled to make a Claim under this policy to the extent of the insurance afforded by this policy. No person or organisation shall have any right under this insurance to join the Insurer as a party to an action or other proceeding against the Employed Lawyer or the Company to determine the Employed Lawyer's liability, nor shall the Insurer be impleaded by the Employed Lawyer or the Company or their legal representative. Bankruptcy or insolvency of the Employed Lawyer or the Company or the respective estates shall not relieve the Insurer of any of its obligations hereunder.

## **XIV. SUBROGATION**

In the event of any payment under this insurance, the Insurer shall be subrogated to all the Employed Lawyer and the Company's rights of recovery therefore against any person or organisation and the Employed Lawyer and the Company shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The Employed Lawyer or the Company shall

do nothing after the payment of Damages by the Insurer to prejudice such rights.

#### **XV. CHANGES**

Notice to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or a change in any part of this insurance or estop the Insurer from asserting any right under the terms of this insurance; nor shall the terms of this insurance be waived or changed, except by endorsement issued to form a part of this insurance, signed by the Insurer.

#### **XVII. MERGERS AND ACQUISITIONS**

The Company shall be required to give written notice to the Insurer prior to the completion of a merger or acquisition by or of the Company and the Insurer expressly reserves the right to demand a premium adjustment if this insurance is to remain in force subsequent to any merger or acquisition.

#### **XVIII. ASSIGNMENT**

The interest hereunder of any Employed Lawyer or the Company is not assignable. If the Employed Lawyer shall die or be adjudged incompetent, this insurance shall cover the Employed Lawyer's legal representative as the insured with respect to liability previously incurred and covered by this insurance.

#### **XIX. CANCELLATION**

A. This policy may not be cancelled by the Company except for non-payment of premium. If the Insurer cancels this insurance because the Company has failed to pay a premium when due, this insurance may be cancelled by the Insurer by mailing a written notice of cancellation to the Company at the address shown in the Declarations stating when not less than 10 days thereafter such cancellation shall be effective. The mailing of notice as aforesaid shall be sufficient proof of notice. The time of surrender or the effective date and hour of cancellation stated in the notice shall become the end of the Period of Insurance. Delivery (where permitted by law) of such written notice either by the Company or by the Insurer shall be equivalent to mailing.

#### **XX. ENTIRE CONTRACT**

By acceptance of this policy the Employed Lawyer and the Company agree that the statements in the Declarations and application are his agreements and representations, that this insurance is issued in reliance upon the trust of such representations and that this policy embodies all agreements existing between the Company, Employed Lawyers and the Insurer relating to this insurance.

## **XXII. SERVICE OF SUIT**

It is understood and agreed that in the event of the failure of the Insurer to pay any amount claimed to be due hereunder, the Insurer, at the request of the Company or the Employed Lawyer, will submit to the jurisdiction of a court of competent jurisdiction within the United States of America. The foregoing shall not constitute a waiver of the right of the Insurer to remove, remand, or transfer such suit to any other court of competent jurisdiction in accordance with the applicable statutes of the state of United States pertinent hereto. In any suit instituted against them upon this contract, the Insurer will abide by the final decision of such court or of any appellate court in the event of an appeal.

It is further agreed that service of process in such suit may be made upon the Superintendent, Commissioner, or Director of Insurance or other person specified for that purpose in the statute or his successor or successors in office as their true and lawful attorney upon whom may be served any lawful process in any action, suit, or proceeding instituted by or on behalf of the Insured or any beneficiary hereunder arising out of this contract of insurance.

The Insurer hereby designates the President of NIC Insurance Company, One Penn Plaza, 55<sup>th</sup> Floor, New York, NY 10119, as the person to who the said Superintendent, Commissioner, or Director of Insurance is authorized to mail such process or a true copy thereof, in compliance with the applicable statutes governing said service of process in the state or jurisdiction in which a cause of action under this contract of insurance arises.