

STATE OF RHODE ISLAND
PROVIDENCE COUNTY

SUPERIOR COURT
C.A. NO:

CLUTCH CITY SPORTS &
ENTERTAINMENT, L.P. (d/b/a TOYOTA
CENTER) and ROCKET BALL, LTD.,

Plaintiffs,

v.

AFFILIATED FM INSURANCE
COMPANY,

Defendant.

PLAINTIFFS' ORIGINAL COMPLAINT

Plaintiffs, by their counsel, file this Original Complaint for damages and declaratory judgment against Defendant, Affiliated FM Insurance Company, alleging the following:

I. INTRODUCTION

1. This action for breach of contract, declaratory judgment, and bad faith arises out of Plaintiffs' claim for insurance coverage under an "all risk" property insurance policy sold by AFM to Plaintiffs.

2. Despite agreeing to cover Plaintiffs' property against all risks of physical loss or damage (except as specifically excluded in the Policy), and Plaintiffs' resulting business interruption loss, AFM wrongfully denied coverage.

II. THE PARTIES

3. Clutch City Sports & Entertainment, L.P. (d/b/a Toyota Center) (“Toyota Center”) is a limited partnership, formed under the laws of the State of Texas, located at 1510 Polk Street, Houston, Texas 77002.

4. Rocket Ball, Ltd. (“Houston Rockets”) is a limited partnership, formed under the laws of the State of Texas, located at 1510 Polk Street, Houston, Texas 77002.

5. Affiliated FM Insurance Company (“AFM”) is incorporated under the laws of Rhode Island, with a principal place of business at 270 Central Avenue, Johnston, Rhode Island 02919. AFM is authorized to do business and issue insurance policies in the State of Texas.

III. JURISDICTION AND VENUE

6. This Court has jurisdiction over this action because AFM is incorporated under the laws of Rhode Island, with a principal place of business at 270 Central Avenue, Johnston, Rhode Island 02919, and under Rhode Island General Laws §8-2-14, because the amount in controversy exceeds the sum of ten thousand dollars (\$10,000).

7. Venue in this Court is proper under Rhode Island General Laws §9-4-4, because AFM is located in Providence County.

IV. FACTUAL BACKGROUND

8. Toyota Center spans six city blocks in downtown Houston, Texas and is home to the National Basketball Association’s (“NBA”) Houston Rockets. It also hosts some of the nation’s top-attended concerts and touring shows.

9. Toyota Center welcomed nearly 1.3 million fans last year while, this year, because of the forced closure of the arena, they hosted just over 340,000 fans.

10. AFM is an insurance company that sold an insurance policy providing coverage to Toyota Center and the Houston Rockets against “all risks of physical loss or damage, except as ... excluded.” *See* Policy attached as Exhibit A (“Policy”).

11. The Policy has an effective term of October 6, 2019, through October 6, 2020.

12. The Policy also provides coverage to Plaintiffs for business interruption losses occurring as a result of physical loss or damage. *See* Exhibit A, All Risk Coverage Form, at 19 of 44.

13. The Policy provides up to \$412 million in coverage for property damage, with a substantial portion of that amount in coverage for business interruption losses, *on a per occurrence basis*. *See* Exhibit A, Declarations, at 1 of 8.

14. The Policy also provides Civil Authority coverage for business interruption loss resulting from prohibited access to Toyota Center due to a civil authority order, provided that such an order was the direct result of physical damage of the type insured at Toyota Center or within five (5) statute miles of it. *See* Exhibit A, All Risk Coverage Form, at 24 of 44.

15. In addition, the Policy covers reasonable and necessary costs incurred for actions to temporarily protect or preserve the property, provided such actions are necessary to prevent insured physical loss or damage. *See* Exhibit A, All Risk Coverage Form, at 14 of 44. This Protection and Prevention of Property Damage coverage is for the full policy limit of \$412 million *per occurrence*.

16. In exchange for AFM’s agreement to take on Plaintiffs’ risk of loss, Plaintiffs dutifully paid AFM \$719,490 in annual premiums.

A. COVID-19 is a Deadly Communicable Disease

17. COVID-19 is a deadly communicable disease that has already infected over 3,000,000 people in the United States, resulting, to date, in more than 131,000 deaths.¹

18. The World Health Organization (“WHO”) has declared the COVID-19 outbreak a pandemic, and President Donald Trump has declared a nationwide emergency due to the public health crisis caused by the COVID-19 outbreak in the United States.

19. The time from exposure (infection) to the development of COVID-19 symptoms—the incubation period—can be up to fourteen days.²

20. During this period (the “pre-symptomatic” period), those infected can be contagious and transmit the disease before they show any symptoms or have any reason to believe they are sick.³

21. According to WHO: “People can catch COVID-19 from others who have the virus. The disease can spread from person to person through small droplets from the nose or mouth, which are spread when a person with COVID-19 coughs or simply exhales. These droplets land on objects and surfaces all around the person. Other people then catch COVID-19 by touching these objects or surfaces, then touching their eyes, nose, or mouth. People also catch

¹ See <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html> (last viewed July 9, 2020) (confirming 3,047,671 reported cases in the United States, resulting, to date, in 132,056 deaths).

² See https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200402-sitrep-73-covid-19.pdf?sfvrsn=5ae25bc7_4#:~:text=The%20incubation%20period%20for%20COVID,occur%20before%20symptom%20onset (last viewed on July 9, 2020); see also <https://www.cdc.gov/coronavirus/2019-ncov/hcp/faq.html> (last viewed on July 9, 2020).

³ See https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200402-sitrep-73-covid-19.pdf?sfvrsn=5ae25bc7_4#:~:text=The%20incubation%20period%20for%20COVID,occur%20before%20symptom%20onset (last viewed on July 9, 2020).

COVID-19 if they breathe in droplets from an infected person who coughs out or exhales droplets.”⁴

22. WHO has confirmed that COVID-19 can exist on objects or surfaces and that the transmission of COVID-19 can occur by indirect contact with surfaces in the immediate environment or with objects that were touched by an infected person hours before.⁵

23. Likewise, a study documented in *The New England Journal of Medicine* established that COVID-19 can remain present in aerosols for up to three hours, up to four hours on copper, up to 24 hours on cardboard, and up to three days on plastic and stainless steel.⁶

24. The study’s results further confirmed that individuals can become infected with COVID-19 through indirect contact with surfaces or objects contacted by an infected person, whether or not they were symptomatic.⁷

B. Civil Authority Orders Because of COVID-19 and Related Physical Loss or Damage to Property

25. In an effort to slow the spread of COVID-19, and as a consequence of physical damage caused by COVID-19, federal, state, and local governments imposed unprecedented civil orders and advisements. These measures included the restriction of travel to the United States, requiring certain businesses to close and requiring residents to remain in their homes unless performing “essential” activities, such as going to the grocery store or pharmacy, or seeking medical care (“Stay at Home Orders” or “Orders”).

⁴ See <https://www.who.int/news-room/q-a-detail/q-acoronaviruses> (last viewed on July 9, 2020).

⁵ See <https://www.who.int/news-room/commentaries/detail/modes-of-transmission-of-virus-causing-covid-19-implications-for-ipc-precaution-recommendations> (last viewed on July 9, 2020).

⁶ See <https://www.nih.gov/news-events/news-releases/new-coronavirus-stable-hours-surfaces> (last viewed July 9, 2020); see also <https://www.who.int/news-room/commentaries/detail/modes-of-transmission-of-virus-causing-covid-19-implications-for-ipc-precaution-recommendations> (last viewed July 9, 2020).

⁷ See Id.

26. The Stay at Home Orders typically required businesses deemed “non-essential” to close their doors and stop all in-person work.

27. However, even businesses classified as “essential” have been severely impacted by the pandemic and Stay at Home Orders.

28. Stay at Home Orders remain in effect as of the date of this filing and have caused the suspension and/or limiting of both non-essential and essential businesses.

29. As a business that relies on customers, vendors, and suppliers locally, from across the country, and around the world, Plaintiffs are directly affected by Stay at Home Orders, wherever issued.

30. Stay at Home Orders, the damage caused by COVID-19, the transmission of COVID-19, and Plaintiffs’ efforts to preserve and protect their property from COVID-19 have had a devastating impact on Plaintiffs’ business.

31. Simply stated, Toyota Center has lost its functionality and has been impaired by the existence of COVID-19.

32. One of the first publicized cases of COVID-19 in Houston was that of a visitor to the Houston Livestock Show and Rodeo World’s Championship Bar-B-Que Contest (“Cook-Off”).

33. On March 11, 2020, City officials confirmed that the attendee, who went to the Cook-Off on February 28, 2020, tested presumptively positive for COVID-19.

34. That same day, Houston Mayor Sylvester Turner and Harris County Judge Lina Hidalgo, to minimize the risk of exposure to COVID-19 and to promote the health and safety of

Harris County residents, issued a Declaration of Local Disaster for Public Health Emergency and cancelled the remainder of the Houston Livestock Show and Rodeo.⁸

35. Eventually, City and County officials revealed that not just one person, but at least four people who had attended the Cook-Off on February 28, 2020 later tested positive for COVID-19.

36. Also on March 11, 2020, the NBA indefinitely postponed the remainder of its 2019-2020 season after a Utah Jazz player tested positive for COVID-19.

37. Then, on March 12, 2020, the NCAA cancelled the 2020 basketball tournament, which was to be hosted in part at Toyota Center (South Regionals March 27-29, 2020), and the McDonald's All-American Game announced the cancellation of the 2020 games, which were scheduled for April 1, 2020 that were also to be held at Toyota Center.

38. Those cancellations were followed by AEG's and Live Nation's announcement which postponed all concerts and events nationwide beginning March 12, 2020.

39. By this time, *every event through April 1, 2020, scheduled at Toyota Center was suspended or cancelled due to COVID-19.*

40. Legal orders from government authorities in Texas swiftly followed, which severely restricted businesses throughout Harris County, Texas. The orders directly affecting the City of Houston are summarized below.

41. On March 13, 2020, the Governor of the State of Texas, Greg Abbott, issued a proclamation certifying that COVID-19 posed an imminent threat of disaster in the State of Texas and declared a state of disaster for all counties in the State of Texas.⁹

⁸ <https://www.houstontx.gov/mayor/press/2020/public-health-emergency-declared-covid-19.html> (last viewed on July 9, 2020).

42. On March 17, 2020, the Commissioners Court of Harris County extended the March 11, 2020 Declaration of Local Disaster for Public Health Emergency and mandated the closure of all bars and dine-in restaurants.¹⁰

43. On March 19, 2020 the Commissioner of the Department of State Health Services, John W. Hellerstedt, M.D., and Governor Abbott, issued a Declaration of a Public Health Disaster in the State of Texas, which among other things, prohibited Texans from gathering in groups of ten or more.¹¹

44. On March, 24, 2020, Judge Hidalgo, extended the Declaration of Local Disaster for Public Health Emergency to April 29, 2020 and issued a “Stay Home Work Safe” order, which prohibited public or private gatherings of any number of people and provided that all residents in the county remain at home other than to leave for Essential Activities as defined in the order. Further, the order required all businesses operating in Harris County to cease all activities at facilities located in the county, except Essential Businesses as defined in the order. As a result, Toyota Center was forced to close to the public, access was restricted to only essential personnel, and has been unable to host events.¹²

45. On March 31, 2020, Governor Abbott, issued Executive Order No. GA-14 relating to the continuity of essential services and activities in the State of Texas, while

⁹ https://gov.texas.gov/uploads/files/press/DISASTER_covid19_disaster_proclamation_IMAGE_03-13-2020.pdf (last viewed on July 9, 2020).

¹⁰ <https://agenda.harriscountytexas.gov/2020/DisasterDeclarationExtension.pdf> (last viewed on July 9, 2020).

¹¹

https://www.westutx.gov/DocumentCenter/View/5526/DECLARATION_of_public_health_disaster_Dr_Hellerstedt_03-19-2020 (last viewed on July 9, 2020); https://www.westutx.gov/DocumentCenter/View/5525/EO-GA_08_COVID-19_preparedness_and_mitigation_FINAL_03-19-2020_1 (last viewed on July 9, 2020).

¹² <https://agenda.harriscountytexas.gov/2020/ExtensionLocalDisasterMarch24.pdf> (last viewed on July 9, 2020); <https://agenda.harriscountytexas.gov/2020/03-24-20StayHomeWorkSafe.pdf> (last viewed on July 9, 2020).

restricting non-essential services during the COVID-19 disaster through at least April 30, 2020, with Harris County commensurately extending its Stay Home Work Safe Order.¹³

46. On April 17, 2020, Governor Abbott, issued Executive Order GA-16 relating to the safe, strategic reopening of select retail services that were not deemed as “essential services” as the first step to start opening businesses again in the State of Texas (“Open Texas”). These reopened services were limited to those businesses whose services could be provided through pickup, delivery by mail, or delivery to the customer’s doorstep.¹⁴

47. That same day, Governor Abbott, issued Executive Order GA-17, relating to the establishment of the Governor’s Strike Force to Open Texas to study and make recommendations on safely and strategically restarting the State of Texas work, entertainment, and culture.¹⁵

48. On April 27, 2020, Governor Abbott, issued Executive Order GA-18, effective through May, 15, 2020, which established new limited guidelines for certain types of businesses (that did not include Toyota Center) to reopen at twenty-five percent (25%) capacity.¹⁶

49. On April 28, 2020, the Commissioner’s Court of Harris County, issued an Order to Extend the Declaration of Local Disaster for Public Health Emergency to May 20, 2020.¹⁷

¹³ https://gov.texas.gov/uploads/files/press/EO-GA-14_Statewide_Essential_Service_and_Activity_COVID-19_IMAGE_03-31-2020.pdf (last viewed on July 9, 2020); <https://www.readyharris.org/Newsroom/News-Releases/All-News-Releases/harris-county-judge-lina-hidalgo-extends-stay-at-home-work-safe-order-to-april-30> (last viewed on July 9, 2020).

¹⁴ https://www.westutx.gov/DocumentCenter/View/5553/EO-GA-16_Opening_Texas_COVID-19_FINAL_04-17-2020 (last viewed on July 9, 2020).

¹⁵ https://gov.texas.gov/uploads/files/press/EO-GA-17_Open_Texas_Strike_Force_COVID-19_IMAGE_04-17-2020.pdf (last viewed on July 9, 2020).

¹⁶ https://gov.texas.gov/uploads/files/press/EO-GA-18_expanded_reopening_of_services_COVID-19.pdf (Last viewed on July 9, 2020).

¹⁷ <https://agenda.harriscountytexas.gov/2020/2020-04-28-22k2.pdf> (last viewed on July 9, 2020).

50. On May 1, 2020, Judge Hidalgo, issued Harris County's Second Amended Stay Home, Work Safe Order, effective through May 20, 2020, which required all non-essential businesses to remain closed or to cease all activities including among others, interactive amusement venues, indoor sports areas, and any facilities that are used or intended to be used for any type of sport or recreation.¹⁸

51. On May 5, 2020, Governor Abbott, issued Executive Order GA-21, relating to the expanded reopening of services as part of the safe, strategic plan to Open Texas and which continued to exclude Toyota Center.¹⁹

52. On May 18, 2020 Governor Abbott, issued Executive Order GA-23, relating to the expanded opening of Texas in response to the COVID-19 disaster, which provided that, starting on May 31, 2020, for all Texas counties, professional basketball and other sporting events with no spectators physically present on the premises of the venue, may be conducted as approved on a league-by-league basis by the Texas Department of State Health Services, in consultation with the Office of the Governor and any recommendations by the advisory Strike Force to Open Texas, subject to certain requirements, including but not limited to, whether the league has submitted a plan that applies to all events and meets the minimum health and safety standards.²⁰

53. To date, however, while the NBA has finalized a plan to resume its 2019-2020 season, its current proposal involves all games being played at a remote location, without spectators, at the ESPN Wide World of Sports Complex at Walt Disney World Resort ("NBA

¹⁸ <https://agenda.harriscountytexas.gov/2020/20200501Order.pdf> (last viewed on July 9, 2020).

¹⁹ https://www.westutx.gov/DocumentCenter/View/5671/EO-GA-21-Expanding-Reopening-of-Services_Final_05-05-2020 (last viewed on July 9, 2020).

²⁰ https://gov.texas.gov/uploads/files/press/EO-GA-23_phase_two_expanding_opening_COVID-19.pdf (last viewed on July 9, 2020).

Complex”), near Orlando, Florida. The NBA’s plan does not include any games being played at Toyota Center.²¹

54. On May 19, 2020, Harris County Commissioner’s Court extended Harris County’s Disaster Declaration through June 10, 2020.²²

55. On June 3, 2020, Governor Abbott, issued Executive Order GA-26, relating to the opening of Texas in response to COVID-19, providing that every businesses establishment in Texas shall operate at no more than fifty percent (50%) of the total listed occupancy of the establishment.²³

56. On June 19, 2020, Judge Hidalgo, issued an Executive Order Regarding Health and Safety Policy and Face Coverings, providing that the Harris County Commissioners Court’s Declaration of Local Disaster for Public Health Emergency was effective unless extended, modified, or terminated early by Judge Hidalgo, that all commercial entities develop, post, and implement a health and safety policy, and that face coverings must be worn in public.²⁴

57. On June 26, 2020, Governor Abbott, issued Executive Order GA-28, relating to the targeted response to the COVID-19 disaster as part of the reopening of Texas, providing that every business establishment in Texas shall operate at no more than fifty percent (50%) of the total listed occupancy of the establishment and that the order shall remain in effect until it is modified, amended, rescinded, or superseded by the governor.²⁵

²¹ <https://www.nba.com/nba-returns-2020-faq> (last visited on July 9, 2020).

²² <https://agenda.harriscountytexas.gov/2020/20200519-25g2.pdf> (last viewed on July 9, 2020).

²³ https://gov.texas.gov/uploads/files/press/EO-GA-26_expanded_opening_COVID-19.pdf (last viewed on July 9, 2020).

²⁴ https://www.westutx.gov/DocumentCenter/View/6018/06-19-20_Health_and_Safety_Policy_and_Mask_signed_order (last viewed on July 9, 2020).

²⁵ https://gov.texas.gov/uploads/files/press/EO-GA-28_targeted_response_to_reopening_COVID-19.pdf (last viewed on July 9, 2020).

58. On July 1, 2020, Judge Hidalgo, issued an Amended Order Regarding Health and Safety Policy and Face Coverings, providing that the Harris County Commissioner Court's Declaration of Local Disaster for Public Health Emergency was effective through August 26, 2020, unless extended, modified or terminated early by Judge Hidalgo and incorporated and adopted Governor Abbott's, Executive Order GA-28.²⁶

59. As a direct result of COVID-19 and these orders, issued directly because of physical damage to property, and to prevent further immediately impending physical damage to property, Toyota Center has been forced to close its doors indefinitely since March 24, 2020 resulting in, to date, at least 29 cancelled events, including: 20 third-party events (*i.e.*, concerts) and nine Houston Rockets regular-season home games, as well as an undetermined number of playoff games.

C. Plaintiffs' "All Risks" Policy

60. The Policy covers property located at 1510 Polk Street, Houston, Texas 77002 "against ALL RISKS OF PHYSICAL LOSS OR DAMAGE, except as hereinafter excluded..." See Exhibit A, All Risk Coverage Form, at 1 of 44.

61. AFM drafted the Policy.

62. Pursuant to the "Communicable Disease – Property Damage" additional coverage, the Policy expressly covers, among other things, "the reasonable and necessary costs incurred ... for the: (a) Cleanup, removal and disposal of ... communicable disease from insured property."²⁷ See Exhibit A, All Risk Coverage Form, at 6 of 44.

²⁶ <https://www.westutx.gov/DocumentCenter/View/6038/Harris-County-2020-06-30-FINAL-Amended-Health-and-Safety-Policy-and-Mask-Order> (last viewed on July 9, 2020).

²⁷ Terms defined in the Policy are signified by the use of **bold** typeface. Unless otherwise stated, the use of **bold** typeface signifies the use of same in the Policy.

63. By providing for the “cleanup, removal and disposal of ... **communicable disease**,” the Policy explicitly recognizes that **communicable disease** physically damages property.

64. Accordingly, because the Policy specifically covers remediation of the damage caused by **communicable disease**, the physical damage to property caused by **communicable disease** is “physical damage of the type insured” under the Policy.

1. COVID-19 Triggered Coverage Under the “All Risks” Policy

65. The existence and actual presence of COVID-19 at Toyota Center has triggered coverage under the Policy.

66. In addition, the existence and presence of COVID-19 on property away from Toyota Center has triggered coverage under the Policy.

67. COVID-19 has caused (and continues to cause) physical loss and physical damage to property, including Toyota Center’s property. The property has been impaired. COVID-19 also has impaired many properties within and without a five-mile radius of Toyota Center.

68. The loss of functionality is no less physical than the impact of a property having lost its roof to a tornado or hurricane. Where once the property could carry on its business function, the property with a blown away and crumbling roof cannot operate in that way. Where once the property could seat patrons away from the elements, it can no longer do so. That is physical damage, as is the loss of function at Toyota Center caused by COVID-19.

69. COVID-19 has also caused (and continues to cause) Plaintiffs to experience covered business interruption.

70. Plaintiffs have submitted a claim pursuant to the Policy as a result of sustaining losses covered by the Policy. Notwithstanding that fact, AFM has denied and limited coverage for Plaintiffs' claim by contending that no physical loss has taken place and that various exclusions apply to Plaintiffs' loss. AFM has done so in bad faith, based on an apparent systematic company practice designed to minimize payments for covered COVID-19 claims.

2. Multiple Coverages are Triggered under the "All Risks" Policy

71. In addition to triggering the Policy's "all risks" coverage, Plaintiffs' claim also triggers multiple "Additional Coverages" and "Coverage Extensions" provided under the Policy including but not limited to the following.

i. COVID-19 Triggered the Policy's Communicable Disease – Property Damage and Communicable Disease – Business Interruption Coverage

72. The actual presence of COVID-19 at Toyota Center has caused physical damage to its property, resulting in the issuance of orders by authorized governmental agencies regulating communicable disease, thereby triggering coverage under the Policy's Communicable Disease – Property Damage coverage.

