

**LIABILITY INSURANCE POLICY**  
**DIRECTORS AND OFFICERS**

Dear Valued Insured,

Thank you for choosing Cocogen Insurance, Inc. as your Insurer.

This insurance contract between you and Cocogen consists of the Proposal Form, the Policy, the Schedule, and the Endorsements, if any. Please note that in accepting this insurance, we relied on the information you have provided us.

In consideration of the payment of the premium shown in the Schedule, we agree to pay you, subject to the terms and conditions contained in or endorsed on this insurance contract, against loss or damage in the manner and to the extent provided in this Policy.

Should you have clarifications and concerns on this insurance contract, feel free to call us at (632) 8-830-6000 or send us an email at [client\\_services@cocogen.com](mailto:client_services@cocogen.com). To learn more about our products and services, please visit our website at [www.cocogen.com](http://www.cocogen.com).

Your Insurance Provider,

COCOGEN INSURANCE, INC.

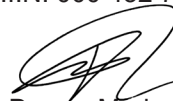
**IMPORTANT NOTICE**

The Insurance Commissioner, with offices in Manila, Cebu, and Davao, is the Government official in charge of the enforcement of all laws relating to Insurance and has supervision over insurance companies. He is ready at all times to render assistance in settling any controversy between an insurance company and a policyholder relating to insurance matters.

**Cocogen has caused this insurance contract to be signed by its duly authorized officer in the place and on the date appearing in the Schedule.**

**COCOGEN INSURANCE, INC.**

T.I.N. 000 432 798



Atty. Darren M. de Jesus  
President

**WHEREAS THE INSURED**, named in the Policy Schedule has, by a written Proposal and declarations, proposed to Cocogen Insurance, Inc. (the Insurer) for the insurance detailed below. The written Proposal and declarations shall be the basis of this contract and are deemed to be incorporated herein. The Insured has agreed to pay as consideration the premium stated in the Policy Schedule or on subsequent renewals, the renewal premium in accordance with the law of the Philippines.

The Insurer, subject to the Terms and Conditions/Provisions of this Policy, and any endorsements or other documents incorporated in this Policy (referred to as the Terms and Conditions) will pay and/or indemnify the Insured in the manner and to the extent provided herein.

## **1. COVERS**

### **1.1 Director of the Insured**

The Director of the Insured, provided the Claim is first made during the Period of Insurance, the Insurer will pay:

- (a) Loss and Defense Costs and Expenses arising from a Claim against the Director in their capacity as such; or
- (b) Investigation Defense Costs and Expenses; or
- (c) Criminal Defense Costs and Expenses; or
- (d) Pollution Defense Costs and Expenses; or
- (e) Extradition Proceedings Defense Costs and Expenses; or
- (f) Asset and Liberty Proceedings Defense Costs and Expenses for an amount not exceeding the limit of indemnity stated in the Policy Schedule or 10% of the Policy limit of indemnity, whichever is greater; or
- (g) Public Relations Expenses,

except to the extent where clause 1.2 applies.

### **1.2. Insured Company**

The Insurer will pay any sums that the Insured company has paid to or is held liable to pay the Director by way of an advancement or indemnity in relation to the Director's liability that would otherwise be covered by clause 1.1.

### **1.3. Defense Costs and Expenses for Identity Theft Claim**

The Insurer will pay **Defense Costs and Expenses** incurred by the Director or the Insured Company in connection with an **Identity Theft Claim** first made during the Period of Insurance.

## **2. EXTENSIONS**

The following extensions are covered subject to all the other terms, conditions, exceptions, limits, deductibles and exclusions of this Policy:

### **2.1. Automatic Acquisition Cover**

Where, during the Period of Insurance, the Insured creates or acquires an entity, then such entity shall be treated as being a Subsidiary for the purpose of this Policy provided that:

- (a) The Total Gross Assets of the Insured is not increased by the acquisition or creation of such Subsidiary by more than 50%; and
- (b) Such newly created or acquired Subsidiary does not have its securities listed or traded on any U.S. exchange; and
- (c) The cover shall apply only to Notifiable Claims arising directly or indirectly out of any Wrongful Act committed (or alleged to have been committed) subsequent to the effective date of such creation or acquisition.

When the coverage for a newly created or acquired Subsidiary is not automatically conferred a consequence of (a) or (b) above, then the Insured may request that the Policy be extended to cover such Subsidiary. The Insurer, at its discretion, may alter the terms and conditions of this Policy accordingly, including the charging of additional premium.

### **2.2. Corporate Manslaughter**

The Insurer shall pay the Loss of any Director under clause 1.1, with respect to any proceeding brought against them for any gross breach of duty of care that causes the death of another person, including any violation or breach of an occupational health and safety law.