73. The business interruption losses sustained by Toyota Center as a result of such civil authority orders issued because of the actual presence of COVID-19 at Toyota Center triggers coverage under the Policy's Communicable Disease – Business Interruption coverage.

74. Plaintiffs sustained losses due to access limitations or restrictions or prohibitions caused by the actual presence of COVID-19 at Toyota Center.

75. AFM is liable under the Policy for such losses under the Policy's Communicable Disease – Property Damage and Communicable Disease – Business Interruption coverage.

ii. COVID-19 Triggered the Policy's Protection and Preservation of Property – Property Damage and Protection and Preservation of Property – Business Interruption Coverage

76. COVID-19 also has caused and continues to cause actual physical loss and damage to insured property. In addition, COVID-19 has threatened and continues to threaten to cause immediately impending physical loss and damage to property.

77. This actual and threatened physical loss and damage to insured property has prompted Plaintiffs to take action to temporarily protect or preserve its property, thereby triggering the Policy's Protection and Preservation of Property – Property Damage and Protection and Preservation of Property – Business Interruption Coverage.

iii. COVID-19 Triggered the Policy's Business Interruption Coverage

78. The Policy affords coverage for Plaintiffs' business interruption losses, subject to the Policy's terms and conditions.

79. COVID-19 has caused Plaintiffs to suffer business interruption loss as a direct result of physical loss and damage of the type insured under the Policy.

80. This loss triggers coverage under the Policy's Business Interruption provisions including, without limitation, coverage for up to 365 days of Gross Earnings loss, Gross Profits loss, and Rental Income Loss.

iv. COVID-19 Triggered the Policy's Extra Expense Coverage

81. COVID-19 has caused Plaintiffs to incur reasonable and necessary expenses to continue, as close to normal as possible, the conduct of Plaintiffs' business. Such expenses are beyond those that would have normally been incurred in conducting the business absent the presence of COVID-19.

82. The expense incurred by Plaintiffs beyond those necessary in the normal operation of its business solely as a result of the physical loss and damage caused by COVID-19 trigger coverage under the Policy's Extra Expense coverage.

v. COVID-19 Triggered the Policy's Attraction Property Coverage

83. COVID-19 has also caused, and is continuing to cause, physical loss and damage to property away from Toyota Center, including property within one statute mile of Toyota Center that attracts business to Toyota Center.

84. Plaintiffs have sustained, and will continue to sustain, a loss of business income directly resulting from physical loss and damage of the type insured to property of the type insured that attracts business to Toyota Center.

vi. COVID-19 Triggered the Policy's Civil Authority Coverage

85. The physical damage caused by the presence of COVID-19 at property located within five statute miles of Toyota Center has directly resulted in the issuance of orders and directives by Governor Abbott and other civil authorities prohibiting access to Toyota Center.

86. Plaintiffs have sustained, and will continue to sustain, business interruption losses because orders from civil authorities issued as a direct result of physical damage of the type insured at Toyota Center or within five statute miles of Toyota Center, have prohibited access to Toyota Center.

vii. COVID-19 Triggered the Policy's Ingress/Egress Coverage

87. COVID-19 and the physical loss and damage it has caused, and continues to cause, has resulted in the necessary interruption of Plaintiffs' business by totally or partially preventing ingress to or egress from Toyota Center as a direct result of physical loss and damage of the type insured to property of the type insured.

88. The business interruption losses sustained by Plaintiffs as a result of the necessary suspension of Plaintiffs' business as a result of the total or partial denial of access to Toyota Center triggers the coverage under the Policy's Ingress/Egress coverage.

viii. COVID-19 Triggered the Policy's Supply Chain Coverage

89. COVID-19 has caused, and continues to cause, physical loss and damage of the type insured to property of the type insured at the premises of Plaintiffs' direct customers and direct contract service providers, and the direct and indirect suppliers, customers, and contract service providers of Plaintiffs' direct customers and contract service providers.

90. The loss of business income sustained by Plaintiffs as a result of such supply chain interruption(s) triggers coverage under the Policy's Supply Chain coverage.

3. No Exclusion Impacts Coverage

91. No exclusion in the Policy applies to preclude or limit coverage for the actual presence of COVID-19 at or away from Toyota Center, the physical loss and damage to property at Toyota Center, and/or the business interruption losses that has and will continue to result from the physical loss and damage to property. To the extent that AFM contends any exclusion(s) apply, such exclusion(s) are unenforceable.

4. The Policy's Contamination Exclusion Does Not Apply

92. The Policy's "Communicable Disease – Property Damage" coverage provides coverage for, among other things, "the reasonable and necessary costs incurred...for the: (a) Cleanup, removal and disposal of ... **communicable disease** from insured property." See Exhibit A, All Risk Coverage Form, at 7 of 44.

93. AFM has stated, in writing, that COVID-19 meets the definition of **communicable disease** under the Policy.

94. The Policy also contain an exclusion that purports to preclude coverage for “**contamination**.” *See* Exhibit A, All Risk Coverage Form, at 5 of 44.

95. The Policy defines “**contamination**” as, “any condition of property due to the actual or suspected presence of any foreign substance, impurity, pollutant, hazardous material, poison, toxin, pathogen, or pathogenic organism, bacteria, virus, disease causing or illness causing agent, fungus, mold or mildew. *See* Exhibit A, All Risk Coverage Form, at 42 of 44.

96. The Policy’s “**contamination**” exclusion does not exclude coverage for loss caused by “communicable disease.”

97. The Policy’s “**contamination**” exclusion does not exclude coverage for immediate costs to protect or preserve insured property due impending physical loss or damage.”

98. The Policy’s “**contamination**” exclusion does not purport to exclude coverage for business interruption losses. The Policy has three types of exclusions: Group I, Group II, and Group III. The contamination exclusion is a Group III exclusion.

99. Group I exclusions specifically exclude coverage for business interruption losses caused by particular risk of loss, such as nuclear reaction, war, and rebellion. Group I exclusions do so by stating specifically in its prefatory phrase that “This Policy excludes *loss or damage directly or indirectly caused by or resulting from any of the following ...*”

100. Group II and III exclusions, however, do not exclude business interruption losses. The prefatory language to those two groups of exclusion does not state explicitly or otherwise that it is excluding loss. Instead, the two groups of exclusions exclude particular conditions of property, rather than seeking to exclude any loss or damage arising from a particular cause.

101. The contamination exclusion itself does not exclude losses from contamination, but, rather, the costs to remedy contamination and, in particular, the cost to decontaminate and the cost to use other non-contaminated space.

102. To the extent that AFM contends that the Policy’s “**contamination**” exclusion bars coverage for loss caused by “**communicable disease**,” cost incurred to preserve or protect insured property, business interruption loss, or some other aspect of Plaintiffs’ claim, the Policy is, at best, ambiguous, and therefore, must be construed in favor of coverage.

5. The Policy’s Communicable Disease Sublimit Does Not Cap Plaintiffs’ Losses

103. Under the Policy, AFM must cover Plaintiffs for the actual presence of “communicable disease” at Toyota Center, pursuant to two sections in the Policy, titled “Communicable Disease – Property Damage” and “Communicable Disease – Business Interruption” (collectively, “Communicable Disease Sublimits”).

104. These two Communicable Disease Coverages are denoted as Additional Coverages or Coverage Extensions and do not purport to reduce other coverages available under the Policy. They are additive. Other coverages under the Policy that might also apply to loss or damage from or caused by virus, the threat of virus, or communicable disease or the threat of communicable disease, are not impacted by the Communicable Disease Sublimits. Further, any sublimit applicable to the Communicable Disease Sublimits Coverages does not apply to limit the Policy’s other coverages that may apply to physical loss or damage to Toyota Center.

D. AFM’s Bad Faith Conduct

i. AFM Conducted an Inadequate and Improper Investigation of Plaintiffs’ Claim

105. AFM is subsidiary of FM Global and is under its control.

106. Based on information and belief, FM Global and AFM are, in fact, engaged in a calculated scheme to deny Plaintiffs’ and its other insureds’ similar COVID-19 related claims.

107. FM Global's and AFM's systemic practice and procedure is noted in FM Global's internal memo, entitled "Talking Points on the Novel 2019 Coronavirus." *See* Exhibit B, "Talking Points."

108. On information and belief, AFM follows FM Global's Talking Points.

109. The FM Global Talking Points incorrectly and summarily state that the Policy coverages for Civil or Military Authority, Contingent Time Element Extended, and Ingress/Egress do not apply because "[a] virus will typically not cause physical damage" and because "the presence of a communicable disease does not constitute physical damage and is not of the type insured against. . ." *See* Exhibit B, Talking Points.

110. FM Global's inclusion of only the Communicable Disease Sublimits in its Talking Points causes FM Global's and AFM's adjusters to request information tied only to Communicable Disease Sublimits.

111. Nothing in the Policy states that such specificity in a civil order is required, nor does the ingress/egress coverage require such specificity. *See* Exhibit A, Policy.

112. In the face of FM Global's and AFM's bad faith coverage position, Plaintiffs' Policy explicitly acknowledges that the presence of communicable disease causes physical damage to property because it provides coverage for the resulting "cleanup, removal and disposal of . . . communicable disease."

113. The FM Global Talking Points document is an effort to maneuver the investigation and impending decision on coverage to only the Communicable Disease Sublimits.

114. The FM Global Talking Points instruct claims adjusters, including AFM adjusters, to reach conclusions without considering the specific facts related to an insured's particular claim, and without considering the applicable law which controls the insurance policy's interpretation.

115. FM Global's and AFM's actions, including but not limited to the Talking Points, are in direct opposition to the accepted practices of good faith insurance claims handling.

116. FM Global's and AFM's explicit practice and procedure on COVID-19-related claims constitute an unfair or deceptive act or practice and bad faith.

117. FM Global's and AFM's actions in using the Talking Points demonstrates an intentional, conscious disregard of Plaintiffs' rights under the Policy.

118. FM Global and AFM intentionally continued to place arbitrary requirements on the coverage under Plaintiffs' Policy.

119. FM Global's and AFM's intentional imposition of arbitrary requirements in Plaintiffs' Policy are unreasonable and are done in bad faith.

120. FM Global and AFM have not only intentionally failed to apply their own Policy language in good faith, but have also intentionally conducted a pretextual investigation with a pre-determined decision based on the arbitrary conclusions in the Talking Points. FM Global and AFM have additionally intentionally failed to consider the relevant facts related to Plaintiffs' *entire* claim against the Policy language.

121. AFM has effectively denied Plaintiffs' claim on June 29, 2020 and in doing so has knowingly or recklessly failed to conduct a reasonable investigation of Plaintiffs' claim knowing their denial lacked any reasonable basis, and, therefore, the basis for AFM's denial is unreasonable.

122. Therefore, Plaintiffs have suffered and continue to suffer substantial damages due to FM Global's and AFM's wrongful denial and bad faith conduct.

CLAIMS ALLEGED

COUNT I

Declaratory Judgment

123. Plaintiffs repeat and reallege the allegations in Paragraphs 1-124, as if fully set forth herein.

124. Plaintiffs seek the Court's declaration of the parties' rights and duties under the Policy, pursuant to Rhode Island Superior Court Rules of Civil Procedure 57 and R.I.G.L. § 9-30-2. A justiciable controversy exists between Plaintiffs and AFM regarding the availability of coverage under the Policy for Plaintiffs' claims.

125. Accordingly, Plaintiffs seek a declaration from the Court that:

- a. The various coverage provisions identified herein are triggered by Plaintiffs' claim;
- b. No Policy exclusion applies to bar or limit coverage for Plaintiffs' claim; and
- c. The Policy covers Plaintiffs' claim.

COUNT II

Breach of Contract (Property Damage)

126. Plaintiffs repeat and reallege the allegations in Paragraphs 1-124, as if fully set forth herein.

127. The Policy is a valid and enforceable contract between Plaintiffs and AFM.

128. In the Policy, AFM agreed to cover property against all risks of physical loss or damage not otherwise excluded.

129. COVID-19 has caused and is continuing to cause physical loss and/or physical damage to Plaintiffs' property.

130. No exclusions apply to bar coverage.

131. Plaintiffs are entitled to coverage for the physical loss and/or damage up to the Policy's \$412 million per occurrence limit of liability of liability per occurrence or any applicable sublimits.

132. Plaintiffs complied with all applicable Policy provisions, including paying premiums and providing timely notice of its claim.

133. Nonetheless, AFM unjustifiably refuses to pay for Plaintiffs' physical loss or damage in breach of the Policy.

134. Plaintiffs have suffered and continue to suffer damages as a result of AFM's breach(es) of the Policy.

135. Plaintiffs are entitled to damages as a result of AFM's breach in an amount to be determined at trial, including pre- and post-judgment interest and any other costs and relief that this Court deems appropriate.

COUNT III

Breach of Contract **(Business Interruption)**

136. Plaintiffs repeat and reallege the allegations in Paragraphs 1-124, as if fully set forth herein.

137. The Policy is a valid and enforceable contract between Plaintiffs and AFM.

138. In the Policy, AFM agreed to cover Business Interruption loss and Incurred Extra Expense, as provided in the Business Interruption Coverage, as a direct result of physical loss or damage of the type insured under the Policy.

139. COVID-19 has caused and, upon information and belief, is continuing to cause, physical loss and/or physical damage to Plaintiffs' property and the property of others that has caused Plaintiffs to suffer business interruption losses and incur extra expenses.

140. No exclusions bar to apply coverage.

141. Plaintiffs are entitled to coverage for their business interruption losses and incurred extra expenses related to COVID-19 up to the Policy's per occurrence limits of liability for business interruption losses per occurrence or any applicable sublimits.

142. Plaintiffs complied with all applicable Policy provisions, including paying premiums and providing timely notice of its claim.

143. Nonetheless, AFM unjustifiably refuses to pay for these losses and expenses in breach of the Policy.

144. Plaintiffs have suffered and continue to suffer damages as a result of AFM's breach of the Policy.

145. Plaintiffs are entitled to damages as a result of AFM's breach in an amount to be determined at trial, including pre- and post-judgment interest and any other costs and relief that this Court deems appropriate.

COUNT IV

Breach of Contract **(Additional Coverages and Coverage Extensions)**

146. Plaintiffs repeat and reallege the allegations in Paragraphs 1-124, as if fully set forth herein.

147. The Policy is a valid enforceable contract between Plaintiffs and AFM.

148. In the Policy, AFM agreed to afford additional coverage as provided in the Policy's Additional Coverages and Coverage Extensions.

149. COVID-19 has caused and, upon information and belief, is continuing to cause, physical loss and/or physical damage to Plaintiffs' property and the property of others that has caused Plaintiffs to suffer losses under the Policy's Additional Coverages and Coverage Extensions.

150. No exclusions apply to bar coverage.

151. Plaintiffs are entitled to coverage for losses related to COVID-19 up to each Additional Coverage's and Coverage Extension's limit of liability or any applicable sublimits.

152. Plaintiffs complied with all applicable Policy provisions, including paying premiums and providing timely notice of its claim.

153. Nonetheless, AFM unjustifiably refuses to pay for these losses and expenses in breach of the Policy.

154. Plaintiffs have suffered and continue to suffer damages as a result of AFM's breach of the Policy.

155. Plaintiffs are entitled to damages as a result of AFM's breach in an amount to be determined at trial, including pre- and post-judgment interest and any other costs and relief that this Court deems appropriate.

COUNT V

Breach of the Covenant of Good Faith and Fair Dealing

156. Plaintiffs repeat and reallege the allegations in Paragraphs 1-124, as if fully set forth herein.

157. AFM has denied Plaintiffs' claim for coverage under the Policy relating to its losses from COVID-19.

158. AFM's denial of Plaintiffs' claim lacks any reasonable basis.

159. AFM has failed to conduct a reasonable investigation of Plaintiffs' claim under the Policy and, therefore, AFM's basis for its denial is unreasonable.

160. AFM employed a systematic "one-size-fits-all" approach to adjusting and denying coverage for all COVID-19 claims, including Plaintiffs' claim.

161. AFM knew or was actually or implicitly aware of the lack of any reasonable basis to deny coverage.

162. AFM acted with reckless disregard as to the unreasonableness of its denial.

163. AFM breached its duty of good faith and fair dealing by failing to reasonably investigate Plaintiffs' claim and provide coverage.

164. AFM's denial of coverage constitutes bad faith.

165. As a result of AFM's bad faith, Plaintiffs have suffered and are continuing to suffer damages.

166. Plaintiffs are entitled to an award of damages as a result of AFM's bad faith in an amount to be determined at trial, including attorney's fees, pre- and post-judgment interest and any other costs and relief that this Court deems appropriate.

COUNT VI

Violation of the Texas Unfair Claim Settlement Practices Act – Tex. Ins. Code §542.001 and Tex. Ins. Code § 541

167. Plaintiffs repeat and reallege the allegations in Paragraphs 1-124, as if fully set forth herein.

168. AFM's systemic practice of mischaracterizing the facts provided by policyholders in connection with claims for coverage for losses from COVID-19 constitutes an unfair or deceptive act or practice in the business of insurance, pursuant to Tex. Ins. Code §542.003(b)(1).

169. AFM's use of the AFM Talking Points with pre-determined conclusions regarding coverage for claims based on losses from COVID-19 without consideration of the particular facts or applicable law constitutes an unfair or deceptive act or practice in the business of insurance pursuant to Tex. Ins. Code §542.003(b)(1), (3) and §541.060(3).

170. AFM's systemic practice and policy of denying coverage for claims by policyholders for losses from COVID-19 without conducting an adequate investigation of the facts and applicable law constitutes an unfair or deceptive act or practice in the business of insurance, pursuant to Tex. Ins. Code §542.003(b)(1), (3) and §541.060(3).

171. AFM has failed to adopt and implement reasonable standards for the prompt investigation and processing of claims related to losses based on COVID-19, which constitutes a violation of Tex. Ins. Code §542.003(3) and §541.060(3).

172. AFM's systemic practices and procedures have compelled Plaintiffs to institute this litigation to recover amounts due under the Policy by attempting to restrict Plaintiffs' recovery to the limited coverage available for communicable disease, which constitutes a violation of Tex. Ins. Code §542.003(b)(5).

173. As a result of AFM's unfair or deceptive acts or practices, Plaintiffs have suffered and are continuing to suffer damages.

174. Plaintiffs are entitled to an award of damages as a result of AFM's unfair or deceptive acts or practices in an amount to be determined at trial, including attorney's fees, pre- and post-judgment interest and any other costs and relief that this Court deems appropriate.

COUNT VII

Bad Faith – R.I.G.L. § 9-1-33

175. Plaintiffs repeat and reallege the allegations in Paragraphs 1-124, as if fully set forth herein.

176. The acts and omissions of AFM as complained of in this Complaint, and also yet to be discovered in this matter, constitute bad faith under R.I.G.L. § 9-1-33.

177. Plaintiffs sustained damages due to the physical presence of COVID-19, the existence and ongoing threat of COVID-19, and the civil authority orders prohibiting large gatherings resulting from COVID-19, but AFM has failed to comply with its obligation and has failed to compensate Plaintiffs for their claim.

178. Plaintiffs are entitled to compensatory damages and punitive damages as a result of AFM's bad faith.

179. Plaintiffs have been required to retain the services of attorneys to commence this action and are further entitled to attorneys' fees and costs.

V. REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court enter judgment in their favor and against AFM as follows:

- 1) A declaration from the Court that:
 - a. The various coverage provisions identified herein are triggered by Plaintiffs' claim;
 - b. No Policy exclusion applies to bar or limit coverage for Plaintiffs' claim;
and
 - c. The Policy covers Plaintiffs' claim.
- 2) For special and consequential damages against AFM in an amount to be proved at trial, in excess of \$10,000;
- 3) Pre- and post-judgment interest, as provided by law;
- 4) An award of attorney's fees and costs of suit incurred; and
- 5) For such other and further relief as the Court deems just and proper.

VI. JURY TRIAL DEMANDED

Plaintiffs demand a trial by jury on all issues so triable.

Date: July 15, 2020

Respectfully submitted,

/s/ Stephen M. Prignano

Stephen M. Prignano (#3649)

MCINTYRE TATE LLP

50 Park Row West, Suite 109

Providence, Rhode Island 02903

Telephone: 401-351-7700

Facsimile: 401-331-6095

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***Counsel for Plaintiffs Clutch City Sports &
Entertainment, L.P. and Rocket Ball, Ltd.***

* Petition for Admission *Pro Hac Vice* to be filed

EXHIBIT A



Affiliated FM Insurance Company
P.O Box 7500
Johnston, RI 02919

DECLARATIONS PAGE

Policy No.	Previous Policy No.	DATE OF ISSUE
GS960	GS659	10-Oct-2019
Account No.		
1-53590		

In consideration of this Policy's Provisions, Conditions, Stipulations, Exclusions and Limits of Liability, and the premium charged, Affiliated FM Insurance Company, hereinafter referred to as the "Company", does insure:

INSURED:

Clutch City Sports & Entertainment, L.P.
1510 Polk Street
Houston, TX 77002

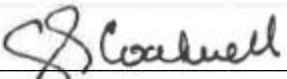
(For Complete Title See Policy)

The term of this Policy is from the **6th day of October 2019 to the 6th day of October 2020 at 12:01a.m.**, Standard Time, at the Locations of property involved as provided in this Policy.

This Policy covers property, as described in this Policy, against ALL RISKS OF PHYSICAL LOSS OR DAMAGE, except as hereinafter excluded, while located as described in this Policy.

This Policy is made and accepted subject to the above provisions and those hereinafter stated, which are made a part of this Policy, together with such other provisions and agreements as may be added to this Policy.

In Witness, this Company has issued this Policy at its office in Frisco, Texas this 10th day of October 2019.


Authorized Signature
ESC/ace


Secretary


President



Member of the FM Global Group

270 Central Ave
Johnston, RI 02919
www.affiliatedfm.com

Thank you for placing your property insurance with AFM. We believe insurance should be straightforward and certain. That is why our proVision® 4100 policy is easy to read and navigate, while providing you broad coverage.

In addition to providing property insurance, AFM would like to help you protect your business and achieve your goals. In partnering with AFM, you have the strength of FM Global Group behind you, including a strong balance sheet and access to our market-leading loss prevention engineering products and services that are based on more than 180 years of experience as a property specialist. We are eager to work with you and your broker to choose how to best identify, prioritize and reduce future loss in a way that makes practical and affordable sense.

Our engineering services, combined with the comprehensive coverage of our proVision 4100, will give you peace of mind and allow you to focus on what matters most—making your business thrive. We are committed to maintaining a long-term, mutually beneficial relationship with you. And, it is our hope that you will take advantage of the many tools and resources we offer our clients, such as online training, onsite policy workshops and access to AFM Online, our powerful extranet that includes policy documents and data-driven risk management tools.

If you have any questions or concerns, please do not hesitate to contact your local account team.

Respectfully,

A handwritten signature in black ink, appearing to read 'James R. Galloway', is written in a cursive style.

James R. Galloway
Senior Vice President, AFM

Loss Reporting and Contact Information Dallas Operations



Claims Manager:

Richard Judd
Affiliated FM Insurance Company
One Cowboys Way, Suite 600
Frisco, TX 75034
Tel: 972-731-1879

Property Loss Reporting Procedure:

To ensure that you receive prompt claims service, be sure to report a loss immediately. This enables us to provide you a professional property adjuster to examine your loss. Your loss may give rise to a claim under your Affiliated FM Insurance Company policy.

Notice of Loss:

The notice and report of any loss under an Affiliated FM Insurance Company policy may be communicated by:

- calling the 24-hour claims hotline: **1-877-NEW-LOSS [(1) 877 639 5677]** or
- via email to newlossdallas@fmglobal.com

If this first notice and report is made orally, it should be confirmed in writing including at least the same information as was provided in the oral first notice and report.

Leaving a Message:

When leaving a message, please include the following information:

- Name and phone number of person to contact
- A brief description of the loss

A claims adjuster will return your call promptly.

Account Engineer:

Rianne Ruegger
Affiliated FM Insurance Company
One Cowboys Way, Suite 600
Frisco, TX 75034
Tel: 972-731-1937
rienne.ruegger@affiliatedfm.com

Jurisdictional Services:

For more information on our jurisdictional inspections, please contact the Account Engineer listed above.

TEXAS IMPORTANT NOTICE

To obtain information or make a complaint:

You may call AFFILIATED FM INSURANCE COMPANY's toll-free telephone number for information or to make a complaint at

1-800-926-9345

You may contact the Texas Department of Insurance to obtain information on companies, coverages, rights or complaints at

1-800-578-4677

You may write the Texas Department of Insurance at

P.O. Box 149104
Austin, TX 78714-9104
FAX (512) 490-1007

Web: <http://www.tdi.state.tx.us>

E-mail: ConsumerProtection@tdi.state.tx.us

PREMIUM OR CLAIM DISPUTES:

Should you have a dispute concerning your premium or about a claim you should contact the agent or the company first. If the dispute is not resolved, you may contact the Texas Department of Insurance.

ATTACH THIS NOTICE TO YOUR POLICY:

This notice is for information only and does not become a part or condition of this policy.

DECLARATIONS

A. **POLICY TERM:**

06-October-2019 to 06-October-2020

B. **NAMED INSURED:**

Clutch City Sports & Entertainment, LP dba Toyota Center
Rocket Ball, Ltd
TJF CCS&E, LLC (fka Alexander Tara, LLC)
TJF Rocket Ball, Inc. (fka LLA Sports, Inc.)
Fertitta Sports Entertainment, LLC

C. **POLICY LIMIT:**

This Company's total limit of liability, including any insured Business Interruption loss, will not exceed the Policy Limit of \$412,000,000 as a result of any one **occurrence** subject to the respective sub-limits of liability shown elsewhere in this Policy.

D. **POLICY TERRITORY:**

Coverage provided by this Policy is limited to property while located within the United States of America except as follows:

Cyber Coverage Territory

Coverage provided in Data Restoration; Data Service Provider Property Damage and Business Interruption and Owned Network Interruption is limited to anywhere in the world except Cuba, Iran, North Korea, Sudan, Syria or Crimea Region of Ukraine.

E. **INSURANCE PROVIDED:**

This Policy covers property, as described in this Policy, against ALL RISKS OF PHYSICAL LOSS OR DAMAGE, except as hereinafter excluded, while located as follows:

Location Schedule:

1. 1510 Polk Street, Houston, TX, 77002, Index No. 001484.00

DECLARATIONS

F. SUB-LIMITS:

Unless otherwise stated below or elsewhere in this Policy, the following sub-limits of liability, including any insured Business Interruption loss, will be the maximum payable and will apply on a per **occurrence** basis.

The sub-limits stated below or elsewhere in this Policy are part of and not in addition to the Policy Limit.

When a limit of liability applies to a **location** or property, such limit of liability will be the maximum amount payable for all loss or damage.

There shall be no liability under this Policy when "NOT COVERED" is shown as a sublimit.

1. \$150,000,000 Earth Movement **annual aggregate** for all coverages provided, and is the maximum amount payable for all loss or damage caused by or resulting from Earth Movement, not to exceed:
\$50,000 Earth Movement **annual aggregate** as respects Data Service Provider, Errors and Omissions, Off-Premises Service Interruption, Unnamed Property and Supply Chain combined.
2. \$150,000,000 Flood **annual aggregate** for all coverages provided, and is the maximum amount payable for all loss or damage caused by or resulting from Flood, not to exceed:
\$50,000 Flood **annual aggregate** as respects Data Service Provider, Errors and Omissions, Off-Premises Service Interruption, Unnamed Property and Supply Chain combined.
3. \$50,000 **Cyber event annual aggregate** as respects Data Restoration and Owned Network Interruption combined.
4. \$50,000 **Cyber event annual aggregate** for loss or damage to **stock in process** or finished goods manufactured by or for the Insured caused by or resulting from **cyber event** that impacts the processing, manufacturing, or testing of such property or while it is otherwise being worked on.

Additional Coverages

\$5,000,000	Accounts Receivable
\$100,000	Arson or Theft Reward
Policy Limit	Brand Protection
\$100,000	Change of Temperature
\$100,000	Communicable Disease - Property Damage annual aggregate
\$50,000	Data Restoration annual aggregate
\$50,000	Data Service Provider - Property Damage annual aggregate
Policy Limit	Debris Removal
Policy Limit	Decontamination Costs
\$100,000	Deferred Payment
Policy Limit	Demolition and Increased Cost of Construction
\$5,000,000	Errors and Omissions
\$5,000,000	Expediting Expenses
\$250,000	Fine Arts not to exceed \$10,000 per item for irreplaceable Fine Arts
\$50,000	Green Coverage not to exceed 25% of the amount of the property damage loss
\$50,000	Land and Water Clean Up Expense annual aggregate
\$100,000	Locks and Keys
\$100,000	Money and Securities
\$5,000,000	Newly Acquired Property
\$5,000,000	Off-Premises Service Interruption - Property Damage
\$500,000	Professional Fees
Policy Limit	Property Removed from a Location
Policy Limit	Protection and Preservation of Property - Property Damage not to exceed \$250,000 for security costs

DECLARATIONS

\$100,000	Tax Treatment
\$100,000	Tenants Legal Liability
	Terrorism Coverage and the Supplemental United States Certified Act of Terrorism Endorsement
\$412,000,000	A. United States Certified Act of Terrorism coverage
\$100,000	B. Terrorism Coverage for Locations Outside of the United States annual aggregate not to exceed \$100,000 annual aggregate for Property Removed from a Location, Unnamed Property and Flood
\$500,000	Transit not to exceed \$250,000 for Business Interruption
\$1,000,000	Unnamed Property
\$5,000,000	Valuable Papers and Records not to exceed \$10,000 per item for irreplaceable Valuable Papers and Records

Business Interruption Coverage

\$87,000,000	Gross Earnings not to exceed 365 days for ordinary payroll
\$87,000,000	Gross Profits for 12 months Period of Liability not to exceed 365 days for ordinary payroll
\$87,000,000	Rental Income
\$5,000,000	Extra Expense

Business Interruption Coverage Extensions

\$100,000	Attraction Property
30 Days	Civil or Military Authority
\$100,000	Communicable Disease - Business Interruption annual aggregate for a 12 Month Period of Liability
\$100,000	Contractual Penalties
\$100,000	Crisis Management not to exceed 30 Days
\$50,000	Data Service Provider - Business Interruption annual aggregate
90 Days	Extended Period of Liability
\$5,000,000	Ingress/Egress
\$250,000	Leasehold Interest
\$100,000	Logistics Extra Cost
Included in OPSI-PD Limit	Off-Premises Service Interruption - Business Interruption
Included in Cyber Event Limit	Owned Network Interruption annual aggregate
Policy Limit	Protection and Preservation of Property - Business Interruption
\$250,000	Research and Development
\$100,000	Soft Costs
\$1,000,000	Supply Chain

DECLARATIONS

G. DEDUCTIBLE AMOUNT:

This Company will not be liable for loss or damage, including any insured Business Interruption loss, in any one **occurrence** until the amount of loss or damage exceeds the deductible amount shown below and then this Company will only be liable for its share of the loss or damage in excess of the deductible amount. If two or more deductibles apply to a single **occurrence**, then no more than the largest deductible amount will apply. However, this Policy allows for the application of separate and distinct deductibles and deductibles for specific loss or damage as shown below.

The following deductible amounts shall apply per **occurrence**, unless otherwise stated, for insured loss or damage under this Policy:

1. \$250,000 Earthquake (per **location** for all coverages provided).
2. \$250,000 Flood (per **location** for all coverages provided).
3. Wind and/or Hail (per **location** for all coverages provided in this policy) associated with or occurring in conjunction with a storm or weather disturbance identified by name by any meteorological authority whether or not named prior to the loss.

This Company will not be liable for loss or damage unless the amount of loss or damage exceeds 3% of the combined value of property and annual business interruption value that would have been earned at the time such loss or damage at the **location** where loss or damage occurs plus that proportion of the 100% business interruption value at all other **locations** where business interruption loss ensues, in accordance with the valuation and business interruption sections of this policy, subject to a minimum deductible amount of \$100,000 per **location**. If coverage is provided for more than one **location**, this deductible percentage or minimum deductible amount will be applied separately to each **location**.

4. Boiler and Machinery:
 - A. Property Damage: \$250,000
 - B. Business Interruption Waiting Period:

The Company will not be liable for business interruption loss unless the period of liability exceeds 48 hours. Should the period of liability exceed this time period, the loss will be calculated beginning from the time of loss, and will not include this waiting period.

5. Communicable Disease Property Damage and Business Interruption:

Qualifying Period: This Company will not be liable for loss or damage unless access is limited, restricted or prohibited in excess of 48 hours.

Should this time be exceeded, the insured loss or damage will be calculated beginning from the time of loss subject to a deductible of:

- A. Property Damage: \$250,000
- B. Business Interruption Day Equivalent Deductible:

The business interruption deductible will be determined by multiplying the one hundred percent day equivalent (DEQ) by 2.

The day equivalent is the 100% actual annual business interruption value that would have been earned had no loss occurred at the **location** where the physical damage happened plus that proportion of the 100% annual business interruption value at all other **locations** where business interruption loss ensues, divided by the number of annual working days.

DECLARATIONS

6. Data Restoration:

Qualifying Period: 48 hours.

Should this time be exceeded, the insured loss or damage will be calculated beginning from the time of loss subject to a deductible of:

A. Property Damage: \$250,000

B. Business Interruption Day Equivalent Deductible:

The business interruption deductible will be determined by multiplying the one hundred percent day equivalent (DEQ) by 2.

The day equivalent is the 100% actual annual business interruption value that would have been earned had no loss occurred at the **location** where the physical damage happened plus that proportion of the 100% annual business interruption value at all other **locations** where business interruption loss ensues, divided by the number of annual working days.

7. Data Service Provider - Property Damage and Business Interruption:

Qualifying Period: 24 hours.

Should this time be exceeded, the insured loss or damage will be calculated beginning from the time of loss subject to a deductible of:

A. Property Damage: \$250,000

B. Business Interruption Day Equivalent Deductible:

The business interruption deductible will be determined by multiplying the one hundred percent day equivalent (DEQ) by 2.

The day equivalent is the 100% actual annual business interruption value that would have been earned had no loss occurred at the **location** where the physical damage happened plus that proportion of the 100% annual business interruption value at all other **locations** where business interruption loss ensues, divided by the number of annual working days.

8. Off Premises Service Interruption Property Damage and Business Interruption:

Qualifying Period: This Company will not be liable for loss or damage unless the Period of Liability exceeds 48 hours.

Should this time be exceeded, the insured loss or damage will be calculated beginning from the time of loss subject to the deductible(s) that would have applied to the cause of the interruption of services, but not less than \$250,000.

DECLARATIONS

9. Owned Network Interruption:

Qualifying Period: 48 hours.

The Qualifying Period for the cost to temporarily protect under Item 4. b) shall be waived.

Should this time be exceeded, the insured loss will be calculated beginning from the time of loss subject to a Business Interruption Day Equivalent Deductible:

The business interruption deductible will be determined by multiplying the one hundred percent day equivalent (DEQ) by 2.

The day equivalent is the 100% actual annual business interruption value that would have been earned had no loss occurred at the **location** where the loss happened plus that proportion of the 100% annual business interruption value at all other **locations** where business interruption loss ensues, divided by the number of annual working days.

10. \$10,000 Video Equipment/Projector

11. \$250,000 All Other Losses.

H. SPECIAL TERMS AND CONDITIONS:

1. **United States Certified Act of Terrorism 2015 - PRO 207 (4/15)**

As respects the United States, its territories and possessions and the Commonwealth of Puerto Rico, the definition of terrorism contained in DEFINITIONS is declared null and void and it is agreed that an event defined as a Certified Act of Terrorism under the terms of the SUPPLEMENTAL UNITED STATES CERTIFIED ACT OF TERRORISM ENDORSEMENT attached to this policy shall be considered terrorism within the terms of this policy. Notwithstanding anything contained in this policy to the contrary, this policy provides coverage for direct physical loss or damage to insured property and any resulting Business Interruption loss, as provided in the policy, caused by or resulting from a Certified Act of Terrorism only to the extent coverage is provided under the terms and conditions of the SUPPLEMENTAL UNITED STATES CERTIFIED ACT OF TERRORISM ENDORSEMENT attached to this policy. Any difference in limit between loss recoverable under the SUPPLEMENTAL UNITED STATES CERTIFIED ACT OF TERRORISM ENDORSEMENT and this policy is not recoverable under this policy.

2. **Application of Flood and Wind and/or Hail Deductibles - PRO 149 (1/17)**

If an occurrence involves loss or damage caused by or resulting from both:

a. Wind and/or hail; and

b. Flood;

Then:

1) A specific wind and/or hail deductible; and

2) A specific **flood** deductible;

Will apply separately to each location.

Such loss or damage will be adjusted separately and will be subject to its respective deductible.

DECLARATIONS

3. Combined Off-Premises Service Interruption Limit (OPSI) - PRO 614 (1/17)

The Company's total liability for Off-Premises Service Interruption - Property Damage and Off-Premises Service Interruption - Business Interruption combined will not exceed \$5,000,000 as a result of one occurrence and replaces the corresponding limits of liability shown in the sublimit section.

4. Business Interruption Coverage Sub-Limit - PRO 709 (1/17)

The Business Interruption Coverage in SUB-LIMITS are amended to the following:

Business Interruption Coverage

This Company's total limit of liability for insured Business Interruption loss, will not exceed Business Interruption Limit of \$92,000,000 as a result of any one **occurrence** subject to the respective sub-limits of liability shown below.

\$87,000,000	Gross Earnings not to exceed 365 days for ordinary payroll
\$87,000,000	Gross Profits for 12 months Period of Liability not to exceed 365 days for ordinary payroll
\$87,000,000	Rental Income
\$5,000,000	Extra Expense

DECLARATIONS

I. INDEX OF FORMS:

The following forms are made part of this Policy:

<u>Title</u>	<u>Form No.</u>	<u>Edition</u>
Declarations Page	PRO DEC 4100	(04/15)
Declarations	PRO S-1 4100	(01/17)
All Risk Coverage	PRO AR 4100	(01/17)
Cyber Event Endorsement	PRO CYBER EVENT 4100	(06/19)
Supplemental United States Certified Act of Terrorism Endorsement	7312	(1/15)
Texas Special Mandatory Endorsement	AFM 6810	(04/15)



ALL RISK COVERAGE

Table of Contents

PROPERTY INSURED	1
Real Property.....	1
Personal Property	1
PROPERTY EXCLUDED	1
EXCLUSIONS	2
Group I	2
Group II.....	3
Group III.....	4
ADDITIONAL COVERAGES	5
Accounts Receivable	5
Arson or Theft Reward.....	5
Brand Protection.....	6
Change of Temperature	6
Communicable Disease – Property Damage	6
Data, Programs or Software	7
Debris Removal.....	8
Decontamination Costs.....	8
Deferred Payment.....	8
Demolition and Increased Cost of Construction.....	9
Earth Movement.....	10
Errors and Omissions	10
Expediting Expenses	10
Fine Arts and Valuable Papers and Records	11
Flood	11
Green Coverage.....	11
Land and Water Clean Up Expense.....	12
Locks and Keys	12
Money and Securities	12
Newly Acquired Property.....	12



Off-Premises Data Services – Property Damage.....	13
Off-Premises Service Interruption – Property Damage.....	13
Professional Fees.....	13
Property Removed from a Location.....	14
Protection and Preservation of Property – Property Damage.....	14
Tax Treatment.....	14
Tenants Legal Liability.....	15
Terrorism.....	15
Transit.....	16
Unnamed Property.....	18
BUSINESS INTERRUPTION.....	19
Loss Insured.....	19
Business Interruption Coverage.....	20
Gross Earnings.....	20
Gross Profits.....	20
Rental Income.....	21
Extra Expense.....	22
BI Select.....	22
Period of Liability.....	22
Business Interruption Exclusions.....	23
BUSINESS INTERRUPTION COVERAGE EXTENSIONS.....	24
Attraction Property.....	24
Civil or Military Authority.....	24
Communicable Disease – Business Interruption.....	24
Computer Systems Non-Physical Damage.....	25
Contractual Penalties.....	25
Crisis Management.....	26
Extended Period of Liability.....	26
Ingress/Egress.....	27
Leasehold Interest.....	27
Logistics Extra Cost.....	27
Off-Premises Data Services – Business Interruption.....	28
Off-Premises Service Interruption – Business Interruption.....	29
Protection and Preservation of Property – Business Interruption.....	30
Research and Development.....	30



Soft Costs	30
Supply Chain	30
LOSS ADJUSTMENT AND SETTLEMENT	32
Abandonment	32
Appraisal	32
Collection From Others	32
Company Option	32
Currency for Loss Payment	32
Legal Action Against this Company	33
Loss Adjustment and Payable	33
Other Insurance	33
Requirements in Case of Loss	33
Settlement of Claims	34
Subrogation	35
Valuation	35
GENERAL CONDITIONS	37
Application of Policy to Date or Time Recognition	37
Cancellation/Non-Renewal	37
Conformity to Statute	37
First Named Insured	37
Increase in Hazard	38
Inspections	38
Liberalization Clause	38
Misrepresentation and Fraud	38
Mortgagee/Lenders Loss Payable	38
Policy Modification	40
Reinstatement of Limits after a Loss	40
Suspension	40
Transfer or Rights and Duties under this Policy	40
DEFINITIONS	41



ALL RISK COVERAGE

This Policy covers property, as described in this Policy, against ALL RISKS OF PHYSICAL LOSS OR DAMAGE, except as hereinafter excluded, while located as described in this Policy.

A. PROPERTY INSURED

This Policy insures the following property, unless otherwise excluded elsewhere in this Policy, at or within 1,000 feet of a **described location**, to the extent of the interest of the Insured in such property.

1. Real Property in which the Insured has an insurable interest.
2. Personal Property:
 - a) Owned by the Insured.
 - b) Consisting of improvements and betterments in which the Insured has an insurable interest.
 - c) Of directors, officers and employees of the Insured.
 - d) Of others in the Insured's custody to the extent the Insured is under obligation to keep insured for physical loss or damage insured by this Policy.
 - e) Of others in the Insured's custody to the extent of the Insured's legal liability for insured physical loss or damage to such Personal Property.

This Company may defend that portion of any suit against the Insured that alleges such liability and seeks damages for such insured physical loss or damage to such Personal Property. This Company may, without prejudice, investigate, negotiate and settle any claim or suit as this Company deems expedient.

This Policy also insures the interest of contractors and subcontractors in insured property during construction, while at or within 1,000 feet of a **described location**, to the extent that the Insured has agreed, prior to loss, to keep such interest insured for insured physical loss or damage to such property. Such interest of contractors and subcontractors is limited to the property for which they have been hired to perform work and will not extend to any Business Interruption coverage provided in this Policy.

B. PROPERTY EXCLUDED

This Policy excludes the following except as otherwise stated in this Policy:

1. Land, water or any substance in or on land.
2. Growing crops, standing timber or animals.
3. Bridges and tunnels intended for use by motor vehicles licensed for highway use.
4. Reservoirs, canals, dikes or dams.
5. Docks, piers or wharves which are not a structural part of a building.
6. Currency, money, notes or securities, except as provided by the Money and Securities coverage in this Policy.
7. Motor vehicles licensed for highway use or owned by directors, officers or employees of the Insured.