### **2.3. Discovery Period**

In the event that, on the expiry of the Period of Insurance, this Policy is not renewed or replaced with any other Directors and Officers insurance cover broadly equivalent to this Policy in scope, then the Director shall have the right to purchase a Discovery Period so that for the purposes of clause 1.1, any Notifiable Claim made in the Discovery Period shall be deemed to have been first made during

the Period of Insurance, subject to the following conditions:

- (a) The cover shall apply only to Notifiable Claims arising directly or indirectly out of Wrongful Acts committed (or alleged to have been committed) prior to the expiry of the Period of Insurance; and
- (b) The Discovery Period is effective only if the 50% additional Premium is paid within thirty (30) days of the expiry of the Period of Insurance; and
- (c) The right to purchase the Discovery Period is not exercisable, or once purchased shall lapse upon the Director or the Insured, after effecting a Directors and Officers policy cover broadly equivalent to this Policy in scope.

## **2.4 Emergency Costs**

If the Insurer's prior written consent cannot reasonably be obtained before the following are incurred:

- (a) Investigation Defense Costs and Expenses;
- (b) Criminal Defense Costs and Expenses;
- (c) Pollution Defense Costs and Expenses;
- (d) Extradition Proceedings Defense Costs and Expenses;
- (e) Asset and Liberty Proceedings Defense Costs and Expenses,

the Insurer will give retroactive approval for such costs and expenses, for an amount not exceeding 10% of the limit of indemnity stated in the Policy Schedule, provided that:

- i. The Insurer's approval is obtained within thirty (30) days such costs are being incurred, and
- ii. The costs would otherwise be covered under this Policy.

## **2.5. Non-Executive Director's Reinstatement of Cover**

In the event that payments are made exhausting the limit of indemnity of this Policy, and of all other applicable management liability policies operating in excess of the limits, and any other source available to provide indemnification for Loss to the non-executive director, then the Insurer agrees to provide an indemnity to the non-executive director for Non-indemnifiable Loss.

For the avoidance of doubt, the Non-Executive Director's Reinstatement of Cover limit of indemnity shall apply only once for each non-executive director.

The Insurer will only be liable under this extension to pay the sums described in insuring clause 1.1, incurred by each non-executive director up to a limit of 10%, subject to an annual aggregate of 10%, of the limit of indemnity stated in the Policy Schedule.

## **2.6. Retirement Run-off**

In the event that, on the expiry of the Period of Insurance, this Policy is not renewed or replaced with any other Directors and Officers insurance cover broadly equivalent to this Policy in scope, then this Policy shall extend to cover any Director who has retired or resigned from the Insured prior to the date of such expiry, in respect of Notifiable Claims made against that Director for a further ten (10) years immediately following such retirement or resignation. However, this extension shall apply only:

- (a) In respect of Wrongful Acts committed either during the Period of Insurance or any previous policy period underwritten by the Insurer which is linked by continuous renewal to this Period of Insurance; and
- (b) If the Director has retired or resigned for reasons other than disqualification or as a result of a merger, consolidation or acquisition as detailed in clause 8.3(a).

## **2.7. Outside Boards**

This cover shall extend to any Wrongful Act committed in the capacity of an Outside Director, but only in excess of the aggregate of:

- (a) The amounts indemnifiable by the entity on whose board the Outside Director is serving; and
- (b) Any other collectible insurance cover available to the Director.

## **2.8. Spouses/Estates**

The Insurer will pay on behalf of:

- (a) The Director's lawful spouse (which will include civil partnerships that are recognized by law in their country of domicile). The amount to be paid is a sum to compromise enforcement proceedings brought against joint property held or owned by or on behalf of the spouse, to enforce a court judgment against the Director, in respect of a Claim that would otherwise be covered under this Policy.
- (b) The estate, heirs and legal representatives of a Director in the event of their death, incapacity or bankruptcy, but only in respect of a Claim against the Director that would otherwise be covered under this Policy.

## **3. DEFINITIONS**

### **3.1. Asset and Liberty Proceeding**

Any proceeding brought against the Director by anybody other than the Insured, so authorized for the

purpose of examining the affairs of the Insured or the conduct of the Director in their capacity as such, seeking:

- (a) Confiscation, assumption of ownership and control, suspension or freezing of rights of ownership of real property or personal assets of the Director;
- (b) A charge over real property or personal assets of such Director;
- (c) A temporary or permanent prohibition on such Director from holding the office of or performing the function of a Director;
- (d) A restriction of such Director's liberty to a specified domestic residence or an official detention;
- (e) Deportation of the Director following revocation of an otherwise proper, current and valid immigration status for any reason other than such Director's conviction of a crime.

### **3.2. Asset and Liberty Proceedings Defense Costs and Expenses**

Defense Costs and Expenses incurred by the Director in dealing with an Asset and Liberty Proceeding, provided such proceeding is commenced during the Period of Insurance.

### **3.3. Bodily Injury and/or Property Damage**

Bodily injury, sickness, disease, death or emotional distress, or damage to, destruction, impairment, or loss of use of any property.