8. Satellites, aircraft or watercraft, except if on land, unfueled and manufactured by the Insured.
9. Property sold by the Insured under conditional sale, trust agreement, installment payment or other deferred payment plan after delivery to the customer, except as provided by the Deferred Payment coverage in this Policy.
10. Underground mines or mine shafts or any property within such mine or shaft.
11. Property while in transit, except as otherwise provided in this Policy.
12. Electronic data, programs or software, except when they are stock in process, finished goods manufactured by the Insured, raw materials, supplies or other merchandise not manufactured by the Insured or as provided by the Data, Programs or Software coverage in this Policy.
13. Property while located **offshore**, except as provided by the Transit coverage in this Policy.

C. EXCLUSIONS

In addition to the exclusions elsewhere in this Policy, the following exclusions apply unless otherwise stated:

GROUP I: This Policy excludes loss or damage directly or indirectly caused by or resulting from any of the following regardless of any other cause or event, whether or not insured under this Policy, contributing concurrently or in any other sequence to the loss or damage:

1. Nuclear reaction or nuclear radiation or radioactive contamination. However:
 - a) If physical damage by fire or sprinkler leakage results, then only that resulting damage is insured; but not including any loss or damage due to nuclear reaction, radiation or radioactive contamination.
 - b) This Policy does insure physical damage directly caused by sudden and accidental radioactive contamination, including resultant radiation damage, from material used or stored or from processes conducted on the **location**, provided that on the date of loss, there is neither a nuclear reactor nor any new or used nuclear fuel on the **location**. This coverage does not apply to any act, loss or damage excluded in Group I Item 2f of this Exclusions clause.

This exclusion Group I Item 1 and the exceptions in Group I Item 1a and Group I Item 1b above do not apply to any act, loss or damage which also comes within the terms of exclusion Group I Item 2b of this Exclusions clause.

2.
 - a) Hostile or warlike action in time of peace or war, including action in hindering, combating or defending against an actual, impending or expected attack by any:
 - i) Government or sovereign power (de jure or de facto);
 - ii) Military, naval or air forces; or
 - iii) Agent or authority of any party specified in i) or ii) above.
 - b) Discharge, explosion or use of any nuclear device, weapon or material employing or involving nuclear fission, fusion or radioactive force, whether in time of peace or war and regardless of who commits the act.
 - c) Insurrection, rebellion, revolution, civil war, usurped power, or action taken by governmental authority in hindering, combating or defending against such an event.
 - d) Seizure or destruction under quarantine or custom regulation, or confiscation by order of any governmental or public authority.
 - e) Risks of contraband, or illegal transportation or trade.



- f) **Terrorism**, including action taken to prevent, defend against, respond to or retaliate against **terrorism** or suspected **terrorism**, except to the extent provided in the Terrorism coverage of this Policy. However, if direct loss or damage by fire results from any of these acts (unless committed by or on behalf of the Insured), then this Policy covers only to the extent of the **actual cash value** of the resulting direct loss or damage by fire to insured property. This coverage exception for such resulting fire loss or damage does not apply to:
- i) Direct loss or damage by fire which results from any other applicable exclusion in the Policy, including the discharge, explosion or use of any nuclear device, weapon or material employing or involving nuclear fission, fusion or radioactive force, whether in time of peace or war and regardless of who commits the act.
 - ii) Any coverage provided in the Business Interruption section of this Policy or to any other coverages provided by this Policy.

Any act which satisfies the definition of **terrorism** shall not be considered to be vandalism, malicious mischief, riot, civil commotion or any other risk of physical loss or damage covered elsewhere in this Policy.

If any act which satisfies the definition of **terrorism** also comes within the terms of Group I Item 2a of this Exclusions clause then Group I Item 2a applies in place of this Group I Item 2f exclusion.

If any act which satisfies the definition of **terrorism** also comes within the terms of Group I Item 2b of this Exclusions clause then Group I Item 2b applies in place of this Group I Item 2f exclusion.

If any act which satisfies the definition of **terrorism** also comes within the terms of Group I Item 2c of this Exclusions clause then Group I Item 2c applies in place of this Group I Item 2f exclusion.

If any act excluded herein involves nuclear reaction, nuclear radiation or radioactive contamination, this Group I Item 2f exclusion applies in place of Group I Item 1 of this Exclusions clause.

3. Any dishonest act, including but not limited to theft, committed alone or in collusion with others, at any time by:
- a) An Insured or any proprietor, partner, director, trustee, officer or employee of an Insured; or
 - b) Any proprietor, partner, director, trustee, or officer of any business or entity (other than a common carrier) engaged by an Insured to do anything in connection with property insured under this Policy.

This Policy does insure acts of direct insured physical damage intentionally caused by an employee of an Insured or any individual specified in b above, and done without the knowledge of the Insured. This coverage does not apply to any act excluded in Group I Item 2f of this Exclusions clause. In no event does this Policy cover loss by theft by any individual specified in a or b above.

4. Lack of incoming electricity, fuel, water, gas, steam or refrigerant; outgoing sewerage; or incoming or outgoing voice, data or video; all when caused by an event off the **location**, except as provided by the Off-Premises Data Services and Off-Premises Service Interruption coverages in this Policy. If the lack of such a service directly causes insured physical damage at the **location**, then only that resulting damage is insured.
5. **Earth movement**, except as otherwise provided in this Policy.
6. **Flood**, except as otherwise provided in this Policy.
7. Seepage or influx of water from natural underground sources.

GROUP II: This Policy excludes the following, however, if physical damage not excluded by this Policy results, then only that resulting damage is insured:



1. Wear and tear, deterioration, depletion, rust, corrosion, erosion, inherent vice or latent defect.
2. Faulty workmanship, material, construction or design.
3. Loss or damage to stock or material attributable to manufacturing or processing operations while such stock or material is being processed, manufactured, tested or otherwise worked on.
4. Loss or damage caused by or resulting from:
 - a) Changes of temperature, except damage to machinery or equipment including fire protective equipment;
 - b) Changes in relative humidity,

All whether atmospheric or not, except as provided by the Change of Temperature and Off-Premises Service Interruption coverages in this Policy.

5. Settling, cracking, shrinking, bulging or expansion of:
 - a) Foundations.
 - b) Walls.
 - c) Floors.
 - d) Pavements or roadways.
 - e) Roofs.
 - f) Ceilings.
6. Loss or damage to personal property in the open from rain, sleet, snow, sand or dust.
7. Theft of precious metal or stones, except when such property is used by the Insured for industrial purposes.
8. Insect, animal or vermin damage.

GROUP III: This Policy excludes:

1. Indirect or remote loss or damage.
2. Interruption of business, except to the extent provided in this Policy.
3. Loss of market or loss of use.
4. Loss or damage or deterioration arising from any delay.
5. Mysterious disappearance, loss or shortage disclosed on taking inventory, or any unexplained loss.
6. Loss from enforcement of any law or ordinance:
 - a) Regulating the construction, repair, replacement, use or removal, including debris removal, of any property; or
 - b) Requiring the demolition of any property, including the cost in removing its debris;



Except as provided by the Decontamination Costs and Demolition and Increased Cost of Construction coverages in this Policy.

7. Loss or damage resulting from the voluntary parting with title or possession of property if induced by any fraudulent act or by false pretense.
8. **Contamination**, and any cost due to **contamination** including the inability to use or occupy property or any cost of making property safe or suitable for use or occupancy. If **contamination** due only to the actual not suspected presence of **contaminant(s)** directly results from other physical damage not excluded by this Policy, then only physical damage caused by such **contamination** may be insured. This exclusion does not apply to radioactive contamination which is excluded elsewhere in this Policy.
9. Shrinkage, evaporation or loss of weight, unless directly resulting from other physical damage not excluded by this Policy.
10. Changes in color, flavor, texture or finish, unless directly resulting from other physical damage not excluded by this Policy.

D. ADDITIONAL COVERAGES

The Additional Coverages below are subject to all the terms and conditions of this Policy including, but not limited to, the limits of liability, deductibles and exclusions shown in the Declarations section.

1. Accounts Receivable

This Policy covers amounts which the Insured is unable to collect as a direct result of insured physical loss or damage to accounts receivable records at a **location**.

Coverage includes:

- a) Interest charges on any loan to offset impaired collections pending repayment of sums that cannot be collected. Unearned interest charges and service charges on deferred payment accounts and normal credit losses on bad debts will be deducted.
- b) Collection expenses in excess of normal collection costs.
- c) Other reasonable expenses incurred by the Insured in recreating records of accounts receivable.

After payment of loss by this Company, all amounts recovered by the Insured on accounts receivable for which the Insured has been indemnified will belong to and be paid to this Company by the Insured up to the total amount of loss paid by this Company. All recoveries in excess of such amounts will belong to the Insured.

Accounts Receivable Exclusions: As respects Accounts Receivable, the following additional exclusions apply:

This Policy does not cover shortage resulting from:

- a) Bookkeeping, accounting, or billing error or omission.
- b) Alteration, falsification, manipulation, concealment, destruction or disposal of records of accounts receivable committed to conceal the wrongful giving, taking, obtaining or withholding of money, securities or other property.



2. Arson or Theft Reward

This Policy covers payment of any reward offered by the Insured or on the Insured's behalf for information that leads to conviction of the perpetrator(s) of insured:

- a) Arson to; or
- b) Theft of;

Insured property.

3. Brand Protection

This Policy gives control of physically damaged property consisting of finished goods or merchandise manufactured by or for the Insured as follows:

- a) The Insured will have full rights to the possession and control of damaged property in the event of insured physical loss or damage to such property provided proper testing is done to show which property is physically damaged.
- b) The Insured using reasonable judgment will decide if the physically damaged property can be reprocessed or sold.

Physically damaged property judged by the Insured to be:

- i) Unfit for reprocessing or selling will not be sold or disposed of except by the Insured, or with the Insured's consent.
- ii) Fit for reprocessing or selling and this Company elects to take all or any part of physically damaged branded and labeled property, the Insured may at this Company's expense:
 - (a) Stamp "salvage" on the property or its containers; or
 - (b) Remove or obliterate the brands or labels,

If doing so will not damage the property.

The Insured must relabel the property or containers in compliance with the applicable requirements of law.

- c) Any salvage proceeds received will go to the:
 - i) Company at the time of loss settlement; or
 - ii) Insured if received prior to loss settlement and such proceeds will reduce the amount of loss payable accordingly.

4. Change of Temperature

This Policy covers spoilage of insured stock and supplies due to:

- a) Changes of temperature or changes in relative humidity,

Directly resulting from the interruption, in whole or part, of services consisting of electricity, gas, fuel, steam, water or refrigeration by reason of any accidental event, other than insured physical loss or damage, at a **location**.



5. Communicable Disease – Property Damage

If a **described location** owned, leased or rented by the Insured has the actual not suspected presence of **communicable disease** and access to such **described location** is limited, restricted or prohibited by:

- a) An order of an authorized governmental agency regulating or as result of such presence of **communicable disease**;
or
- b) A decision of an Officer of the Insured as a result of such presence of **communicable disease**,

This Policy covers the reasonable and necessary costs incurred by the Insured at such **described location** for the:

- a) Cleanup, removal and disposal of such presence of **communicable disease** from insured property; and
- b) Actual costs or fees payable to public relations services or actual costs of using the Insured's employees for reputation management resulting from such presence of **communicable disease** on insured property.

This Additional Coverage does not cover any costs incurred due to any law or ordinance with which the Insured was legally obligated to comply prior to such presence of **communicable disease**.

This coverage is subject to the Qualifying Period in the Declarations section of this Policy.

Communicable Disease - Property Damage Exclusions: As respects Communicable Disease – Property Damage, the following additional exclusion applies:

This Policy excludes loss or damage directly or indirectly caused by or resulting from **terrorism** regardless of any other cause or event, whether or not insured under this Policy, contributing concurrently or in any other sequence to the loss.

6. Data, Programs or Software

This Policy covers insured **physical loss or damage to electronic data, programs or software**, including physical loss or damage caused by the malicious introduction of a machine code or instruction, while anywhere within this Policy's Territory, including while in transit.

This coverage includes:

- a) The cost of the following reasonable and necessary actions taken by the Insured due to actual insured **physical loss or damage to electronic data, programs or software**:
 - i) To temporarily protect and preserve insured electronic data, programs or software.
 - ii) For the temporary repair of insured **physical loss or damage to electronic data, programs or software**.
 - iii) To expedite the permanent repair or replacement of such damaged property.
- b) The reasonable and necessary costs incurred by the Insured to temporarily protect or preserve insured electronic data, programs or software against immediately impending insured **physical loss or damage to electronic data, programs or software**. In the event that there is no physical loss or damage, the costs covered under this item will be subject to the deductible that would have applied had there been such physical loss or damage.

This coverage is subject to the Qualifying Period in the Declarations section of this Policy.

This Additional Coverage excludes loss or damage to data, programs or software when they are **stock in process**, finished goods manufactured by the Insured, **raw materials**, supplies or other merchandise not manufactured by the Insured.



Data, Programs or Software Exclusions: As respects Data, Programs or Software, the following additional exclusion applies:

This Policy excludes the following but, if physical damage not excluded by this Policy results, then only that resulting damage is insured:

- a) Errors or omissions in processing or copying.
- b) Loss or damage to data, programs or software from errors or omissions in programming or machine instructions.

Data, Programs or Software Valuation: On property insured under this coverage, the loss amount will not exceed:

- a) The cost to repair, replace or restore data, programs or software including the costs to recreate, research and engineer; or
- b) The blank value of the media if not repaired, replaced or restored within two years from the date of loss.

7. Debris Removal

This Policy covers the reasonable and necessary costs incurred to remove debris from a **location** that remains as the direct result of insured physical loss or damage.

This coverage does not cover the costs of removing:

- a) Contaminated uninsured property; or
- b) The **contaminant** in or on uninsured property;

Whether or not the **contamination** results from insured physical loss or damage.

This coverage includes the costs of removal of contaminated insured property or the **contaminant** in or on insured property only if the **contamination**, due to the actual not suspected presence of **contaminant(s)**, of the debris resulted directly from other physical damage not excluded by the Policy.

8. Decontamination Costs

If insured property is contaminated as a direct result of insured physical damage and there is in force at the time of the loss any law or ordinance regulating **contamination** due to the actual not suspected presence of **contaminant(s)**, then this Policy covers, as a direct result of enforcement of such law or ordinance, the increased cost of decontamination and/or removal of such contaminated insured property in a manner to satisfy such law or ordinance. This coverage applies only to that part of insured property so contaminated due to such presence of **contaminant(s)** as a direct result of insured physical damage.

The Company is not liable for the costs required for removing:

- a) Contaminated uninsured property; or
- b) The **contaminant** in or on uninsured property;

Whether or not the **contamination** results from insured physical loss or damage.



9. Deferred Payment

This Policy covers the Insured's interest in personal property of the type insured that has been sold by the Insured under a conditional sale or trust agreement or any installment or deferred payment plan, if such property sustains physical loss or damage insured by this Policy and only to the extent the Insured is unable to collect the unpaid balance of such interest.

This coverage applies from the time the property is delivered to the buyer until the Insured's interest in it has ceased or the policy terminates or expires, whichever is first.

Deferred Payment Exclusion: As respects Deferred Payment, the following additional exclusion applies:

This Policy excludes:

- a) Theft or conversion by the buyer of the property after the buyer has taken possession of such property.
- b) Property not within this Policy's Territory.

Deferred Payment Valuation: On property insured under this coverage, the loss amount will not exceed the lesser of the following:

- a) The total amount of unpaid installments less finance charges.
- b) The **actual cash value** of the property on the date of loss or damage.
- c) The cost to repair or replace with material of like size, kind and quality.

10. Demolition and Increased Cost of Construction

This Policy covers the costs as described herein resulting from the Insured's obligation to comply with a law or ordinance, provided that:

- a) Such law or ordinance is enforced as a direct result of insured physical loss or damage at a **location**;
- b) Such law or ordinance is in force at the time of such loss or damage; and
- c) Such **location** was not required to be in compliance with such law or ordinance prior to the happening of the insured physical loss or damage.

Coverage A:

The reasonable and necessary costs incurred by the Insured to comply with the enforcement of the minimum requirements of any law or ordinance that Regulates the demolition, construction, repair, replacement or use of buildings, structures, machinery or equipment.

As respects insured property, this Coverage A covers the reasonable and necessary costs to:

- a) Demolish any physically damaged and undamaged portions of the insured buildings, structures, machinery or equipment.
- b) Repair or rebuild the physically damaged and undamaged portions, whether or not demolition is required, of such insured buildings, structures, machinery or equipment.



The Company's maximum liability for this Coverage A at each location in any occurrence will not exceed the actual costs incurred in demolishing the physically damaged and undamaged portions of the insured property plus the lesser of:

- a) The reasonable and necessary cost, excluding the cost of land, to rebuild on another site; or
- b) The cost to rebuild on the same site.

Coverage B:

The reasonable estimated cost to repair, replace or rebuild insured property consisting of buildings, structures, machinery or equipment that the Insured is legally prohibited from repairing, replacing or rebuilding to the same height, floor area, number of units, configuration, occupancy or operating capacity, because of the enforcement of any law or ordinance that regulates the construction, repair, replacement or use of buildings, structures, machinery or equipment.

Demolition and Increased Cost of Construction Coverage B Valuation: On property covered under this Coverage B that cannot legally be repaired or replaced, the loss amount will be the difference between:

- a) The **actual cash value**; and
- b) The cost that would have been incurred to repair, replace or rebuild such lost or damaged property had such law or ordinance not been enforced at the time of loss.

Demolition and Increased Cost of Construction Exclusions: As respects Demolition and Increased Cost of Construction, the following additional exclusions apply:

This Policy does not cover:

- a) Any cost incurred as a direct or indirect result of enforcement of any law or ordinance regulating any form of **contamination**.
- b) Any machinery or equipment manufactured by or for the Insured, unless used by the Insured in its operation at the **location** suffering the physical loss or damage.

11. Earth Movement

This Policy covers physical loss or damage caused by or resulting from **earth movement**.

12. Errors and Omissions

If physical loss or damage is not payable under this Policy solely due to an error or unintentional omission:

- a) In the address of a property insured by this Policy which existed at the inception date of this Policy or in any subsequent amendments to this Policy;
- b) That fails to include any **location**:
 - i) Owned; or
 - ii) Occupied by the Insured; or
- c) That results in cancellation of insured property under this Policy;

Then coverage applies to the extent this Policy would have provided coverage had the error or unintentional omission not been made.



It is a condition of this Additional Coverage that any error or unintentional omission be reported by the Insured to the Company when discovered and corrected.

13. Expediting Expenses

This Policy covers the reasonable and necessary costs incurred to:

- a) Temporarily repair or replace; and
- b) Expedite the permanent repair or replacement of;

Insured property that has sustained insured physical loss or damage.

This coverage does not include expenses payable elsewhere in this Policy including the cost of permanent repair or replacement of damaged property.

14. Fine Arts and Valuable Papers and Records

This Policy covers **fine arts** and **valuable papers and records** while anywhere within this Policy's Territory including while in transit.

Fine Arts and Valuable Papers and Records Exclusion: As respects Fine Arts and Valuable Papers and Records, the following additional exclusion applies:

This Policy excludes:

- a) Loss or damage to any **fine arts** as a result of restoring, repairing or retouching processes.
- b) Errors or omissions in the processing or copying of **valuable papers and records**.

Fine Arts and Valuable Papers and Records Valuation: On property insured under this coverage, the loss amount will not exceed the lesser of the following:

- a) The cost to repair or restore the article to the condition that existed immediately prior to the loss;
- b) The cost to replace the article; or
- c) The value designated for the article as shown in the Declarations section of this Policy or on a schedule on file with this Company.

In case of physical loss or damage to a **fine arts** or **valuable papers and records** article that is part of a pair or a set, this Company will pay the lesser of the full value or the amount scheduled, if any, of the value of such pair or set only if the damaged article cannot be repaired or restored to its condition before the loss and the Insured surrenders the remaining article or articles of the pair or set to this Company.

15. Flood

This Policy covers physical loss or damage caused by or resulting from **flood**.

16. Green Coverage

This Policy covers the reasonable and necessary additional costs incurred by the Insured, as a direct result of insured physical loss or damage:



- a) To repair or replace physically damaged insured property with material of like kind and quality which qualifies as **Green**.
- b) To replace the insured physically damaged portions of insured roofing systems with vegetative roof(s), including but not limited to the addition of trees, shrubs, plants and lawns to those roof(s), which qualify as **Green**, if this Policy covers Real Property.
- c) As part of **Green** reconstruction, to flush out the air in the area of the physically damaged insured property with 100 percent outside air and to provide replacement filtration media for the building's ventilation system that controls the damaged area.
- d) For an accredited professional certified by a **Green Authority** to participate in the design and construction for repairing or rebuilding the physically damaged insured property as **Green**.
- e) For the process of certification or recertification of the repaired or replaced insured property as **Green**.
- f) For **Green** removal, disposal or recycling of the damaged insured property.

Notwithstanding any other provision in this Policy, the Insured must repair or replace the insured real and/or personal property lost, damaged or destroyed as a condition of this coverage.

Green Coverage Exclusions: As respects Green Coverage, the following additional exclusions apply:

This Policy excludes:

- a) Stock, **raw materials**, work in process, finished goods, merchandise, **production machinery and equipment**, electronic data processing equipment not used in the functional support of the real property, molds and dies, property in the open, property of others for which the insured is legally liable, personal property of directors, officers or employees of the Insured.
- b) Any property adjusted on other than repair or replacement per the Valuation clauses of this Policy.
- c) Any loss recoverable elsewhere in this Policy.

17. Land and Water Clean Up Expense

This Policy covers the reasonable and necessary costs to remove, dispose of or clean up the actual but not the suspected presence of **contaminant(s)** from uninsured land or water or any substance in or on land, at a **location**, when such property is contaminated as a direct result of insured physical loss or damage to insured property.

This Policy does not cover the cost to clean up, remove and dispose of **contamination** from such property:

- a) At any **location** insured for Personal Property only.
- b) When the Insured fails to give written notice of loss to this Company within 180 days after the inception of the loss.

18. Locks and Keys

This Policy covers the reasonable and necessary cost incurred by the Insured to replace undamaged keys and to replace, adjust or reprogram undamaged locks to accept new keys or entry codes as a result of insured physical loss or damage.



19. Money and Securities

This Policy covers physical loss or damage to money and securities at a **location** resulting from:

- a) Fire, explosion or sprinkler leakage.

20. Newly Acquired Property

This Policy covers property of the type insured that is newly acquired while located anywhere within this Policy's Territory, excluding while in transit.

This coverage terminates:

- a) When the newly acquired property is bound by this Company; or
- b) When agreement is reached that the property will not be insured under this Policy; or
- c) 120 days after the date of acquisition of the property; or
- d) At the termination or expiration of this Policy;

Whichever occurs first.

21. Off-Premises Data Services - Property Damage

This Policy covers insured physical loss or damage to insured property at a **location** when such physical loss or damage results from the interruption of **off-premises data processing or data transmission services** by reason of any accidental event at the facilities of the provider of such services, while anywhere within this Policy's Territory, that immediately prevents in whole or in part the delivery of such provided services.

For the purposes of this Additional Coverage an accidental event to satellites will be considered an accidental event at the facilities of the provider.

This coverage is subject to the Qualifying Period in the Declarations section of this Policy.

Additional General Conditions:

- 1) The Insured will immediately notify the company providing **off-premises data processing or data transmission services** of any interruption of such services.
- 2) The Company will not be liable if the interruption of such services is caused directly or indirectly by the failure of the Insured to comply with the terms and conditions of any contracts the Insured has entered into for such specified services.

Off Premises Data Services - Property Damage Exclusions: As respects Off-Premises Data Services - Property Damage , the following additional exclusion applies:

This Policy excludes loss or damage directly or indirectly caused by or resulting from **terrorism** regardless of any other cause or event, whether or not insured under this Policy, contributing concurrently or in any other sequence to the loss.

22. Off-Premises Service Interruption - Property Damage

This Policy covers insured physical loss or damage at a **location** caused by or resulting from the interruption, in whole or part, of incoming electric, gas, fuel, steam, water, refrigeration, or outgoing sewerage.



The interruption of such services must be by reason of an accidental event, not otherwise excluded by this Policy, at the facilities of the service provider(s) while anywhere within this Policy's Territory.

This coverage is subject to the Qualifying Period in the Declarations section of this Policy.

Additional Conditions:

This Company will not be liable for deliberate act(s) by the service provider to shed load to maintain system integrity.

Off-Premises Service Interruption - Property Damage Exclusion: As respects Off-Premises Service Interruption - Property Damage the following additional exclusions apply:

This Policy excludes loss or damage directly or indirectly caused by or resulting from **terrorism** regardless of any other cause or event, whether or not insured under this Policy, contributing concurrently or in any other sequence to the loss.

23. Professional Fees

This Policy covers the reasonable and necessary expenses incurred by the Insured of:

- a) Auditors;
- b) Accountants;
- c) Architects;
- d) Engineers; or
- e) Other professionals; and
- f) The Insured's own employees,

For producing and certifying particulars or details to determine the amount of loss payable under this Policy for which this Company has accepted liability.

This coverage does not include the fees and expenses of attorneys, public adjusters, loss appraisers, loss consultants or any of their subsidiaries or related or associated entities.

24. Property Removed from a Location

This Policy covers insured property when removed from a **location** to avoid or prevent immediately impending insured physical loss or damage to such property. This Policy covers such property for physical loss or damage as provided at the **location** from which the property was removed.

This coverage applies for a period:

- a) Of 120 days from the date of removal; but
- b) Not beyond the termination or expiration date of this Policy.

25. Protection and Preservation of Property - Property Damage

This Policy covers the reasonable and necessary costs incurred for:



- a) Actions to temporarily protect or preserve insured property; provided such actions are necessary due to actual, or to prevent immediately impending, insured physical loss or damage to such insured property.
- b) Fire department firefighting charges imposed as a result of responding to a fire in, on or exposing the insured property.
- c) Restoring and recharging fire protection systems following an insured loss.
- d) The water used for fighting a fire in, on or exposing the insured property.
- e) Temporary security for a period of time not to exceed 30 consecutive days due to actual, or to prevent immediately impending, insured physical loss or damage to such insured property.

This coverage does not cover costs incurred for actions to temporarily protect or preserve insured property from actual, or to prevent immediately impending, physical loss or damage covered by the Terrorism coverage of this Policy.

This coverage is subject to the deductible provisions that would have applied had the physical loss or damage happened.

26. Tax Treatment

This Policy covers the increased tax liability as a direct result of insured physical loss or damage to insured property. When such tax liability is greater than the tax liability that would have been incurred had there been no such loss or damage, then this Policy will cover only the increased tax liability for the profit portion of a loss payment under this Policy involving finished stock manufactured by the Insured and/or the profit portion of the Business Interruption loss payment.

27. Tenants Legal Liability

This Policy covers direct physical loss or damage, caused by or resulting from **named perils**, to that part of buildings of others, including permanently attached building fixtures, leased to and occupied by the Insured at a **described location** to the extent of the Insured's legal liability for such loss or damage.

This coverage also includes the following:

- a) The reasonable expenses of defending the Insured against only that part of any suit alleging the Insured's legal liability for such physical loss or damage;
- b) The reasonable expenses incurred by this Company, this Company's proportionate share of costs taxed against the Insured in any such suit, and this Company's proportionate share of interest accruing after entry of judgment until this Company has paid, tendered or deposited into court its proportionate share of such judgment; and
- c) The reasonable expenses, other than loss of earnings, incurred at this Company's request.

This coverage does not include:

- a) That part of any settlement by the Insured to which this Company has not given its prior written consent; or
- b) Any legal liability for loss or damage assumed by the Insured under any contract or agreement, whether oral or written, expressed or implied.

Additional Provisions: This Company may:

- a) Investigate, negotiate and settle any claim or suit as this Company deems expedient and will not be prejudiced under this coverage for failure to settle for any amount within the Company's applicable limit of liability.



- b) Pay, tender or deposit into court the Company's applicable limit of liability, less any expenses incurred by the Company, in full satisfaction of its liability under this coverage, and thereby terminate any further liability for any expense amount described in paragraphs a, b or c above.

Tenants Legal Liability Exclusion: As respects Tenants Legal Liability, the following additional exclusions apply:

This Policy excludes loss or damage directly or indirectly caused by or resulting from **terrorism** regardless of any other cause or event, whether or not insured under this Policy, contributing concurrently or in any other sequence to the loss.

28. Terrorism

This Policy covers physical loss or damage caused by or resulting from **terrorism** only at a **described location**.

Any act which satisfies the definition of **terrorism** shall not be considered to be vandalism, malicious mischief, riot, civil commotion or any other risk of physical loss or damage covered elsewhere in this Policy.

Amounts recoverable under this coverage are excluded from coverage elsewhere in this Policy.

This coverage does not cover loss or damage which also comes within the terms of either Group I Item 2a or Group I Item 2c of the Exclusions clause of this Policy.

This coverage does not in any event cover loss or damage directly or indirectly caused by or resulting from any of the following, regardless of any other cause or event, whether or not insured under this Policy contributing concurrently or in any other sequence to the loss:

- a) That involves the use, release or escape of nuclear materials or that directly or indirectly results in nuclear reaction or radiation or radioactive contamination or that involves the discharge, explosion or use of any nuclear device, weapon or material employing or involving nuclear fission, fusion or radioactive force, whether in time of peace or war and regardless of who commits the act; or
- b) That is carried out by means of the dispersal or application of pathogenic or poisonous biological or chemical materials; or
- c) In which pathogenic or poisonous biological or chemical materials are released, and it appears that one purpose of the terrorism was to release such materials; or
- d) That involves action taken to prevent, defend against, respond to or retaliate against **terrorism** or suspected **terrorism**.

29. Transit

This Policy covers the following insured personal property:

- a) Owned by the Insured;
- b) Of others to the extent of the Insured's interest or legal liability while in the actual or constructive custody of the Insured;
- c) Shipped to others on Free on Board (FOB), Cost and Freight (C&F) or similar terms. The Insured's contingent interest in such shipments is admitted,
- d) Of others sold by the Insured, that the Insured has agreed prior to the loss to insure during course of delivery including:



- i) When shipped by the Insured's direct contract service provider or by the Insured's direct contract manufacturer to the Insured or to the Insured's customer;
- ii) When shipped by the Insured's customer to the Insured or to the Insured's contract service provider or to the Insured's contract manufacturer,

While in transit within the Policy's Territory:

- a) From the time the property leaves the original point of shipment for transit; and
- b) Continuously in the due course of transit until delivered at the destination.
- c) Coverage on export shipments not insured under ocean cargo policies does not extend beyond the time when the property is loaded on board overseas vessels or aircraft. Coverage on import shipments not insured under ocean cargo policies does not attach until after discharge from overseas vessels or aircraft.

This coverage:

- a) Insures physical loss or damage caused by or resulting from:
 - i) Unintentional acceptance of fraudulent bills of lading, shipping or messenger receipts by the Insured or the Insured's agent, customer or consignee.
 - ii) Any unauthorized person(s) representing themselves to be the proper party(ies) to receive the property for shipment or to accept it for delivery.
- b) Covers general average and salvage charges on shipments covered while waterborne.

Additional Conditions:

- a) Permission is granted to the Insured, without prejudice to this insurance, to accept ordinary bills of lading used by carriers, including:
 - i) Released and/or undervalued bills of lading; or
 - ii) Shipping or messenger receipts.
- b) The Insured may waive subrogation against railroads under sidetrack agreements.
- c) The Insured may not enter into any special agreement with carriers releasing them from their common law or statutory liability.
- d) This coverage shall not inure directly or indirectly to the benefit of any carrier or bailee.

Transit Exclusions: As respects Transit, the following additional exclusions apply:

This Policy excludes:

- a) Property shipped by mail.
- b) Shipments by air unless made by regularly scheduled airlines.
- c) Waterborne shipments via the Panama Canal or waterborne shipments to and from:
 - i) Alaska.



- ii) Hawaii.
- iii) Commonwealth of Puerto Rico.
- iv) Virgin Islands.
- d) Any transporting vehicle.
- e) Property of others, including the Insured's legal liability, hauled on vehicles owned, leased or operated by the Insured when acting as a common or contract carrier.
- f) Property insured under any import or export ocean marine insurance.

Transit Valuation: On property insured under this coverage, the loss amount will not exceed the following:

- a) For property shipped to or for the account of the Insured: the actual invoice to the Insured, including such costs and charges (including the commission of the Insured as selling agent) as may have accrued and become legally due on such property.
- b) For property that has been sold by the Insured and shipped to or for the account of the purchaser (if covered by this Policy), the amount of the Insured's selling invoice, including prepaid or advanced freight.
- c) For property not under invoice:
 - i) For property of the Insured, at the valuation provisions of the Policy applying at the place from which the property is being transported; or
 - ii) For other property, the **actual cash value** at point of destination on the date of loss,

Less any charges saved which would have become due and payable upon arrival at destination.

30. Unnamed Property

This Policy covers insured property anywhere within this Policy's Territory, excluding property while in transit.

Unnamed Property Exclusion: As respects Unnamed Property, the following additional exclusion applies:

This Policy excludes:

- a) **Transmission and distribution systems**, except at a premises owned, leased or rented by the Insured.



BUSINESS INTERRUPTION

The Business Interruption loss, as provided in the Business Interruption Coverage and Business Interruption Coverage Extensions of this section, is subject to all the terms and conditions of this Policy including, but not limited to, the limits of liability, deductibles and exclusions shown in the Declarations section.

A. LOSS INSURED

This Policy insures Business Interruption loss, as provided in the Business Interruption Coverage, as a direct result of physical loss or damage of the type insured:

1. To property as described elsewhere in this Policy and not otherwise excluded by this Policy;
2. Used by the Insured;
3. While at a **location** or while in transit as provided by this Policy; and
4. During the Period of Liability as described elsewhere in this Policy.

This Policy insures Business Interruption loss only to the extent it cannot be reduced through:

1. The use of any property or service owned or controlled by the Insured;
2. The use of any property or service obtainable from other sources;
3. Working extra time or overtime; or
4. The use of inventory;

All whether at a **location** or at any other premises. This Company reserves the right to take into consideration the combined operating results of all associated, affiliated or subsidiary companies of the Insured in determining the amount of loss.

In determining the amount of loss payable, this Company will consider:

1. Any amount recovered elsewhere under this Policy for loss or damage to finished goods or merchandise at selling price as having been sold to the Insured's regular customers and credited against net sales.
2. The experience of the business before and after and the probable experience during the Period of Liability. The probable experience will also consider any increase or decrease in demand for the Insured's goods or services during the Period of Liability, even if such increase or decrease is from the same event that caused physical loss or damage starting the Period of Liability.
3. The continuation of only those normal charges and expenses that would have been earned had there been no interruption of production or business operations or services.

This Policy also covers expenses reasonably and necessarily incurred by the Insured to reduce the loss otherwise payable under this Policy. The amount of such recoverable expenses will not exceed the amount by which the loss is reduced.



B. BUSINESS INTERRUPTION COVERAGE

1. Gross Earnings

The recoverable Gross Earnings loss is the actual loss sustained by the Insured of **Gross Earnings**, less all charges and expenses that do not necessarily continue, plus all other earnings derived from the operations of the business, excluding loss covered under Rental Income, during the Period of Liability.

Gross Earnings means:

The net sales value of production or business operations or services less the cost of:

- a) Raw stock;
- b) Materials and supplies; and
- c) Merchandise sold;

Used in production or business operations or services rendered by the Insured

The recoverable Gross Earnings loss payable is limited to the extent the Insured is:

- a) Wholly or partially prevented from producing goods or continuing business operations or services;
- b) Unable to make up lost production within a reasonable amount of time, not limited to the period during which production is interrupted;
- c) Unable to continue such operations or services during the Period of Liability; and
- d) Able to demonstrate a loss of sales for the production or business operations or services prevented.

2. Gross Profits

The recoverable Gross Profits loss is the actual loss sustained by the Insured of the:

- a) **Reduction in Sales**; and the
- b) **Increased Cost of Doing Business**,

Resulting from the necessary interruption of business during the Period of Liability.

As respects Gross Profits, Business Interruption Exclusion Items 2a, 2c and 3 do not apply.

For purposes of measuring the loss:

Gross Profits means:

The sum produced by adding the **Net Profit** to the **Insured Fixed Charges**. If there is no **Net Profit** the amount of all **Insured Fixed Charges** less that proportion of any loss from business operations as the amount of the **Insured Fixed Charges** bears to all fixed charges.

Increased Cost of Doing Business means:



The reasonable and necessary costs incurred to avoid or diminish a reduction in sales but not to exceed the sum produced by applying the **Rate of Gross Profit** to the amount of the reduction avoided; all less any sums saved as may cease or be reduced during the Period of Liability.

Insured Fixed Charges means:

All fixed charges unless specifically excluded in the Declarations section.

Net Profit means:

The net operating profit excluding:

- a) Capital receipts and accruals; and
- b) Outlay properly chargeable to capital;

Resulting from the business of the Insured after due provision has been made for all fixed charges and any other expenses, including depreciation, but before deduction of any taxes on profits.

Rate of Gross Profit means:

The rate of **Gross Profit** earned on **Sales** during the twelve (12) full months immediately before the date of the loss or damage to the insured property.

Reduction in Sales means:

The amount produced by applying the **Rate of Gross Profit** to the amount by which the **Sales** during the Period of Liability fall short of the **Standard Sales**.

Sales means:

The money, excluding loss covered under Rental Income, paid or payable to the Insured for:

- a) Goods sold and delivered; and
- b) Services rendered;

In the conduct of the Insured's business.

Standard Sales means:

The **Sales** during the period of the twelve (12) months immediately before the date of the loss or damage to the insured property which corresponds with the Period of Liability.

3. Rental Income

The recoverable Rental Income loss is the actual loss sustained by the Insured of the following during the Period of Liability:

- a) The fair rental value of any portion of the property occupied by the Insured;
- b) Income reasonably expected from the rentals of unoccupied or unrented portions of such property;
- c) The rental income from the rented portions of such property, according to bona fide leases, contracts or agreements, in force at the time of loss;



All less charges and expenses that do not continue.

Rental Income Exclusion: As respects Rental Income, the following additional exclusion applies:

This Policy does not insure:

- a) Any loss of rental income during any period in which the insured property would not have been rented for any reason other than an insured loss.

4. Extra Expense

The recoverable Extra Expense loss is the reasonable and necessary extra expense incurred by the Insured of the following during the Period of Liability to:

- a) Temporarily continue as close to normal the conduct of the Insured's business; and
- b) Temporarily use the property or facilities of the Insured or others;

All less any value remaining at the end of the Period of Liability for property obtained in connection with the above.

If the Insured makes claim in accordance with the terms and conditions of the BI Select clause, the Period of Liability for Extra Expense coverage will be the Period of Liability applicable to the Business Interruption Coverage option selected.

Extra Expense Exclusions: As respects Extra Expense, the following additional exclusions apply:

This Policy does not insure:

- a) Any loss of income.
- b) Expenses that usually would have been incurred in conducting the business during the same period had no physical loss or damage happened.
- c) The cost of permanent repair or replacement of property that has been damaged or destroyed.
- d) Any expense recoverable elsewhere in this Policy.

5. BI Select™

If this Policy insures Gross Earnings and Gross Profit the Insured has the option to make claim based on either:

- a) Gross Earnings; or
- b) Gross Profit.

If such claim involves more than one **location**, including interdependency at one or more **locations**, all such claims will be adjusted using the coverage option chosen above.

This option may be exercised any time prior to meeting the conditions set forth in the Settlement of Claims provisions in the Loss Adjustment and Settlement section of this Policy.



C. PERIOD OF LIABILITY

The Period of Liability for Business Interruption Coverage and Business Interruption Coverage Extensions, unless otherwise stated elsewhere in this Policy, is as follows:

The Gross Earnings, Rental Income or Extra Expense Period of Liability is:

1. The period starting from the time of physical loss or damage of the type insured; and
2. Ending when, with due diligence and dispatch,
 - a) The lost or damaged property could be repaired or replaced and made ready for production or business operations or services under the same or equivalent physical operating conditions that existed prior to the loss or damage; or
 - b) The lost or damaged property under the course of construction or renovation could be repaired or replaced to the same or equivalent degree of completion that existed prior to the loss or damage. This period of time will be applied to the level of business that would have been reasonably achieved after construction and startup would have been completed had no physical damage happened.
3. For **raw materials** or supplies, the period of time:
 - a) Resulting from the inability to procure suitable **raw materials** or supplies to replace those physically lost or damaged, but
 - b) For no more than the period of time for which such physically lost or damaged **raw materials** or supplies would have supplied production or business operating or servicing needs.

The Gross Profit Period of Liability is:

The period starting from the time of physical loss or damage of the type insured and ending no later than the period of time shown in the Declarations section during which the results of the business shall be directly affected by such damage.

Period of Liability Conditions:

The Period of Liability will not include any additional time:

1. Due to the Insured's inability to resume production or business operations or services regardless of the reason, including but not limited to:
 - a) Making change(s) to the buildings, structures or equipment, for any reason except as provided by the Demolition and Increased Cost of Construction coverage in this Policy; or
 - b) Restaffing or retraining employees. However, this item does not apply to additional time needed to train staff to use new machinery or equipment which replaces machinery or equipment that suffered insured physical loss or damage, provided that such training is completed within 90 days after the new machinery or equipment has been installed.

If two or more Periods of Liability apply such periods will not be cumulative and will not be limited by the expiration of this Policy.

D. BUSINESS INTERRUPTION EXCLUSIONS

In addition to the exclusions elsewhere in this Policy, the following exclusions apply to Business Interruption loss:

This Policy does not insure:



1. Any loss during any idle period, including but not limited to when production, operations or services or delivery or receipt of goods would cease, or would not have taken place or would have been prevented due to:
 - a) Physical loss or damage not insured by this Policy.
 - b) Planned or rescheduled shutdown.
 - c) Strike or other work stoppage.
 - d) Any other reason other than physical loss or damage insured under this Policy.
2. Any increase in loss due to:
 - a) The suspension, cancellation, or lapse of any lease, contract, license or order.
 - b) Damages for breach of contract, or for late or non-completion of orders.
 - c) Fines or penalties of any nature, except as provided by the Contractual Penalties coverage in this Policy.
 - d) Any other consequential or remote loss.
3. Any loss resulting from physical loss or damage to merchandise or finished goods valued at the regular cash selling price or the time required for their reproduction.
4. Any loss resulting from the actual cash value portion of direct physical loss or damage by fire caused by or resulting from terrorism.

E. BUSINESS INTERRUPTION COVERAGE EXTENSIONS

1. Attraction Property

This Policy covers the Business Interruption Coverage loss incurred by the Insured during the Period of Liability directly resulting from physical loss or damage of the type insured to property of the type insured that attracts business to a **described location** and is within one (1) statute mile of the **described location**.

Attraction Property Exclusion: As respects Attraction Property, the following additional exclusion applies:

This Policy does not insure loss resulting from:

- a) Physical loss or damage caused by or resulting from **terrorism**, regardless of any other cause or event, whether or not insured by this Policy, contributing concurrently or in any other sequence to loss.

2. Civil or Military Authority

This Policy covers the Business Interruption Coverage loss incurred by the Insured during the Period of Liability if an order of civil or military authority prohibits access to a **location** provided such order is the direct result of physical damage of the type insured at a **location** or within five (5) statute miles of it.

Item B. 3. of Property Excluded does not apply to this Business Interruption Coverage Extension.