### **3.4. Claim**

Any demand for compensation or damages, or the allegation of a right that can be enforced through a civil proceeding, alleging a Wrongful Act. All Claims related or connected in any way by reference to any common contributory factor or characteristic shall be treated as a single Claim first made on the date such Claim was notified.

### **3.5. Insured**

The Insured Company and its/their Subsidiaries stated in the Policy Schedule.

### **3.6. Criminal Prosecution**

Any prosecution commenced by the police or any other criminal prosecuting body, including any violation or breach of an occupational health and safety law, against the Director in their capacity as such.

### **3.7. Criminal Defense Costs and Expenses**

Defense Costs and Expenses incurred by the Director in defending a Criminal Prosecution that commenced during the Period of Insurance.

### **3.8. Defense Costs and Expenses**

Reasonable fees, costs and expenses incurred with the prior written and continuing consent of the Insurer (such consent not to be unreasonably withheld). It does not include any Director's or the Insured's own costs and expenses (including salaries) or any value attributable to the time spent by the Director, Insured or any Employee in dealing with a Claim. Defense Costs and Expenses shall also include premium paid for insurance instruments or for bonds that may be required.

### **3.9. Director**

Any natural person, except an external auditor, who at the date of inception has been or is, or who, during the Period of Insurance becomes:

- (a) A Director or Officer of the Insured, including Non-Executive Directors and persons who hold equivalent positions in any jurisdiction;
- (b) An Outside Director;
- (c) A de facto Director;
- (d) A prospective Director;
- (e) A trustee of a pension, retirement or provident benefit fund established for the benefit of the Employees;
- (f) A shadow Director;
- (g) An Employee acting in any managerial or supervisory capacity or who is named as co-defendant with any Director.

### **3.10. Discovery Period**

Period of twelve (12) months immediately following the expiry of the Period of Insurance by which the Insurer extends cover. This is also referred to as Extended Reporting Period.

### **3.11. Employee**

Any person, other than a Director of the Insured, who is under a contract of service or apprenticeship with, supplied to, hired, or borrowed by the Insured, or under any work experience or similar scheme, while employed or engaged by and under the control of the Insured.

### **3.12. Employment Practices Wrongful Act**

Any actual or alleged:

- (a) Discrimination with respect to the terms or conditions of Employment on the basis of an individual's race, color, religion, age, sex, national origin, disability, pregnancy, sexual orientation or preference or other status protected under applicable law;
- (b) Sexual harassment, including unwelcome sexual or non-sexual advances, requests for sexual favors and any unwelcome verbal or physical contact of a sexual nature which:
  - i. Is explicitly or implicitly made a term or condition of Employment; or
  - ii. Creates a hostile or offensive working environment for an Employee; or
  - iii. When rejected or opposed by a person, becomes a basis for decisions regarding that person's Employment;
- (c) Defamation (including libel and slander) which relates to a person's job skills, job performance, qualifications for Employment, professional reputation, disciplinary history or termination of Employment;
- (d) Unfair or constructive dismissal of an Employee (or the equivalent in other jurisdictions) or unlawful refusal to hire or promote an Employee;
- (e) Adverse change in the terms and conditions of a person's Employment in retaliation for that person's exercise of his/her rights under the law, or support of the rights of another.

### **3.13. Extradition Notice**

Any formal process by which any Director located in any country is surrendered to any other country or the country of jurisdiction for trial or otherwise to answer any criminal accusation arising from a Wrongful Act.

### **3.14. Extradition Proceedings Defense Costs and Expenses**

Defense Costs and Expenses incurred by the Director in dealing with an Extradition Notice, provided such notice is first served on the Director during the Period of Insurance.

### **3.15. Identity Theft Claim**

Any claim for damages made by a third party to enforce an agreement entered into with another person fraudulently representing themselves as a Director or the Insured.

### **3.16. Insurer**

Cocogen Insurance, Inc., in its capacity as Insurer, issues the Policy, collects the premium and ensures the coverage of the risks are in accordance with the conditions of the Policy.

### **3.17. Investigation**

Any formal request for information from a Director or for the Director's attendance at an interview, that is made by anybody other than the Insured (unless in respect of any internal investigation instigated as a result of a shareholder derivative action), so authorized for the purpose of examining the affairs of the Insured or the conduct of the Director in their capacity as such, including but not limited to proceedings for any violation or breach of occupational health and safety law. For the avoidance of doubt, an investigation does not include a risk management visit or equivalent by the regulator of the Insured.

### **3.18. Investigation Defense Costs and Expenses**

The Defense Costs and Expenses incurred by the Director in an Investigation, provided the Investigation is initiated during the Period of Insurance.

### **3.19. Loss**

Any award of compensatory damages made by a competent court or tribunal including third party costs, or any settlement incurred with the prior written consent of the Insurer.

Except when legally permissible in the country or territory in which the Claim is brought, the loss does not include:

- (a) Employee remuneration, benefits, stock or share options or severance payments; or
- (b) Taxes; or
- (c) Fines; or
- (d) Civil, regulatory or criminal penalties; or
- (e) Punitive, aggravated or exemplary damages.

### **3.20. Non-Executive Director**

- (a) Any natural person who is or during the Period of the Policy becomes a member of the board of the Insured; and
- (b) Who, within the last three (3) years has not:
  - i. Served as an executive officer of the Insured; and
  - ii. Served as an Employee of the Insured; and

- iii. Received, either directly or indirectly from the Insured, money or benefits in kind for services given in any capacity except as a Director of the Insured.

### **3.21. Non-Indemnifiable Loss**

Any Loss of a Director for whom the Insured cannot provide an advancement or indemnity due to a legislative prohibition, or if it is a Claim brought by the Insured against the Director.

### **3.22 Notifiable Claim**

A Claim or an Investigation or a Criminal Prosecution or an Extradition Notice or an Asset and Liberty Proceeding or an Identity Theft Claim.

### **3.23. Outside Director**

Any Director formally appointed on the specific request of the Insured to the board or equivalent position (including in the case of non-profit organizations, governors and committee members) in an Outside Entity.

### **3.24. Outside Entity**

Any entity, including any non-profit entity, provided such entity is not an entity with Securities traded on any exchange in the USA, but this provision shall not apply in the event the Insurer agrees in writing otherwise.

### **3.25. Period of Insurance**

The period stated in the Policy Schedule.

### **3.26. Pollution**

Any pollution, seepage, discharge, dispersal, release or escape of any solid, liquid, gaseous or thermal irritant or contaminant including, but not limited to, smoke, vapors, soot, dust, fibers, fungi, mold, fumes, acids, alkalis, chemicals and waste (including, but not limited to, material to be recycled, reconditioned or reclaimed) or contamination of any kind; or ionizing radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel; or radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

### **3.27. Pollution Defense Costs and Expenses**

Defense Costs and Expenses incurred in relation to any Notifiable Claim first made during the Period of Insurance, against the Director in their capacity as such, involving any Pollution. For the avoidance of doubt, this does not include the costs involved in testing for, monitoring, cleaning up, removing, containing, treating or detoxifying any Pollution.

### **3.28. Premium**

The amount stated in the Policy Schedule as the price of the insurance that the Insured must pay the Insurer in consideration for the coverage of the risks provided for the Insured by the latter, the receipt for which will include, moreover, the surcharges and taxes legally applicable.

### **3.29. Prior and Pending Litigation Date**

The date from which the Insured has maintained uninterrupted cover of the same nature as that provided herein with the Insurer or such date as agreed to in writing by the Insured, either of which is set forth in the Policy Schedule.

### **3.30. Proposal**

The written information referred to in this Policy and containing particulars and statements together with any other information and documents supplied to the Insurer by or on behalf of any Director or the Insured. This does not include any information contained within or linked to the Insured's website unless such information is specifically supplied in written form to the Insurer by or on behalf of any Director or the Insured.

### **3.31. Public Relations Expenses**

The reasonable fees, costs and expenses of the public relations consultants incurred by a Director with the prior written consent of the Insurer to be given at its absolute discretion where it is satisfied that such fees, costs and expenses will mitigate or reduce the adverse effect on such Director's reputation from a Notifiable Claim first made against the Director, in their capacity as such, during the Period of Insurance.

### **3.32. Policy Schedule**

The document entitled "Policy Schedule" that attaches to and forms part of this Policy. It contains the summary of all the details of the Insured, the premiums and the coverage under this Policy.



### **3.33. Security or Securities**

Security or securities representing debt of or equity interests in the Insured.

### **3.34. Subsidiary**

An entity in which the Insured, as at the date of inception of this Policy:

- (a) Owned or owns directly or through one or more of its Subsidiaries more than 50% of the voting rights or more than 50% of the share capital issued in such entity; or
- (b) Had or has the right to appoint or remove the majority of such entity's board of directors; or
- (c) Controlled or controls alone pursuant to a written agreement with other shareholders or members the majority of the voting rights in such entity, provided that the Insured is also a shareholder in it;

but only in respect of Wrongful Acts committed in relation to the Subsidiary while a Subsidiary of the Insured.

### **3.35. Total Gross Assets**

The total gross assets of the Insured including its Subsidiaries as shown, where they exist, in the consolidated audited financial statements most recently preceding the Period of Insurance.

### **3.36. Wrongful Act**

Any error, omission, misstatement, misleading statement, libel, slander, breach of warranty, negligent act, negligent error, negligent omission or negligent breach of duty by a Director, or any other matter claimed against a Director while acting in their capacity as such. Wrongful Act shall include any Employment Practices Wrongful Act.