The Period of Liability for this Business Interruption Coverage Extension will be:



- a) The period of time starting at the time of such order of civil or military authority, but not to exceed the number of consecutive days shown in the Declarations section of this Policy.

3. Communicable Disease - Business Interruption

If a **described location** owned, leased or rented by the Insured has the actual not suspected presence of **communicable disease** and access to such **described location** is limited, restricted or prohibited by:

- a) An order of an authorized governmental agency regulating such presence of **communicable disease**; or
- b) A decision of an Officer of the Insured as a result of such presence of **communicable disease**,

This Policy covers the Business Interruption Coverage loss incurred by the Insured during the Period of Liability at such **described location** with such presence of **communicable disease**.

This coverage is subject to the Qualifying Period in the Declarations section of this Policy.

Communicable Disease - Business Interruption Exclusions: As respects Communicable Disease - Business Interruption, the following additional exclusions apply:

This Policy does not insure loss resulting from:

- a) The enforcement of any law or ordinance with which the Insured was legally obligated to comply prior to the time of the actual spread of **communicable disease**.
- b) Loss or damage caused by or resulting from **terrorism**, regardless of any other cause or event, whether or not insured under this Policy, contributing concurrently or in any sequence of loss.

The Period of Liability for this Business Interruption Coverage Extension will be:

The period of time:

- a) Starting at the time of the order of the authorized governmental agency or the Officer of the Insured; but
- b) Not to exceed the time limit shown in the Limits of Liability clause in the Declarations section,

This period of time is part of and not in addition to any Period of Liability applying to any coverage provided in the Business Interruption section.

4. Computer Systems Non-Physical Damage

This Policy covers the Business Interruption Coverage loss incurred by the Insured during the Period of Liability directly resulting from:

- a) The failure of the Insured's **electronic data processing equipment or media** to operate provided that such failure is the direct result of a malicious act directed at the Named Insured; or
- b) The Insured's reasonable action to temporarily protect the Insured's **electronic data processing equipment or media** against an actual or immediately impending malicious act directed at the Named Insured, provided such action is necessary to prevent failure of the Insured's **electronic data processing equipment or media** to operate.

While anywhere within this Policy's Territory.

This coverage is subject to the Qualifying Period in the Declarations section of this Policy.



The Period of Liability for this Business Interruption Coverage Extension will be:

- a) The period of time starting when the Insured's **electronic data processing equipment or media** fails to operate and ending when, with due diligence and dispatch, the Insured's **electronic data processing equipment or media** could be restored to the same or equivalent operating condition that existed prior to the failure; and
- b) Does not include the additional time to make changes to the Insured's **electronic data processing equipment or media**.

5. Contractual Penalties

This Policy covers contractual penalties incurred by the Insured during the Period of Liability due to late or non-completion of orders as a direct result of insured physical loss or damage to property of the type insured.

This extension of coverage applies provided that such contractual penalties:

- a) Are written in the provisions of a contract prior to the time of such direct physical loss or damage, and
- b) Will be limited to the contractual sales value of such late or non-completed orders.

6. Crisis Management

This Policy covers the Business Interruption Coverage loss incurred by the Insured during the Period of Liability if an order of civil or military authority prohibits access to a **described location**, provided such order is a direct result of:

- a) A violent crime, suicide, attempted suicide or armed robbery; or
- b) A death or bodily injury caused by a **workplace accident**;

At that **described location**.

For the purpose of this Business Interruption Coverage Extension only, a violent crime, suicide, attempted suicide or armed robbery at a **described location** will be considered direct physical loss or damage insured by this Policy.

Crisis Management Exclusion: As respects Crisis Management, the following additional exclusion applies:

This Policy does not insure loss resulting from:

- a) Physical loss or damage caused by or resulting from **terrorism**, regardless of any other cause or event, whether or not insured by this Policy, contributing concurrently or in any other sequence to the loss.

The Period of Liability for this Business Interruption Coverage Extension will be:

- a) The period of time starting at the time of such order of civil or military authority, but not to exceed the number of consecutive days shown in the Declarations section of this Policy.

7. Extended Period of Liability

The Gross Earnings and Rental Income coverage is extended to cover the reduction in sales resulting from:

- a) The interruption of business as covered by Gross Earnings or Rental Income;
- b) For such additional length of time as would be required with the exercise of due diligence and dispatch to restore the Insured's business to the condition that would have existed had no loss happened; and



- c) Commencing with the date on which the liability of the Company for loss resulting from interruption of business would terminate if this Business Interruption Coverage Extension had not been included in this Policy.

However, this Business Interruption Coverage Extension does not apply to Gross Earnings or Rental Income loss resulting from physical loss or damage caused by or resulting from **terrorism**.

As respects Extended Period of Liability, Business Interruption Exclusion Item 2a does not apply.

Coverage under this Business Interruption Coverage Extension for the reduction in sales due to contract cancellation will include only those sales that would have been earned under the contract during the extended period of liability.

Coverage under this Business Interruption Coverage Extension does not apply for more than the number of consecutive days shown in the Limits of Liability clause of the Declarations section of this Policy.

8. Ingress/Egress

This Policy covers the Business Interruption Coverage loss incurred by the Insured due to the necessary interruption of the Insured's business when ingress to or egress from a **described location(s)** is physically prevented, either partially or totally, as a direct result of physical loss or damage of the type insured to property of the type insured whether or not at a **described location**.

Item B. 3. of Property Excluded does not apply to this Business Interruption Coverage Extension.

Ingress/Egress Exclusion: As respects Ingress/Egress, the following additional exclusion applies:

This Policy does not insure loss resulting from:

- a) Physical loss or damage caused by or resulting from **terrorism**, regardless of any other cause or event, whether or not insured by this Policy, contributing concurrently or in any other sequence to the loss.

9. Leasehold Interest

This Policy covers the loss incurred by the Insured of Leasehold Interest as follows:

If the lease agreement requires continuation of rent; and if the property is wholly untenable or unusable, the actual rent payable for the unexpired term of the lease; or if the property is partially untenable or unusable, the proportion of the rent payable for the unexpired term of the lease.

If the lease is cancelled by the lessor pursuant to the lease agreement or by the operation of law; the **Lease Interest** for the first three months following the loss; and the **Net Lease Interest** for the remaining unexpired term of the lease.

Leasehold Interests Exclusions: As respects Leasehold Interest, the following applies:

- a) Business Interruption Exclusions 1, 2 and 3 do not apply and the following applies instead:

This Policy does not insure any increase in loss resulting from the suspension, lapse or cancellation of any license, or from the Insured exercising an option to cancel the lease; or from any act or omission of the Insured that constitutes a default under the lease.

- b) This Policy does not insure loss directly resulting from physical loss or damage to Personal Property.

As used above, the following terms mean:

Net Lease Interest:



That sum which placed at 6 percent interest rate compounded annually would equal the Lease Interest (less any amounts otherwise payable hereunder).

Lease Interest:

The excess rent paid for the same or similar replacement property over actual rent payable plus cash bonuses or advance rent paid (including maintenance or operating charges) for each month during the unexpired term of the Insured's lease.

10. Logistics Extra Cost

This Policy covers the extra cost incurred by the Insured during the Period of Liability due to disruption of the normal movement of goods or materials:

- a) Directly between **described locations**; or
- b) Directly between a **location** and the premises of a direct supplier, direct customer or direct contract service provider to the Insured;

Provided that such disruption is a direct result of physical loss or damage of the type insured to property of the type insured within the Policy's Territory.

Item B. 3. of Property Excluded does not apply to this Business Interruption Coverage Extension.

The recoverable extra cost loss will be the reasonable and necessary extra costs incurred by the Insured of the following:

- a) Extra costs to temporarily continue as close to normal the movement of goods or materials.

Logistics Extra Cost Exclusions: As respects Logistics Extra Cost, the following shall apply:

This Policy does not insure any loss resulting from:

- a) Disruption of incoming or outgoing services consisting of electricity, gas, fuel, steam, water, refrigeration, sewerage and voice, data or video.
- b) Disruption caused by or resulting from **terrorism**, regardless of any other cause or event, whether or not insured under this Policy, contributing concurrently or in any other sequence to the loss.
- c) Disruption caused by physical loss or damage to personal property of the Insured while in transit.
- d) Disruption in the movement of goods or materials between the premises of a supplier, customer or contract service provider to the Insured and the premises of another supplier, customer or contract service provider to the Insured.
- e) Costs that usually would have been incurred in conducting the business during the same period had there been no disruption of normal movement of goods or materials; or
- f) Loss of income
- g) Costs of permanent repair or replacement of property that has been damaged or destroyed.

The Period of Liability for this Business Interruption Coverage Extension will be:

The period of time:

- a) Starting at the time of physical loss or damage causing the disruption of the normal movement of goods or materials; and



- b) Ending not later than when with due diligence and dispatch the normal movement of goods or materials could be resumed.

11. Off-Premises Data Services - Business Interruption

This Policy covers the Business Interruption Coverage loss incurred by the Insured during the Period of Liability at a **location of off-premises data processing or data transmission services**, when the interruption is caused by any accidental event at the facilities of the provider of such services, while anywhere within this Policy's Territory, that immediately prevents in whole or in part the delivery of such provided services. For the purposes of this Additional Coverage an accidental event to satellites will be considered an accidental event at the facilities of the provider.

This coverage is subject to the Qualifying Period in the Declarations section of this Policy.

Additional General Conditions:

- a) The Insured will immediately notify the company providing **off-premises data processing or data transmission services** of any interruption of such services.
- b) The Company will not be liable if the interruption of such services is caused directly or indirectly by the failure of the Insured to comply with the terms and conditions of any contracts the Insured has entered into for such specified services.

Coverage provided in this Extension is excluded from coverage elsewhere in this Policy.

This Extension does not cover the Business Interruption Coverage loss incurred by the Insured covered by Computer Systems Non-Physical Damage coverage as provided in this section of this Policy.

Off-Premises Data Services - Business Interruption Exclusions: As respects Off- Premises Data Services - Business Interruption, the following additional exclusions apply:

This Policy excludes loss or damage directly or indirectly caused by or resulting from **terrorism** regardless of any other cause or event, whether or not insured under this Policy, contributing concurrently or in any other sequence to the loss.

As used above, Period of Liability of **off-premises data processing or data transmission services**:

- a) Is the period starting with the time when an interruption of provided services happens; and ending when with due diligence and dispatch the service could be wholly restored and the **location** receiving the service could or would have resumed normal operations following the restorations of service under the same or equivalent physical and operating conditions as provided by the Period of Liability clause in this section.
- b) Is limited to only those hours during which the Insured would or could have used service(s) if it had been available.
- c) Does not extend to include the interruption of operations caused by any reason other than interruption of the provided service(s).

12. Off-Premises Service Interruption - Business Interruption

This Policy covers Business Interruption Coverage loss incurred by the Insured during the Period of Liability caused by the interruption, in whole or part, of incoming electric, gas, fuel, steam, water, refrigeration, and outgoing sewerage services at a **location**.

The interruption of such services must be by reason of any accidental event, not otherwise excluded by this Policy, at the facilities of the service provider(s) while anywhere within this Policy's Territory.



This coverage is subject to the Qualifying Period in the Declarations section of this Policy.

Additional Conditions:

This Company will not be liable for deliberate act(s) by the supplying utility to shed load to maintain system integrity.

Off-Premises Service Interruption - Business Interruption Exclusion: As respects Off-Premises Service Interruption - Business Interruption the following additional exclusions apply:

This Policy excludes loss or damage directly or indirectly caused by or resulting from **terrorism** regardless of any other cause or event, whether or not insured under this Policy, contributing concurrently or in any other sequence to the loss.

The Period of Liability for this Business Interruption Coverage Extension will be:

- a) The period starting with the time when an interruption of specified services happens; and
- b) Ending when with due diligence and dispatch the service could be wholly restored and the **location** receiving the service could or would have resumed normal operations under the same or equivalent physical and operating conditions. Resultant and concurrent interruptions are considered as one event.

13. Protection and Preservation of Property - Business Interruption

This Policy covers the Business Interruption Coverage loss incurred by the Insured for a period of time not to exceed 48 hours prior to and 48 hours after the Insured first taking reasonable action for the temporary protection and preservation of property insured by this Policy provided such action is necessary to prevent immediately impending insured physical loss or damage to such insured property.

This Business Interruption Coverage Extension does not cover loss sustained by the Insured to temporarily protect or preserve insured property from actual, or to prevent immediately impending, physical loss or damage covered by Terrorism coverage as provided in this Policy.

This Business Interruption Coverage Extension is subject to the deductible provisions that would have applied had the physical loss or damage happened.

14. Research and Development

Gross Earnings and Gross Profits coverages are extended to cover the actual loss sustained by the Insured of continuing fixed charges and **ordinary payroll** directly attributable to the interruption of research and development activities that in themselves would not have produced income during the Period of Liability.

The Period of Liability for this Business Interruption Coverage Extension will be:

The period of time:

- a) Starting at the time of physical loss or damage of the type insured; and
- b) Ending when the property could be repaired or replaced and made ready for operations.

15. Soft Costs

This Policy covers **soft costs** incurred by the Insured during the Period of Liability arising out of the delay in the completion of buildings and additions under construction directly resulting from physical loss or damage of the type insured to insured property under construction at **locations**.



16. Supply Chain

This Policy covers the Business Interruption Coverage loss incurred by the Insured during the Period of Liability directly resulting from physical loss or damage of the type insured to property of the type insured at the premises of any of the following within the Policy's Territory:

- a) Direct suppliers, direct customers or direct contract service providers to the Insured;
- b) Any company under any royalty, licensing fee or commission agreement with the Insured; or
- c) Any company that is a direct or indirect supplier, customer or contract service provider of those described in a) above,

But not at the premises of entities directly or indirectly supplying to or receiving from a **location** electricity, fuel, water, steam, refrigeration, sewerage, voice, data or video.

Business Interruption Coverage loss recoverable under this Business Interruption Coverage Extension is extended to include the following Business Interruption Coverage Extensions:

- a) Civil or Military Authority
- b) Crisis Management
- c) Extended Period of Liability
- d) Ingress/Egress
- e) Off-Premises Service Interruption - Business Interruption
- f) Supply Chain

Supply Chain Exclusions: As respects Supply Chain coverage, the following additional exclusion applies:

This Policy does not insure loss resulting from:

- a) Physical loss or damage caused by or resulting from **terrorism**, regardless of any other cause or event, whether or not insured by this Policy, contributing concurrently or in any other sequence to the loss.



LOSS ADJUSTMENT AND SETTLEMENT

A. ABANDONMENT

There shall be no abandonment to this Company of any property.

B. APPRAISAL

If the Insured and this Company fail to agree on the amount of loss, each will, on the written demand of either, select a competent and disinterested appraiser after:

1. The Insured has fully complied with all provisions of this Policy.
2. This Company has received a signed and sworn Proof of Loss from the Insured.

Each will notify the other of the appraiser selected within 20 days of such demand.

The appraisers will first select a competent and disinterested umpire. If the appraisers fail to agree upon an umpire within 30 days then, on the request of the Insured or this Company, the umpire will be selected by a judge of a court of record in the jurisdiction in which the appraisal is pending. The appraisers will then appraise the amount of loss, stating separately the **actual cash value** and replacement cost value as of the date of loss and the amount of loss, for each item of physical loss or damage or if, for Business Interruption loss, the amount of loss for each Business Interruption coverage of this Policy.

If the appraisers fail to agree, they will submit their differences to the umpire. An award agreed to in writing by any two will determine the amount of loss.

The Insured and this Company will each:

1. Pay its chosen appraiser; and
2. Bear equally the other expenses of the appraisal and umpire.

A demand for Appraisal shall not relieve the Insured of its continuing obligation to comply with the terms and conditions of this Policy, including as provided under Requirements in Case of Loss.

This Company will not be held to have waived any of its rights by any act relating to appraisal.

C. COLLECTION FROM OTHERS

This Company will not be liable for any loss to the extent that the Insured has collected for such loss from others.

D. COMPANY OPTION

This Company has the option to take all or any part of damaged property at the agreed or appraised value. This Company must give notice to the Insured of its intention to do so within 30 days after receipt of Proof of Loss.

E. CURRENCY FOR LOSS PAYMENT

Losses will be adjusted and paid in the currency of the United States of America, except in Canada where losses will be paid in Canadian currency, unless directed otherwise by the First Named Insured.



F. LEGAL ACTION AGAINST THIS COMPANY

No suit, action or proceeding for the recovery of any claim will be sustained in any court of law or equity unless:

1. The Insured has fully complied with all the provisions of this Policy; and
2. Legal action is started within two years after inception of the loss.

If under the insurance laws of the jurisdiction in which the property is located, such two-year limitation is invalid, then any such legal action must be started within the shortest limit of time permitted by such laws.

G. LOSS ADJUSTMENT AND PAYABLE

Loss or damage will be adjusted with the First Named Insured and payable to or as the First Named Insured directs subject to the Mortgage/Lenders Loss Payable clause in the General Conditions section of this Policy.

Additional insured interests will also be included in loss payment as their interests may appear when named as additional named insured, lender, mortgagee and/or loss payee on a Certificate of Insurance issued by this Company prior to the loss.

When named on a Certificate of Insurance issued by the Insured's broker with this Company's permission, such additional interests are added to this Policy as their interests may appear when such Certificate of Insurance is issued prior to the loss and on file with this Company. The effective date of any such interest will be the issue date of the certificate unless a later date is specified on the Certificate of Insurance. The Certificate of Insurance will not amend, extend or alter the terms, conditions, provisions and limits of this Policy.

H. OTHER INSURANCE

1. If there is any other insurance that would apply in the absence of this Policy, this Policy will apply only after such insurance whether collectible or not.
2. In no event will this Policy apply as contributing insurance.
3. The Insured is permitted to have other insurance over any limits or sublimits of liability specified elsewhere in this Policy without prejudice to this Policy. The existence of any such insurance will not reduce any limit or sublimit of liability in this Policy. Any other insurance that would have provided primary coverage in the absence of this Policy will not be considered excess.
4. The Insured is permitted to have other insurance for all, or any part, of any deductible in this Policy. The existence of such other insurance will not prejudice recovery under this Policy. If the limits of liability of such other insurance are greater than this Policy's applicable deductible, this Policy's insurance will apply only after such other insurance has been exhausted.
5. If this Policy is deemed to contribute with other insurance, the limit of liability applicable at each **location**, for the purposes of such contribution with other insurers, will be the latest amount described in this Policy or the latest **location** value on file with this Company.

I. REQUIREMENTS IN CASE OF LOSS

The Insured will:

1. Give immediate written notice to this Company of any loss.
2. Protect the property from further loss or damage.



3. Promptly separate the damaged and undamaged property; put it in the best possible order; and furnish a complete inventory of the lost, destroyed, damaged and undamaged property showing in detail the quantities, costs, **actual cash value**, replacement value and amount of loss claimed.
4. Give a signed and sworn proof of loss to the Company within 90 days after the loss, unless that time is extended in writing by this Company. The proof of loss must state the knowledge and belief of the Insured as to:
 - a) The time and origin of the loss.
 - b) The Insured's interest and that of all others in the property.
 - c) The **actual cash value** and replacement value of each item and the amount of loss to each item; all encumbrances; and all other contracts of insurance, whether valid or not, covering any of the property.
 - d) Any changes in the title, use, occupation, location, possession or exposures of the property since the effective date of this Policy.
 - e) By whom and for what purpose any **location** insured by this Policy was occupied on the date of loss, and whether or not it then stood on leased ground.
5. Include a copy of all the descriptions and schedules in all policies and, if required, provide verified plans and specifications of any buildings, fixtures, machinery or equipment destroyed or damaged.
6. Further, the Insured, will as often as may be reasonably required:
 - a) Exhibit to any person designated by the Company all that remains of any property;
 - b) Submit to examination under oath by any person designated by the Company and sign the written records of examinations; and
 - c) Produce for examination at the request of the Company:
 - i) All books of accounts, business records, bills, invoices and other vouchers; or
 - ii) Certified copies if originals are lost,

At such reasonable times and places that may be designated by the Company or its representative and permit extracts and machine copies to be made.

J. SETTLEMENT OF CLAIMS

The amount of loss for which this Company may be liable will be paid within 30 days after:

1. Proof of loss as described in this Policy is received by this Company; and
2. When a resolution of the amount of loss is made either by:
 - a) Written agreement between the Insured and this Company; or
 - b) The filing with this Company of an award as provided in the Appraisal clause of this section.

In the event of insured physical loss or damage determined by this Company's representatives to be in excess of the applicable policy deductible, this Company will advance mutually agreed-upon partial payment(s), subject to the Policy's



provisions. To obtain such partial payments, the Insured will submit a signed and sworn proof of loss as described in this Policy, with adequate supporting documentation.

K. SUBROGATION

The Insured shall cooperate in any subrogation proceedings. This Company may require from the Insured an assignment or other transfer of all rights of recovery against any party for loss to the extent of this Company's payment.

This Company will not acquire any rights of recovery that the Insured has expressly waived prior to a loss. No such waiver will affect the Insured's rights under this Policy.

Any recovery from subrogation proceedings, less costs incurred by this Company in such proceedings, will be payable to the Insured in the proportion that the amount of:

1. Any applicable deductible; and/or
2. Any provable uninsured loss,

Bears to the entire provable loss amount.

L. VALUATION

Adjustment of the physical loss amount(s) under this Policy will be as of the date of loss at the place of loss, and for no more than the interest of the Insured.

1. Adjustment of physical loss to property will be determined based on the lesser of the following unless stated otherwise below or elsewhere in this Policy:
 - a) The cost to repair.
 - b) The cost to rebuild or replace on the same site with new materials of like size, kind and quality.
 - c) The cost to rebuild, repair or replace on the same or another site, but not to exceed the size and operating capacity that existed on the date of loss.
 - d) On real property or machinery and equipment, other than stock, offered for sale on the date of the loss, the selling price.
2. On **raw materials**, supplies and merchandise not manufactured by the Insured, the replacement cost.
3. On **stock in process**, the value of **raw materials** and labor expended plus the proper proportion of overhead charges.
4. On finished goods manufactured by the Insured, the regular cash selling price, less all discounts and charges to which such finished goods would have been subject had no loss happened.
5. On exposed films, records, manuscripts and drawings that are not **valuable papers and records**, the value blank plus the cost of copying information from backup or from originals of a previous generation. These costs will not include research, engineering or any costs of restoring or recreating lost information.
6. On property that is damaged by fire and such fire is the result of **terrorism**, the **actual cash value** of the fire damage loss. Any remaining fire damage loss shall be adjusted according to the terms and conditions of the Valuation clause(s) of the Policy and shall be subject to the limit(s) of liability for Terrorism, and if stated the limit of liability for SUPPLEMENTAL UNITED STATES CERTIFIED ACT OF TERRORISM ENDORSEMENT(S), as shown in the Limits of Liability clause in the Declarations section.



7. On personal property that is part of a pair or set, and the physically damaged personal property cannot be replaced or repaired, the reduction in value of the undamaged portion of insured personal property. If settlement is based on a constructive total loss, the Insured will surrender the undamaged parts of such property to this Company.
8. On unrepairable electrical or mechanical equipment, including computer equipment, the cost to replace such equipment with equipment that is the most functionally equivalent to that damaged or destroyed, even if such equipment has technological advantages and/or represents an improvement in function and/or forms part of a program of system enhancement.
9. On property scheduled for demolition, the increased cost of demolition, if any, directly resulting from insured loss.
10. On improvements and betterments, the unamortized value of improvements and betterments, if such property is not repaired or replaced at the Insured's expense.
11. On property that is useless to the Insured, the **actual cash value**.
12. On property if not repaired, replaced or rebuilt on the same or another site within two years from the date of loss, unless such time is extended by the Company, the **actual cash value**.

The Insured may elect not to repair or replace the insured real or personal property under Item 1 above that is lost, damaged or destroyed. Loss settlement may be elected on the lesser of repair or replacement cost basis if the proceeds of such loss settlement are expended on other capital expenditures related to the Insured's operations within two years from the date of loss. As a condition of collecting under this item, such expenditure must be unplanned as of the date of loss and be made at a **described location** under this Policy. This item does not extend to Demolition and Increased Cost of Construction.



GENERAL CONDITIONS

A. APPLICATION OF POLICY TO DATE OR TIME RECOGNITION

With respect to situations caused by any **date or time recognition** problem by **electronic data processing equipment or media** (such as the so-called Year 2000 problem), this Policy applies as follows:

1. This Policy does not pay for remediation, change, correction, repair or assessment of any **date or time recognition** problem, including the Year 2000 problem, in any **electronic data processing equipment or media**, whether preventative or remedial, and whether before or after a loss, including temporary protection and preservation of property. This Policy does not pay for any business interruption loss resulting from the foregoing remediation, change, correction, repair or assessment.
2. Failure of **electronic data processing equipment or media** to correctly recognize, interpret, calculate, compare, differentiate, sequence, access or process data involving one or more dates or times, including the Year 2000, is not insured physical loss or damage. This Policy does not pay for any such incident or for any business interruption loss resulting from any such incident.

Subject to all of its terms and conditions, this Policy does pay for physical loss or damage not excluded by this Policy that results from a failure of **electronic data processing equipment or media** to correctly recognize, interpret, calculate, compare, differentiate, sequence, access or process data involving one or more dates or times, including the Year 2000. Such covered resulting physical loss or damage does not include any loss, cost or expense described in a) or b) above. If such covered resulting physical loss or damage happens, and if this Policy provides business interruption coverage, then, subject to all of its terms and conditions, this Policy also covers any insured business interruption loss directly resulting therefrom.

B. CANCELLATION/NON-RENEWAL

This Policy may be:

1. Cancelled at any time at the request of the First Named Insured by surrendering this Policy to this Company or by giving written notice to this Company stating when such cancellation will take effect; or
2. Cancelled by this Company by giving the First Named Insured not less than:
 - a) 60 days written notice of cancellation; or
 - b) 10 days written notice of cancellation if the First Named Insured fails to remit, when due, payment of premium for this Policy; or
3. Non-renewed by this Company by giving the First Named Insured not less than 60 days written notice of non-renewal.

Return of any unearned premium will be calculated on the customary short rate basis if the First Named Insured cancels and on a pro-rata basis if the Company cancels this Policy. Return of any unearned premium will be made by the Company as soon as practicable.

C. CONFORMITY TO STATUTE

Terms of this Policy that conflict with the statutes of the jurisdiction where the insured property is located, are amended to conform to such statutes.

D. FIRST NAMED INSURED

The First Named Insured shown in the Declarations section:



1. Is responsible for the payment of all premiums.
2. Will be the payee for any return premiums.
3. May authorize changes in the terms and conditions of this Policy with the consent of this Company.

E. INCREASE IN HAZARD

This Policy will not apply to any **location** where there is an increase in hazard over which the Insured has control and knowledge. Any increase in hazard at one or more **locations** will not affect coverage at other **locations** where, at the time of loss or damage, the increase in hazard does not exist.

F. INSPECTIONS

This Company, at all reasonable times, will be permitted, but will not have the duty, to inspect insured property. This Company does not address life, safety or health issues.

This Company's:

1. Right to make inspections; or
2. Making of inspections; or
3. Providing recommendations or other information in connection with any inspections,

Will not constitute an undertaking, on behalf of or for the benefit of the Insured or others.

This Company will have no liability to the Insured or any other person because of any inspection or failure to inspect.

When this Company is not providing jurisdictional inspections, the Owner/Operator has the responsibility to assure that jurisdictional inspections are performed as required, and to assure that required jurisdictional Operating Certificates are current for their pressure equipment.

G. LIBERALIZATION CLAUSE

If during the period that insurance is in force under this Policy, any filed rules or regulations affecting the same are revised by statute so as to broaden the insurance without additional premium charge, such extended or broadened insurance will inure to the benefit of the Insured within such jurisdiction, effective the date of the change specified in such statute.

H. MISREPRESENTATION AND FRAUD

This entire Policy will be void if, whether before or after a loss, an Insured has:

1. Willfully concealed or misrepresented any material fact or circumstance concerning this insurance, the subject thereof, any insurance claim, or the interest of an Insured.
2. Made any attempt to defraud this Company.
3. Made any false swearing.



I. MORTGAGEE/LENDERS LOSS PAYABLE

Loss or damage, if any, to specified property insured under this Policy shall be payable to each specified Lenders Loss Payable (hereinafter referred to as Lender) and specified Mortgagee as its interest may appear.

This insurance as to the interest of the Lender or Mortgagee shall not be invalidated by:

1. Any act or neglect of the debtor, mortgagor or owner (as the case may be) of the property.
2. Foreclosure, notice of sale or similar proceedings with respect to the property.
3. Change in the title or ownership of the property.
4. Change to a more hazardous occupancy.

The Lender or Mortgagee will notify this Company of any known change in ownership, occupancy or hazard and, within 10 days of written request by this Company, may pay the increased premium associated with such known change. If the Lender or Mortgagee fails to pay the increased premium, all coverage under this Policy will cease.

If the Insured fails to render proof of loss within the time provided in this Policy, the Lender or Mortgagee shall render proof of loss within sixty days after having knowledge of the Insured's failure in the form and manner provided by this Policy, and, further, shall be subject to the provisions of this Policy relating to Appraisal, Legal Action Against this Company, and Settlement of Claims.

If this Policy is cancelled at the request of the First Named Insured or its agent, the coverage for the interest of the Lender or Mortgagee will terminate 10 days after the Company sends to the Lender or Mortgagee written notice of cancellation, unless:

1. Sooner terminated by authorization, consent, approval, acceptance or ratification of the Insured's action by the Lender or Mortgagee, or its agent.
2. This Policy is replaced by the Insured, with a policy providing coverage for the interest of the Lender or Mortgagee, in which event coverage under this Policy with respect to such interest will terminate as of the effective date of the replacement policy, notwithstanding any other provision of this Policy.

This Company may cancel this Policy and/or the interest of the Lender or Mortgagee under this Policy, by giving the Lender or Mortgagee written notice 60 days prior to the effective date of cancellation, if cancellation is for any reason other than non-payment. If the debtor, mortgagor or owner has failed to pay any premium due under this Policy, this Company may cancel this Policy for such non-payment, but will give the Lender or Mortgagee written notice 10 days prior to the effective date of cancellation. If the Lender or Mortgagee fails to pay the premium due by the specified cancellation date, all coverage under this Policy will cease.

Whenever this Company shall pay the Lender or Mortgagee for loss or damage under this Policy and shall deny payment to the debtor, mortgagor or owner, this Company shall, to the extent of such payment, be subrogated to the rights of the Lender or Mortgagee under all collateral held to secure the debt or mortgage. No subrogation shall impair the right of the Lender or Mortgagee to recover the full amount due. At its option, this Company may pay to the Lender or Mortgagee the whole principal due on the debt or mortgage plus any accrued interest. In this event, all rights and securities will be assigned and transferred from the Lender or Mortgagee to this Company, and the remaining debt or mortgage will be paid to this Company.

This Company may invoke this Policy's Suspension clause. The suspension of insurance will apply to the interest of the Lender or Mortgagee in any machine, vessel, or part of any machine or vessel subject to the suspension. This Company will provide the Lender or Mortgagee at the last reported address a copy of the suspension notice.

All notices sent to the Lender shall be sent to its last reported address.



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Other provision relating to the interests and obligations of the Lender or Mortgagee may be added to this Policy by agreement in writing.

J. POLICY MODIFICATION

This Policy contains all of the agreements between the Insured and the Company concerning this insurance. The Insured and the Company may request changes to this Policy. This Policy can be changed only by endorsements issued by the Company and made a part of this Policy.

Notice to any agent or knowledge possessed by any agent or by any other person will not:

1. Create a waiver, or change any part of this Policy; or
2. Prevent the Company from asserting any rights under the provisions of this Policy.

K. REINSTATEMENT OF LIMITS AFTER A LOSS

Except for an **annual aggregate** limit of liability, any loss or payment of any claim will not reduce the amount payable under this Policy.

L. SUSPENSION

Upon discovery of a dangerous condition, this Company may immediately suspend the **boiler and machinery** insurance with respect to any machine, vessel or part thereof by giving written notice to the Insured. The insurance that is suspended may be reinstated by this Company. The Insured will be allowed the return of the unearned portion of the premium resulting from the suspension of insurance.

M. TRANSFER OF RIGHTS AND DUTIES UNDER THIS POLICY

The Insured's rights, interests and duties under this Policy may not be transferred or assigned without this Company's written consent.



DEFINITIONS

actual cash value means the cost to repair or replace the property, on the date of the loss or damage, with material of like kind and quality, less proper deduction for obsolescence and physical depreciation.

annual aggregate means the Company's maximum amount payable during any policy year.

boiler and machinery means:

1. Direct physical loss or damage originating within:

a) Boilers, fired or unfired pressure vessels, vacuum vessels and pressure piping, all normally subject to vacuum or internal pressure other than static pressure of contents, excluding:

i) Waste disposal piping;

ii) Any piping forming part of a fire protective system;

iii) Furnaces; and

iv) Any water piping other than:

(a) Boiler feed water piping between the feed pump or injector and the boiler;

(b) Boiler condensate return piping; or

(c) Water piping forming part of a refrigerating or air conditioning system used for cooling, humidifying or space heating purposes.

b) All mechanical, electrical, electronic or fiber optic equipment;

2. And caused by, resulting from or consisting of:

a) Mechanical breakdown; or

b) Electrical or electronic breakdown; or

c) Extremes or changes of temperature; or

d) Rupture, bursting, bulging, implosion or steam explosion.

3. **boiler and machinery** as used in this Policy does not mean:

Physical loss or damage caused by or resulting from any of the following regardless of any other cause or event contributing concurrently or in any other sequence to the loss:

a) Combustion explosions, except from within combustion gas turbines; or

b) Explosions from liquids coming in contact with molten materials; or

c) Accidental discharge, escape, leakage, backup or overflow to the open of any material from confinement within piping, plumbing systems or tanks except from property described in Item 1a above; or

d) Fire, or from the use of water or other means to extinguish a fire.



communicable disease means disease which is:

1. Transmissible from human to human by direct or indirect contact with an affected individual or the individual's discharges, or
2. Legionellosis.

contaminant means anything that causes **contamination**.

contamination means any condition of property due to the actual or suspected presence of any foreign substance, impurity, pollutant, hazardous material, poison, toxin, pathogen or pathogenic organism, bacteria, virus, disease causing or illness causing agent, fungus, mold or mildew.

date or time recognition means the recognition, interpretation, calculation, comparison, differentiation, sequencing, accessing or processing of data involving one or more dates or times, including the Year 2000.

described location(s) means the locations described in the Insurance Provided clause of the Declarations section of this Policy.

earth movement means any natural or man-made earth movement, including but not limited to earthquake or landslide regardless of any other cause or event contributing concurrently or in any other sequence of loss. However, physical loss or damage by fire, explosion, sprinkler leakage or **flood** resulting from **earth movement** will not be considered to be loss by **earth movement** within the terms and conditions of this Policy.

electronic data processing equipment or media means any computer, computer system or component, hardware, network, microprocessor, microchip, integrated circuit or similar devices or components in computer or non-computer equipment, operating systems, data, programs or other software stored on electronic, electro-mechanical, electro-magnetic data processing or production equipment, whether the property of the Insured or not.

fine arts means paintings; etchings; pictures; tapestries; rare or art glass windows; valuable rugs; statuary; sculptures; antique furniture; antique jewelry; bric-a-brac; porcelains; and similar property of rarity, historical value, or artistic merit, excluding automobiles, coins, stamps, furs, jewelry, precious stones, precious metals, watercraft, aircraft, money and securities.

flood means flood; surface waters; rising waters; storm surge, sea surge, wave wash; waves; tsunamis; tide or tidal water; the release of water, the rising, overflowing or breaking of boundaries of natural or man-made bodies of water; or the spray therefrom; all whether driven by wind or not; or sewer backup resulting from any of the foregoing; regardless of any other cause or event, whether natural or man-made, contributing concurrently or in any other sequence of loss. Physical loss or damage from **flood** associated with a storm or weather disturbance whether or not identified by name by any meteorological authority, is considered to be **flood** within the terms of this Policy. However, physical loss or damage by fire, explosion or sprinkler leakage resulting from **flood** is not considered to be loss by **flood** within the terms and conditions of this Policy.

Green means products, materials, methods and processes certified by a **Green Authority** that conserve natural resources, reduce energy or water consumption, avoid toxic or other polluting emissions or otherwise minimize environmental impact.

Green Authority means an authority on **Green** buildings, products, materials, methods or processes that are certified and accepted by Leadership in Energy and Environmental Design (LEED®), Green Building Initiative Green Globes®, Energy Star Rating System or any other recognized **Green** rating system.

irreplaceable means an item which cannot be replaced with other of like kind and quality.

location means a location described in the Insurance Provided clause of the Declarations section or included as Newly Acquired Property or Unnamed Property coverages.



named perils means: fire, lightning, **wind**, hail, explosion, smoke, impact from aircraft and vehicles, objects falling from aircraft, strike, riot, civil commotion, vandalism, theft, attempted theft, sprinkler leakage or collapse of buildings.

occurrence means the sum total of all loss or damage of the type insured, including any insured Business Interruption loss, arising out of or caused by one discrete event of physical loss or damage, except as respects the following:

1. **terrorism: occurrence** will mean the sum total of all loss or damage of the type insured, including any insured Business Interruption loss, arising out of or caused by all acts of **terrorism** during a continuous period of seventy-two (72) hours.
2. **earth movement: occurrence** will mean the sum total of all loss or damage of the type insured, including any insured Business Interruption loss, arising out of or caused by all **earth movement(s)** during a continuous period of seventy-two (72) hours.

off-premises data processing or data transmission services means the storage or processing of data performed off-premises of the Insured's property, including the transmission of voice, data or video over a single, or combination of, computer or communication networks.

offshore means away from the shore but not connected to the shore by docks, piers or any other physical connection other than pipelines.

ordinary payroll means:

1. Wages of all employees except officers, executives, department managers, and employees under contract or similar key employees; and
2. Includes taxes and charges dependent on the payment of those wages.

physical loss or damage to electronic data, programs or software means the destruction, distortion or corruption of electronic data, programs or software.

production machinery and equipment means any production or process machine(s) or apparatus that processes, forms, cuts, shapes, grinds or conveys **raw materials**, materials in process or finished goods and any associated equipment utilized in production including but not limited to electrical cabling, transformers, HVAC and any equipment or apparatus that is mounted upon or used exclusively with any one or more production or process machine(s) or apparatus.

raw materials mean materials and supplies in the state in which the Insured receives them for conversion by the Insured into finished goods.

soft costs means the expenses over and above normal expenses at **locations** undergoing alterations or additions to existing property and property in the course of construction limited to the following:

1. Construction loan fees - the additional cost incurred to rearrange loans necessary for the completion of construction, repairs or reconstruction including the cost to arrange refinancing, accounting work necessary to restructure financing, legal work necessary to prepare new documents, and charges by the lenders for the extension or renewal of loans necessary.
2. Commitment fees, leasing and marketing expenses - the cost of returning any commitment fees received from prospective tenant(s) or purchaser(s), the cost of releasing and marketing of the Insured Project due to loss of tenant(s) or purchaser(s).
3. Additional fees - for architects, engineers, consultants, attorneys and accountants needed for the completion of construction, repairs or reconstruction.
4. Carrying costs - building permits, additional interest on loans, insurance premiums and property and realty taxes.



stock in process means **raw materials** or stock, which has undergone any aging, seasoning, mechanical or other process or manufacture, but which is not finished goods.

terrorism means:

1. Any act, involving the use or threat of: force, violence, dangerous conduct, interference with the operations of any business, government or other organization or institution, or any similar act,
2. When the effect or apparent purpose is:

To influence or instill fear in any government (de jure or de facto) or the public, or any segment of either; or to further, or to express support for, or opposition to, any political, religious, social, ideological or similar type of objective or position.

transmission and distribution systems means transmission and distribution systems including but not limited to electricity, gas, fuel, steam, water, refrigeration, sewerage, voice, data and video. Such systems shall include poles, towers and fixtures, overhead conductors and devices, underground and underwater conduit, underground and underwater conductors and devices, line transformers, service meters, street lighting and signal systems.

valuable papers and records means inscribed, printed or written: documents; manuscripts or records including abstracts; and, books, deeds, drawings, films, maps or mortgages, all of which must be of value to the Insured. **Valuable papers and records** are not: money, securities and stamps; converted data programs or instructions used in the Insured's data processing operations; or, materials on which data is recorded.

wind means direct action of wind including substance driven by wind. **Wind** does not mean or include anything defined as **flood** in this Policy.

workplace accident means a sudden, fortuitous event that happens during working hours and arises out of work performed in the course and the scope of employment.



CYBER EVENT ENDORSEMENT

This Endorsement is a part of this Policy and the terms and conditions of this Policy are amended as described herein. All other terms and conditions of this Policy remain unchanged.

1. Cyber Event Definition

The following definition is added to this Policy:

cyber event means any act involving the malicious or unauthorized access to, operation of, or use of **electronic data processing equipment or media**, regardless of any other cause or event contributing concurrently or in any other sequence of loss. However, **physical loss or damage** by fire, explosion or sprinkler leakage resulting from **cyber event** is not considered to be loss by **cyber event** within the terms and conditions of this Policy.

2. Exclusions

PROPERTY EXCLUDED item **12.** is replaced with the following:

12. Electronic data, programs or software, except when incorporated into physical goods intended to be sold as:

- a) Finished goods manufactured by the Insured; or
- b) Other merchandise not manufactured by the Insured;

or as provided by the Data Restoration coverage in this Policy.

EXCLUSIONS Group I item **4.** is replaced with the following:

- 4.** Lack of incoming electricity, fuel, water, gas, steam or refrigerant; outgoing sewerage; or incoming or outgoing voice, data or video; all when caused by an event off the **location**, except as provided by the Data Service Provider and Off-Premises Service Interruption coverages in this Policy. If the lack of such a service directly causes insured physical damage at the **location**, then only that resulting damage is insured.

3. Additional Coverages

ADDITIONAL COVERAGES items **6.** and **21.** are replaced with the following:

6. Data Restoration

This Policy covers insured **physical loss or damage to electronic data, programs or software**, while anywhere within this Policy's Territory, including while in transit.

With respect to **physical loss or damage to electronic data, programs or software** caused by or resulting from a **cyber event**, this coverage will apply when the time to recreate or restore such data, programs or software with due diligence and dispatch is in excess of the Qualifying Period shown in the Declarations section of this Policy.

This coverage includes:

- a) The cost of the following reasonable and necessary actions taken by the Insured due to actual insured **physical loss or damage to electronic data, programs or software**:
 - i) To temporarily protect and preserve insured electronic data, programs or software.



- ii) For the temporary repair of insured **physical loss or damage to electronic data, programs or software**.
- iii) To expedite the permanent repair or replacement of such damaged property.
- b) The reasonable and necessary costs incurred by the Insured to temporarily protect or preserve insured electronic data, programs or software against immediately impending insured **physical loss or damage to electronic data, programs or software**. In the event that there is no physical loss or damage, the costs covered under this item will be subject to the deductible that would have applied had there been such physical loss or damage.

This Additional Coverage excludes loss or damage to data, programs or software when incorporated into physical goods intended to be sold as:

- a) Finished goods manufactured by the Insured, or
- b) Other merchandise not manufactured by the Insured.