## **4. EXCLUSIONS**

This Section defines the areas where the Insurer shall not be liable under any Section of this Policy. Such areas may directly or indirectly arise out of, or be in any way connected with, any of the following:

### **4.1. Known Claim or Circumstance**

Any Notifiable Claim or circumstance/s which may give rise to a liability under this Policy, and which was (or were) known to the Director or the Insured prior to the Period of Insurance.

For the avoidance of doubt, this exclusion applies only to the Director or Insured that had the requisite knowledge. This exclusion will apply to that Director even where the Insurer has waived its right to avoid the Policy pursuant to clause 7.6.

### **4.2. Prior and Pending Litigation**

Any circumstance, transaction or Wrongful Act underlying or alleged in any prior and pending litigation that commenced prior to the date set out in:

- (a) The Policy Schedule in respect of any litigation involving Pollution, or
- (b) The Policy Schedule for all other litigation.

For the purposes of this exclusion, litigation means any civil, administrative, regulatory or criminal proceeding or any investigation, examination, inquiry or disciplinary proceeding.

### **4.3. Death or Bodily Injury**

Any bodily injury, sickness, disease, emotional distress, mental anguish, mental stress or the death of any person, howsoever caused except:

- (a) Emotional distress, mental anguish and mental stress in respect of any Employment Practices Wrongful Act; or
- (b) Emotional distress arising from any libel or slander; or
- (c) In respect of Investigation Defense Costs and Expenses or Criminal Defense Costs and Expenses.

### **4.4. Property Damage**

Any damage to, or destruction or loss of, any property, including loss of use.

### **4.5. Dishonest or Fraudulent Acts**

Any intentional, dishonest or fraudulent act or omission or any willful breach of any statute, rule or law committed by the Director.

This exclusion shall only apply to the Director who is actually guilty of the above conduct, as established through a final adjudication by any court, tribunal or other similar body, or formal written admission by the Director.

#### **4.6. Profit or Advantage**

Any unlawful personal profit, remuneration or advantage gained by the Director or a financial advantage to any entity in which such Director has a financial interest.

This exclusion shall only apply to such Director who has benefited directly or indirectly in the above way, as established through a final adjudication by any court, tribunal or other similar body or by a formal written admission by the Director.

#### **4.7. Pollution**

Any connection to Pollution. However, this exclusion shall not apply to:

- (a) Pollution Defense Costs and Expenses which fall within Non-indemnifiable Loss; or
- (b) Any Claim instigated by way of shareholder derivative action without the willing assistance, procurement, instigation or involvement of any Director.

#### **4.8. US Claims by the Insured**

Any Claim made in the United States of America by or on behalf of the Insured or Outside Entity, provided that this exclusion shall not apply to:

- (a) Any Claim brought by or at the direction of any liquidator, provisional liquidator, administrator or receiver of any Insured or Outside Entity; or
- (b) Any Claim in respect of an Employment Practices Wrongful Act; or
- (c) Any Claim pursued as a shareholder derivative action brought or maintained on behalf of a Insured or Outside Entity without the voluntary, rather than legally, required procurement or instigation of any Director or the Insured or any Outside Entity; or
- (d) Any Claim directly resulting from another Claim otherwise covered by this Policy; or
- (e) Defense Costs and Expenses of a Director.

#### **4.9. Other Insurance**

For any matter in respect of which the Director or the Insured is (or, for the existence of this Policy, would be) entitled to cover under any other valid and collectible contract of insurance, except where such other insurance is written as specific excess insurance to provide an indemnity in excess of the amount payable under this Policy. This Policy shall only apply in excess of such other policy, to the extent of such part of the limit of indemnity or any applicable sub-limit exceeding the limit of the other policy.

#### **4.10. Breach of Philippine Retirement Law**

Any actual or alleged breach as imposed by the Retirement Law of the Philippines (R.A. 7641) as from time to time amended.

### **5. LIMIT OF INDEMNITY**

- 5.1. Subject to the Non-Executive Director's Reinstatement of Cover (clause 2.5), the limit of indemnity means the maximum aggregate amount payable by the Insurer under this Policy including any endorsements or extensions, irrespective of the number of Notifiable Claims.
- 5.2. The limit of indemnity shall be as stated in the Schedule.
- 5.3. Any payment in respect of clauses 1.1, 1.2 and/or 1.3 and/or any endorsement or otherwise shall erode the limit of indemnity. Once the limit of indemnity is completely eroded, then, subject to the Non-Executive Director's Reinstatement of Cover (clause 2.5), the Insurer shall have no further liability under this Policy.
- 5.4. The sub-limits of indemnity shown in the Schedule relate to specific insuring clauses. These sub-limits are each aggregate limits and form part of the limit of indemnity and so when paid, in whole or in part, shall erode the limit of indemnity. Once such sub-limit is completely eroded, then, subject to the Non-Executive Director's Reinstatement of Cover (clause 2.5), the Insurer shall have no further liability under the relevant clause.
- 5.5. In the event that the Non-Executive Director's Reinstatement of Cover (clause 2.5) is triggered, then each and every further payment to the Director shall erode the Non-Executive Director's Reinstatement of Cover limit of indemnity and once completely eroded, the Insurer shall have no further liability under this Policy.