Data Restoration Exclusions: As respects Data Restoration, the following additional exclusion applies:

This Policy excludes the following but, if physical damage not excluded by this Policy results, then only that resulting damage is insured:

- a) Errors or omissions in processing or copying.
- b) Loss or damage to data, programs or software from errors or omissions in programming or machine instructions.
- c) Deterioration, inherent vice, vermin or wear and tear.

The Period of Liability for this Additional Coverage Extension will be:

- a) The period of time starting from the time of insured **physical loss or damage to electronic data, programs or software**; and
- b) Ending when with due diligence and dispatch the electronic data, programs or software could have been recreated or restored and made ready for production or business operations or services under the same or equivalent physical operating conditions that existed prior to the physical loss or damage.

Data Restoration Valuation: On property insured under this coverage, the loss amount will not exceed:

- a) The cost to repair, replace or restore data, programs or software including the costs to recreate, research and engineer; or
- b) The blank value of the media if not repaired, replaced or restored within two years from the date of loss.

21. Data Service Provider - Property Damage

This Policy covers insured physical loss or damage to insured property at a **location** when such physical loss or damage results from the interruption of **off-premises data processing or data transmission services** by reason of any accidental event at the facilities of the provider of such services, while anywhere within this Policy's Territory, that immediately prevents in whole or in part the delivery of such provided services.



For the purposes of this Additional Coverage an accidental event to satellites will be considered an accidental event at the facilities of the provider.

This coverage will apply when such interruption of **off-premises data processing or data transmission services** is in excess of the Qualifying Period shown in the Declarations section of this Policy. Such interruption is the time when an interruption of provided services happens; and ending when with due diligence and dispatch the service could be wholly restored.

Additional General Conditions:

- 1) The Insured will immediately notify the company providing **off-premises data processing or data transmission services** of any interruption of such services.
- 2) The Company will not be liable if the interruption of such services is caused directly or indirectly by the failure of the Insured to comply with the terms and conditions of any contracts the Insured has entered into for such specified services.

Data Service Provider - Property Damage Exclusions: As respects Data Service Provider - Property Damage, the following additional exclusion applies:

This Policy excludes loss or damage directly or indirectly caused by or resulting from **terrorism** regardless of any other cause or event, whether or not insured under this Policy, contributing concurrently or in any other sequence to the loss.

4. Business Interruption Coverage

BUSINESS INTERRUPTION COVERAGE EXTENSIONS items **4.** and **11.** are replaced with the following:

4. **Owned Network Interruption**

This Policy covers the Business Interruption Coverage loss incurred by the Insured during the Period of Liability directly resulting from:

- a) The failure of the Insured's **electronic data processing equipment or media** to operate provided that such failure is the direct result of a **cyber event** directed at the Named Insured; or
- b) The Insured's reasonable action to temporarily protect the Insured's **electronic data processing equipment or media** against an actual or immediately impending **cyber event** directed at the Named Insured, provided such action is necessary to prevent failure of the Insured's **electronic data processing equipment or media** to operate.

While anywhere within this Policy's Territory.

As respects item **a)** above, this coverage will apply when the Period of Liability below is in excess of the Qualifying Period shown in the Declarations section of this Policy.

The Period of Liability for this Business Interruption Coverage Extension will be:

- a) The period of time starting when the Insured's **electronic data processing equipment or media** fails to operate and ending when with due diligence and dispatch, the Insured's **electronic data processing equipment or media** could be restored to the same or equivalent operating condition that existed prior to the failure; and



- b) Does not include the additional time to make changes to the Insured's **electronic data processing equipment or media**.

11. Data Service Provider - Business Interruption

This Policy covers the Business Interruption Coverage loss incurred by the Insured during the Period of Liability at a **location of off-premises data processing or data transmission services**, when the interruption is caused by any accidental event at the facilities of the provider of such services, while anywhere within this Policy's Territory, that immediately prevents in whole or in part the delivery of such provided services.

For the purposes of this Additional Coverage an accidental event to satellites will be considered an accidental event at the facilities of the provider.

This coverage will apply when the Period of Liability of **off-premises data processing or data transmission services** below is in excess of the Qualifying Period shown in the Declarations section of this Policy.

Additional General Conditions:

- a) The Insured will immediately notify the company providing **off-premises data processing or data transmission services** of any interruption of such services.
- b) The Company will not be liable if the interruption of such services is caused directly or indirectly by the failure of the Insured to comply with the terms and conditions of any contracts the Insured has entered into for such specified services.

Coverage provided in this Extension is excluded from coverage elsewhere in this Policy.

This Extension does not cover the Business Interruption Coverage loss incurred by the Insured covered by Owned Network Interruption coverage as provided in this section of this Policy.

Data Service Provider - Business Interruption Exclusions: As respects Data Service Provider - Business Interruption, the following additional exclusions apply:

This Policy excludes loss or damage directly or indirectly caused by or resulting from **terrorism** regardless of any other cause or event, whether or not insured under this Policy, contributing concurrently or in any other sequence to the loss.

The Period of Liability for this Business Interruption Coverage Extension will be:

- a) The period starting with the time when an interruption of provided services happens; and ending when with due diligence and dispatch the service could be wholly restored and the **location** receiving the service could or would have resumed normal operations following the restorations of service under the same or equivalent physical and operating conditions as provided by the Period of Liability clause in this section.
- b) Is limited to only those hours during which the Insured would or could have used service(s) if it had been available.
- c) Does not extend to include the interruption of operations caused by any reason other than interruption of the provided service(s).

**SUPPLEMENTAL UNITED STATES
CERTIFIED ACT OF TERRORISM ENDORSEMENT**

This Endorsement is applicable to all insured locations in the United States, its territories and possessions and the Commonwealth of Puerto Rico.

Coverage for “Certified Act of Terrorism” Under The Terrorism Risk Insurance Act of 2002, as amended.

In consideration of a premium charged of \$30,000, this Policy, subject to the terms and conditions therein and in this Endorsement, covers direct physical loss or damage to insured property and any resulting Business Interruption loss, as provided in the Policy, caused by or resulting from a Certified Act of Terrorism as defined herein.

Notwithstanding anything contained elsewhere in this Policy, any exclusion or limitation of terrorism in this Policy and any endorsement attached to and made a part of this Policy, is hereby amended to the effect that such exclusion or limitation does not apply to a “Certified Act of Terrorism” as defined herein. This amendment does not apply to any limit of liability for a Certified Act of Terrorism, if any, stated under any Sub-Limits clause in the Declarations section of this Policy.

With respect to any one or more Certified Act(s) of Terrorism, this Company will not pay any amounts for which the Company is not responsible under the terms of the Terrorism Risk Insurance Act of 2002 (including subsequent action of Congress pursuant to the Act) which includes a provision stating that if the aggregate insured losses exceed \$100,000,000,000 during any calendar year, neither the United States Government nor any insurer that has met its insurer deductible shall be liable for the payment of any portion of the amount of such losses that exceed \$100,000,000,000. If the aggregate insured losses for all insurers exceed \$100,000,000,000, your coverage may be reduced.

The coverage provided under this Endorsement for “Certified” losses caused by acts of terrorism will be partially reimbursed by the United States Government under a formula established by Federal Law. Under this formula, the United States pays 85% (and beginning on January 1, 2016, shall then decrease by 1 percentage point per calendar year until equal to 80 percent) of covered terrorism losses exceeding a statutorily established retention by the insurer referenced in this Policy. The premium charged for this coverage is provided above.

The terms and limitations of any terrorism exclusion, or the inapplicability or omission of terrorism exclusion, do not serve to create coverage for any loss which would otherwise be excluded under this Endorsement or the Policy.

The coverage provided by this Endorsement only applies to a Certified Act of Terrorism.

Reference and Application: The following term(s) means:

Certified Act of Terrorism:

A “Certified Act of Terrorism” means any act that is certified by the Secretary of the Treasury, in concurrence with the Secretary of Homeland Security, and the Attorney General of the United States, to be an act of terrorism pursuant to the federal Terrorism Risk Insurance Act of 2002 as amended and extended in 2005, 2007 and in 2015. The criteria contained in that Act for a “Certified Act of Terrorism” include the following:

- a. The act resulted in aggregate losses in excess of \$5,000,000; and
- b. The act is a violent act or an act that is dangerous to human life, property or infrastructure and is committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.



TEXAS

SPECIAL MANDATORY ENDORSEMENT

With respect to any insured location in the State of Texas this policy is amended:

REQUIREMENTS IN CASE LOSS OCCURS

1. The Insured shall give immediate written notice to the Company of any loss, notify the police in case of loss by theft, protect the property from further damage, immediately separate the damaged and undamaged personal property, and put it in the best possible order.
2. The Insured shall make reasonable and necessary repairs to protect the property, and keep an accurate record of repair expenses.
3. The Insured shall furnish a complete inventory of the destroyed, damaged and undamaged property showing in detail the quantity, cost, actual cash value and loss amount claimed. All bills, receipts and related documents shall be attached to the inventory.
4. Within 90 days unless such time is extended in writing by the Company, the Insured shall send to the Company a signed, sworn proof of loss.
5. This proof of loss shall state to the best knowledge and belief of the Insured:
 - a) The time and origin of loss;
 - b) The interest of the Insured and all others in the property involved including all liens on the property;
 - c) All other contracts of insurance whether valid or not, covering any of the said property;
 - d) The actual cash value of each item of property and the amount of loss to each item;
 - e) The name of the occupancy and the occupancy of the building at the time of the loss; and
 - f) Any changes in the title, use, occupation, location, possession or exposures of said property since the issuing of this policy.
6. The Insured shall furnish a copy of all the descriptions and schedules in all policies and, if required, a copy of all verified plans and specifications of any building, fixtures or machinery destroyed or damaged.
7. If this policy provides replacement cost coverage and the Insured elects to make claim under the replacement cost coverage of this policy, this proof of loss shall also state, to the best knowledge and belief of the Insured, the replacement cost of the described property and the full cost of repair or replacement of loss without deduction for depreciation.
8. The Insured, as often as may be reasonably required, shall:
 - a) Exhibit to any person designated by the Company all that remains of any property described in this policy;
 - b) Produce for examination all books of account, business records, bills, invoices and other vouchers or certified copies if originals are lost, and permit copies to be made; and
 - c) Submit to examinations under oath and sign and swear to them.

9. Within fifteen (15) days after the company receives written notice of claim, the Company shall:
 - a) Acknowledge receipt of the claim; but, if the acknowledgement of the claim is not in writing, the Company will keep a record of the date, method and content of the acknowledgement;
 - b) Begin any investigation of the claim; and
 - c) Specify the information that the Insured shall provide in accordance with the above item a.

The Company may request more information, if during the investigation of the claim such additional information is necessary.

10. After the Company receives the requested information, the Company shall notify the Insured in writing within fifteen (15) business days, or within thirty (30) days if the Company has reason to believe the loss resulted from arson, whether the claim will be paid or has been denied or whether more information is necessary.
11. If the Company does not approve payment of the claim or requires more time for processing the claim, the Company shall give the reasons for denying the claim, or give the reasons for requiring more time to process the claim.
12. But, the Company shall either approve or deny the claim within forty-five (45) days after requesting more time.
13. In the event of a weather related catastrophe as determined by the State Board of Insurance or major natural disaster as declared under the Texas Disaster Act of 1975, the claim handling deadlines imposed in this policy provision are extended for an additional fifteen (15) days.
14. "Business day" means a day other than Saturday, Sunday or holiday recognized by the State of Texas.

LOSS PAYMENT

1. If the Company notifies the Insured that payment of the claim or part of the claim will be made, the company shall make payment within five (5) business days after notification to the Insured.
2. If payment of the claim or part of the claim requires the performance of an act by the Insured, the Company shall make payment within five (5) business days after the date the Insured performs the act.
3. In the event of a weather related catastrophe as determined by the State Board of Insurance or major natural disaster as declared under the Texas Disaster Act of 1975, the claim handling deadlines imposed in this policy provision are extended for an additional fifteen (15) days.
4. "Business day" means a day other than Saturday, Sunday or holiday recognized by the State of Texas.

SUIT AGAINST COMPANY - No suit, action or proceeding for the recovery of any claim under this policy shall be sustainable in any court of law or equity unless the Insured shall have fully complied with all the requirements of this policy, and unless the same be commenced within two (2) years and one (1) day next after the cause of action accrues.

CANCELLATION

1. The Insured may cancel this policy by notice to this Company. Upon demand and surrender of this policy, the Company will refund the unearned premium determined by the customary short rate procedures.
2. Except as provided in 3 below, this company may not cancel this policy after the 60th day following the effective date of this policy.
3. This Company may cancel this policy at any time during the term of this policy for the following reasons:

- a. Fraud in obtaining coverage;
 - b. Failure to pay premiums when due;
 - c. An increase in hazard within the control of the Insured which would produce an increase in rate;
 - d. Loss of this Company's reinsurance covering all or part of the risk covered by this policy, or;
 - e. This Company being placed in supervision, conservatorship or receivership, if the cancellation or nonrenewal is approved or directed by the supervisor, conservator or receiver.
4. This Company must deliver or mail to the First Named Insured under this policy, at the address shown on this policy, written notice of cancellation of this policy not less than the 10th day before the date on which the cancellation takes effect.
 5. At the option of the Insured, this policy must be renewed at expiration, unless this Company delivers or mails to the First-Named Insured written notice of the nonrenewal of this policy at the address shown on this policy. The notice must be delivered or mailed not later than the 60th day before the date on which this policy expires. If notice is delivered or mailed later than the 60th day before the date on which this policy expires, the coverage shall remain in effect until the 61st day after the date on which the notice is delivered or mailed.
 - a. Earned premium for any period of coverage that extends beyond the expiration date of this policy shall be computed pro rata based on the rate charged for this expired policy.
 - b. The transfer of a policyholder between admitted companies within the same insurance group is not considered a refusal to renew.
 6. In notice to the Insured relating to cancellation or refusal to renew this Company must state the reason for the cancellation or nonrenewal.
 7. This Company may not cancel or refuse to renew this policy solely because the Insured is an elected official.

MORTGAGE INTERESTS AND OBLIGATIONS

1. This policy, as to the interest of the mortgagee only therein, shall not be invalidated by any act or neglect of the mortgagor or owner of the within described property, nor by any foreclosure or other proceedings or notice of sale relating to the property, nor by any change in the title or ownership of the property, nor by the occupation of the premises for purposes more hazardous than are permitted by this policy; PROVIDED that the mortgagee shall notify the Company of any change of ownership or increase of hazard which shall come to the knowledge of said mortgagee, and unless permitted by this policy, it shall be noted hereon.
2. If the Insured fails to render proof of loss, such mortgagee, upon notice, shall render proof of loss in the form herein specified within ninety one (91) days thereafter and shall be subject to the provisions hereof relating to appraisal and time of payment and of bringing suit. If the Company shall claim that no liability existed as to the mortgagor or owner, it shall, to the extent of payment of loss to the mortgage, be subrogated to all the mortgagee's rights of recovery, but without impairing mortgagee's right to sue, or it may pay off the mortgage debt and require an assignment thereof and of the mortgage. Other provisions relating to the interests and obligations of such mortgagee may be added hereto by agreement in writing.
3. Failure upon the part of the mortgagee to comply with any of the foregoing obligations shall render the insurance under this policy null and void as to the interest of the mortgagee.
4. If this policy is cancelled, the Company will give the mortgagee specifically named in this policy a written notice of cancellation.
5. If the Company cancels this policy, the mortgagee will be given the same number of days' notice of cancellation as the Insured.

6. If the Insured cancels this policy, the mortgagee will be given notice of cancellation to be effective on the date stated in the notice; however, the effective date of cancellation cannot be before the 10th day after notice is mailed.
7. The Company will not give notice of cancellation to any successor or assignee of the mortgagee named in this policy.
8. In the event of a foreclosure under a deed of trust, the lender may cancel this policy of insurance covering the property foreclosed upon and shall be entitled to any unearned premiums from this policy, provided the lender credits the amount of such unearned premiums against any deficiency owed by the borrower. Unearned premiums shall be determined by the customary short rate procedures.

ADDITIONAL GENERAL CONDITION, A LIQUIDATED DEMAND - A fire insurance policy, in case of a total loss by fire of property insured, shall be held and considered to be a liquidated demand against the Company for the full amount of such policy. The provisions of this Article shall not apply to personal property.

EXHIBIT B

Talking Points on the 2019 Novel Coronavirus (2019-nCoV)

“2019 Novel Coronavirus (2019-nCoV) is a virus (more specifically, a [coronavirus](#)) identified as the cause of an outbreak of respiratory illness first detected in Wuhan, China. Early on, many of the patients in the outbreak in Wuhan, China reportedly had some link to a large seafood and animal market, suggesting animal-to-person spread. However, a growing number of patients reportedly have not had exposure to animal markets, indicating person-to-person spread is occurring. At this time, it’s unclear how easily or sustainably this virus is spreading between people. The latest situation summary updates are available on CDC’s web page [2019 Novel Coronavirus, Wuhan, China.](#)”¹

Several of our clients have inquired as to whether there is coverage for losses they have or expect to incur as a result of the virus, which has spread outside of China. As one might expect, we have a wide range of clients who may be affected in a variety of ways by this outbreak. This document will not deal with all the issues associated with this matter, but will be helpful in providing responses to basic questions as it relates to the coverage provided by our policies.

The standard FM Global Advantage and AFM proVision forms provide a specific coverage for Communicable Disease. The Advantage policy provides Communicable Disease Response under Property Damage and Interruption by Communicable Disease under Time Element. The proVision policy provides coverage for Communicable Disease – Property Damage and Communicable Disease – Business Interruption. This memo addresses the standard policy language (cited below).

Lead in policy language policy language is noted below:

Property Damage

The 2019 Advantage Policy states in part:

If a **location** owned, leased or rented by the Insured has the actual not suspected presence of **communicable disease** and access to such location is limited, restricted or prohibited by:

- 1) an order of an authorized governmental agency regulating the actual not suspected presence of communicable disease; or
- 2) a decision of an Officer of the Insured as a result of the actual not suspected presence of **communicable disease**,

The proVision states:

If a **described location** owned, leased or rented by the Insured has the actual not suspected presence of **communicable disease** and access to such **described location** is limited, restricted or prohibited by:

- a) An order of an authorized governmental agency regulating or as result of such presence of **communicable disease**; or
- b) A decision of an Officer of the Insured as a result of such presence of **communicable disease**

This same initial lead in language also appears under the Advantage Time Element coverage and the proVision Business Interruption coverage.

Q. What is the trigger of coverage for Property Damage?

- A. Under each policy there must be the actual presence of a **communicable disease** at a location owned, leased or rented by the Insured and the access must be limited by either 1) or 2) under the Advantage, or a) or b) under proVision

Q. When does this coverage apply?

- A. Advantage Policy – under both Property Damage and Time Element each state:
 - This Additional Coverage will apply when access to such location is limited, restricted or prohibited in excess of 48 hours
- A. AFM proVision Policy - under both Property Damage and Business Interruption each state:
 - This coverage is subject to the Qualifying Period in the Declarations section of this Policy

Q. Would an employee at a **location** who is affected with the **communicable disease** be considered the “actual presence” of a **communicable disease**?

¹ <https://www.cdc.gov/coronavirus/2019-ncov/about/index.html>

A. Yes - if it can be confirmed the employee actually has the **communicable disease** and that the presence of the **communicable disease** is the basis for the decision limiting access as noted in sub-sections 1) and 2) under the Advantage Policy or a) and b) under proVition Policy.

Q. How can we determine whether an employee has the **communicable disease**

A. In some jurisdictions, access to medical records is not possible without employee consent. However, the Insured can ask the employee for the necessary medical diagnosis.

Q. If an Insured closes one or more locations because they suspect the presence of the **communicable disease** or does so in an abundance of caution, would that trigger coverage.

A. No. Coverage is only triggered if there is the actual presence of a **communicable disease**.

Q. What deductible would apply in the event of a covered loss?

A. If a coverage-specific deductible is not specified, the largest applicable deductible would apply. For example, if the location deductible is \$1,000,000 combined and the All Other Loss deductible is \$250,000, the \$1,000,000 would apply.

Q. Would an outbreak of a different virus be considered part of the same occurrence?

A. No

Q. Does coverage under Civil or Military Authority apply?

A. No

The Advantage form states:

“This Policy covers the Actual Loss Sustained and **EXTRA EXPENSE** incurred by the Insured during the **PERIOD OF LIABILITY** if an order of civil or military authority limits, restricts or prohibits partial or total access to the insured **location** provided such order is the direct result of physical damage of the type insured at the insured **location** or within five statute miles/eight kilometres of it...”

The proVition form states:

“This Policy covers the Business Interruption Coverage loss incurred by the Insured during the Period of Liability if an order of civil or military authority prohibits access to a **location** provided such order is the direct result of physical damage of the type insured at a **location** or within five (5) statute miles of it...”

A virus will typically not cause physical damage. Under either policy, the presence of a communicable disease does not constitute physical damage and is not of the type insured against as a virus falls within the definition of **contamination**, which is excluded.

Q. Does coverage under Contingent Time Element Extended (Advantage) or Supply Chain (ProVition) or Ingress/Egress apply?

A. No

These coverages require physical loss or damage to property of the type insured under either policy. The presence of a communicable disease does not constitute physical damage and is not of the type insured against as a virus falls within the definition of **contamination**, which is excluded.

Q. Is there any activity to consider prior to confirming coverage or issuing a payment?

A. Yes - keep in mind that most policies issued have a specific limit for this coverage and an annual aggregate applies. Check with the Claims Manager Written as well as the DSGA Written prior to confirming coverage and prior to issuing any payment to determine the status of the annual aggregate.

While the FM Global Advantage offers some of the broadest property coverage available, there are still events for which there may be no coverage. The Advantage and AFM policies insure against physical damage and require that there be insured physical loss or damage to property before its coverages become available. The Communicable Disease coverage provides for a specific trigger of coverage under these Additional Coverages. If there is a report of loss, FM Global stands ready to provide all the coverage available under the terms and conditions of its policies.