### **6. DEDUCTIBLE**

- 6.1. The deductible is not applicable to Non-indemnifiable Loss.
- 6.2. Where a deductible applies under clause 1.2, the Insurer shall be liable for Loss that exceeds the deductible. The deductible does not form part of the Insurer's liability for Loss and shall remain uninsured. The Insurer shall only be liable to the extent that any liability exceeds the relevant deductible.



- 6.3. The deductible shall be nil except that:
- (a) In respect of clause 1.2, insofar as the Insurer is called upon to pay Loss arising in connection with any legal proceedings -
    - i. In the USA or for the enforcement of any order or judgment of any USA court, a deductible as stated in the Policy Schedule shall apply,
    - ii. Elsewhere in the world, a deductible as stated in the Policy Schedule shall apply.
  - (b) In respect of an Employment Practices Wrongful Act, a deductible as stated in the Schedule shall apply.
- 6.4. Where a deductible applies, if the Insured is able to provide an advancement or indemnity to the Director but fails to do so within thirty (30) days, the Insurer shall advance to the Director all Loss within the deductible. In such circumstances, the Insured agrees to repay the deductible to the full extent once the Insurer has notified the Insured of the amount so advanced.
- 6.5. Only one deductible shall apply to Notifiable Claims that are related or connected in any way by reference to any common contributory factor or characteristic.
- 6.6. The deductible includes all Defense Costs and Expenses and Investigation Defense Costs and Expenses, except for Non-Indemnifiable Loss.

## **7. CLAIMS**

### **7.1. Notification**

- (a) The Director or the Insured must notify the Insurer in writing to the Notification Address set out below, of any Notifiable Claim as soon as practicable during the Period of Insurance or Discovery Period, and in any event no later than thirty (30) days after the expiration of the Period of Insurance or of the Discovery Period.
- (b) The Director or the Insured must notify the Insurer in writing to the Notification Address set out below, of any circumstance/s that may give rise to a Notifiable Claim or an entitlement to be indemnified under this Policy, provided they first become aware of these circumstances during the Period of Insurance. In the event the Insurer is so notified during the Period of Insurance of any such circumstance/s, then any subsequent Notifiable Claim that arises directly from the circumstance/s so notified shall be deemed to have been made during the Period of Insurance, but only if the notice adequately specifies the reason/s why a Notifiable Claim is likely to arise.

Notification Address:

The Claims Department  
 Subject: D & O Claim Notification  
 Cocogen Insurance, Inc.  
 22nd Floor One Corporate Center, Doña Julia Vargas Ave., cor. Meralco Avenue  
 Ortigas Center, Pasig City

### **7.2. Duty to Cooperate**

The Director and/or the Insured shall:

- (a) Provide such prompt cooperation, information and assistance as the Insurer and its representatives, legal advisers or agents may reasonably require; and
- (b) Ensure that all documents relevant to any Notifiable Claim or any circumstance/s likely to give rise to a Notifiable Claim shall not be intentionally destroyed or otherwise intentionally disposed of.

### **7.3. No Admission of Liability**

The Director and/or the Insured shall not, without the prior written approval of the Insurer, admit liability for, compromise, settle, or make any offer or payment in respect of any Notifiable Claim or any circumstance/s likely to give rise to a Notifiable Claim or any circumstance/s where the Director and/or the Insured has requested cover under this Policy.

### **7.4. Insurer Entitled to Defend**

The Insurer shall be entitled, but not obliged, to take over the investigation, defense and settlement of any Notifiable Claim and any circumstance/s likely to give rise to a Notifiable Claim and any circumstance/s where the Director and/or the Insured has requested cover under this Policy, including the choice and appointment of legal representation. The Insurer shall have full discretion in the handling thereof (notwithstanding that a dispute may have arisen between the Insurer and the Director and/or the Insured), provided always that the Director and/or the Insured shall not be obliged to defend any legal proceedings, unless a senior counsel (to be mutually decided upon by the Insurer and the Director and/or the Insured) shall advise that such proceedings can be contested with a reasonable prospect of success.

### **7.5. Subrogation**

The Insurer shall be subrogated to all the rights of recovery of the Director against any third party before

or after any payment is made under this Policy, provided always that the Insurer shall not exercise any such rights against any Employee or former Employee of the Insured unless the Loss in respect of which payment is made under this Policy was caused or contributed to by an intentional fraudulent or dishonest act or omission by the Employee or former Employee. The Director and Insured shall, without charge, provide such assistance as the Insurer may reasonably require in any subrogation.

#### **7.6. Avoidance by the Insurer**

This Policy is not avoidable or rescindable in whole or in part with respect to any Director, and the Insurer shall have no other remedy, with respect to any pre-inception misrepresentation or non-disclosure by any Director in connection with this Policy, except with respect to any fraudulent misrepresentation or fraudulent non-disclosure, where established by final adjudication of a judicial or arbitral tribunal, or any formal written admission by or on behalf of any Director.

#### **7.7. Advanced Payment of Costs**

The Insurer shall pay Defense Costs and Expenses, or any other costs and/or expenses payable under this Policy. However, in the event and to the extent that it is finally determined that the Director or the Insured is not entitled to such payments under this Policy, the sums advanced shall be repaid by the Director or the Insured as applicable, to the Insurer upon demand. Failure to do so will automatically reduce the limit of indemnity by the amount of such advance payment.

#### **7.8. Allocation**

In the event of:

- (a) Any Loss, Defense Costs and Expenses, Investigation Defense Costs and Expenses, Criminal Defense Costs and Expenses, Pollution Defense Costs and Expenses, Extradition Proceedings Defense Costs and Expenses, Asset and Liberty Proceedings Defense Costs and Expenses and Public Relations Expenses being partially excluded by the terms of this Policy; and/or
- (b) Any Notifiable Claim against a Director being also made against the Insured and/or one or more persons who are not covered under this Policy;

then the Insurer, the Director and/or the Insured shall use their best endeavors based on established judicial decisions, to fairly and reasonably agree such an allocation of the Loss and professional costs and expenses to the Policy, as may be appropriate and reasonable, having regard to the legal and financial exposures of the relevant parties, and the proportion to which the losses and professional costs and expenses are not covered under this Policy.

#### **7.9. Order of Payments**

Where there are multiple claims for indemnities under this Policy, the Insurer shall make payments in the order those claims are presented to it.

If it becomes apparent to the Insurer, in its absolute discretion, that the limit of indemnity will not be sufficient to cover all expected payments under the Policy, then the Insurer will make payments in the following order:

- (a) Payments under clause 1.1, direct to the Directors; followed by
- (b) Payments under clause 1.2, to the Insured; followed by
- (c) Any other payments to the Insured.

### **8. GENERAL PROVISIONS**

#### **8.1. Third Party Rights**

A person who is not a party to this Policy has no rights to enforce any terms of this Policy.

#### **8.2. Non-imputation**

- (a) This Policy shall operate severally in relation to each Director.
- (b) In determining whether the Insurer is entitled to avoid a Director's interest in this Policy or reject a Director's claim for an indemnity under this Policy, the Insurer shall only take into account the Proposal and the statements made by, or the knowledge possessed by, or the acts, omissions or conduct of that particular Director.
- (c) In determining whether the Insurer is entitled to avoid or rescind the Insured's interest in this Policy where cover is available to it, then the Proposal and the statements made by, or the knowledge possessed by, or the acts, omissions or conduct on the part of, any two out of the Insured's chairman of the board, managing director, finance director, chief legal officer or their equivalents, shall be deemed to be imputed or attributable to the Insured.

#### **8.3. Changes in Risk**

- (a) If during the Period of Insurance, the Insured merges with or consolidates into another entity, or any person or entity acquires more than 50% of its issued share capital, or another entity has or acquires the rights to vote, designate or select a majority of the board of Directors of the Insured

or voting rights:

- i. The Insured shall within thirty (30) days give written notice to the Insurer of such merger, consolidation or acquisition; and
  - ii. Cover shall apply only to Notifiable Claims arising directly or indirectly out of any Wrongful Act committed (or alleged to have been committed) prior to the effective date of such merger, consolidation or acquisition.
- (b) If during the Period of Insurance, any:
- i. Securities are or become legally required to be the subject of any registration statement filed with the United States of America Securities and Exchange Commission (SEC) in accordance with Section 5 of the Securities Act of 1933, or
  - ii. The Insured is or becomes subject to any obligation to file reports with the SEC in accordance with Section 13 of the Securities Exchange Act of 1934,

then, when such registration or reporting obligation first attached during the Period of Insurance, the Insured shall, as soon as practicable:

1. Provide the Insurer with notice of the registration or reporting requirements, and such information, as the Insurer may require, to evaluate and assess any additional exposure; and
2. Accept any alteration to the terms and conditions of this Policy, and agree to pay any reasonable additional premium charged by the Insurer for the increase in exposure.

If conditions 1 and 2 above are not complied with, the Insurer shall not be liable to make any payment or to provide any services in connection with any Claim directly or indirectly arising out of, based upon or attributable to, any Securities referred to in i or any event referred to in ii with respect to the Insured or the Director or the registration or reporting requirements, unless such cover is expressly provided by a written endorsement to this Policy. For the avoidance of doubt, this condition shall not apply to any Security purchased or sold pursuant to Rule 144A of the Securities Act of 1933.

#### 8.4. Premium Payment

- (a) The Insured undertakes that Premium will be paid in full to the Insurer within thirty (30) days of inception of this Policy.
- (b) If the Premium has not been so paid to the Insurer by the thirtieth day from the inception of this Policy, the Insurer shall have the right to cancel this Policy by notifying the Insured through the agent or broker in writing. In the event of cancellation, Premium is due to the Insurer on a pro-rata basis for the period that the Insurer is on risk, but the full Policy Premium shall be payable to the Insurer in the event of a notification prior to the date of termination, which gives rise to a Notifiable Claim under this Policy. The Premium shall be added to and form part of the deductible amount in the event of its non-payment.
- (c) It is agreed that the Insurer shall give no less than fifteen (15) days prior notice of cancellation to the Insured through the agent or broker. If Premium due is paid in full to the Insurer before the notice period expires, notice of cancellation shall automatically be revoked. Otherwise, this Policy shall automatically terminate at the end of the notice period.

#### 8.5. Cancellation of Policy

This Policy shall not be cancelled by the Insurer except upon prior notice thereof to the Insured, and no notice of cancellation shall be effective unless it is based on the occurrence, after effective date of this Policy, of one or more of the following:

- (a) Non-payment of premium;
- (b) Conviction of a crime arising out of acts increasing the risk insured against;
- (c) Discovery of fraud or material misrepresentation;
- (d) Discovery of willful or reckless acts or omissions increasing the risk insured against;
- (e) A determination by the Insurance Commissioner that the continuation of this Policy would violate or would place the Insurer in violation of the Insurance Code.

All notices of cancellation shall be in writing, and mailed or delivered to the Insured at the address shown in the Policy Schedule, and shall state:

- (a) Which of the grounds set forth in this provision is relied upon, and
- (b) That upon written request of the Insured, the Insurer will furnish the facts on which the cancellation is based.

If the Insured cancels this Policy, which must be in writing, earned premiums shall be computed with the applicable percentage indicated under the following Short Rate Cancellation Table:

5 days or less	6% of the premium
Up to 10 days	10% of the premium
Up to 15 days	13% of the premium
Up to 20 days	17% of the premium

1 month or less	20% of the premium
2 months	30% of the premium
3 months	40% of the premium
4 months	50% of the premium
5 months	60% of the premium
6 months	70% of the premium
7 months	75% of the premium
8 months	80% of the premium
9 months	90% of the premium
10 months	the full annual premium

#### 8.6. Omnibus Clause

All applicable provisions of the Insurance Code of the Philippines, as amended, as of the date of effectivity, latest renewal or latest reinstatement of this Policy as the case may be, and all existing laws obligatory upon insurance companies as may be pertinent are deemed incorporated in this Policy and will supersede any agreement/contract inconsistent therewith.

#### 8.7. Civil Code Article 1250 Waiver Clause

It is hereby declared and agreed that the provision of Article 1250 of the Civil Code of the Philippines (Republic Act No. 386) which reads:

*“In case an extraordinary inflation or deflation of the currency stipulated should supervene, the value of the currency at the time of the establishment of the obligation shall be the basis of payment.”*

shall not apply in determining the extent of liability under the provisions of this Policy.

#### 8.8. Documentary Stamp Clause

Acceptance of the terms of proposal means that:

- (a) It is understood that upon the issuance of this Policy, no payment for documentary stamp tax will be refunded as a result of the cancellation or endorsement of this Policy or a reduction in the premium due for whatever reason; and
- (b) If a cancellation or endorsement occurs prior to the settlement of the amount due under this Policy, the Insured guarantees payment of the corresponding documentary stamp tax due, which amount may be legally enforced against and collected from said Insured.

#### 8.9. Interpretation

In this Policy:

- (a) Reference to any Act, statute or statutory provision shall include a reference to that provision as amended, re-enacted or replaced from time to time whether before or after the date of the inception of this Policy or the equivalent in any other jurisdiction;
- (b) None of the provisions, conditions and terms of this Policy shall be waived or altered except by an endorsement signed or initialed by an authorized official of the Insurer and in accordance with the provisions of Section 50 of the Insurance Code as amended.
- (c) If any term, condition, exclusion or endorsement or part thereof is found to be invalid or unenforceable, the remainder shall be in full force and effect;
- (d) The headings in this Policy are for general reference only and shall not be considered when determining the meaning of this Policy;
- (e) This Policy and the Policy Schedule shall be read together as one contract, and any word or expression to which a specific meaning has been attached in any part of this Policy or of the Policy Schedule shall bear such specific meaning wherever it may appear.

### 9. GOVERNING LAWS AND DISPUTES

This Policy shall be governed by and construed in accordance with the laws of the Philippines, the courts of which shall have sole jurisdiction to deal with any matters in dispute not determinable by arbitration.