



Underwritten by: Scottsdale Indemnity Company  
Home Office: One Nationwide Plaza • Columbus, Ohio 43215  
Administrative Office: 18700 North Hayden Road • Scottsdale, Arizona 85255  
1-800-423-7675 • A Stock Company

## **RESTAURANT FOODBORNE ILLNESS AND CONTAMINATION INSURANCE (Including Crisis Expenses)**

### **(CLAIMS MADE)**

The **Named Insured** and the Insurer agree, in consideration of the payment of the premium and in reliance upon the **Application(s)** and statements contained therein, subject to the Schedule of Coverage, the Insurer will indemnify or otherwise compensate the **Named Insured** in accordance with and subject to the terms and conditions of this Policy.

In granting coverage under this Policy, it is understood and agreed that the Insurer has relied upon the statements, representations and warranties contained in all **Application(s)**, warranty statements, together with attachments and any other materials submitted for this Policy (including all such previous Policy applications, and their attachments and materials, for which this Policy is a renewal or succeeds in time), as being accurate and complete.

Boldfaced words within this Policy have special meaning. Refer to SECTION II—DEFINITIONS.

### SECTION I—INSURING AGREEMENT

The Insurer will pay **Insured Losses** in excess of the **Self-Insured Retention** up to the Limits of Insurance as shown on the Schedule of Coverage caused by, arising out of or resulting solely and directly from an **Insured Event** provided that:

1. The **Insured Event** is:
  - a. **First Discovered** during the Period of Insurance;
  - b. Reported to the Insurer in writing during the Period of Insurance or up to sixty (60) days after the expiration; and
  - c. In accordance with SECTION IV—GENERAL CONDITIONS, subsection 9. Duties of the **Named Insured**; and
2. The **Insured Losses** are incurred as follows:
  - a. **Insured Losses** other than **Loss of Gross Profit**, must be incurred within twelve (12) months after the **Insured Event** is **First Discovered** by the **Named Insured**; and
  - b. **Loss of Gross Profit** must be incurred within the **Indemnity Period**.
3. The most the Insurer will pay for all **Insured Losses** shall not exceed:
  - a. The relevant Sub-Limit shown under Limits of Insurance in the Schedule of Coverage for any one **Insured Event**;
  - b. The relevant Sub-Limit shown under Limits of Insurance in the Schedule of Coverage for all **Insured Events** in any one Period of Insurance; or

- c. The Combined Policy Period Aggregate Limit shown under Limits of Insurance in the Schedule of Coverage for all **Insured Events** in any one Period of Insurance.

However, **Crisis Response Consultant Costs** are paid in addition to and are not part of the Sub-Limits or the Combined Policy Period Aggregate.

Any amounts payable under any endorsement do not increase the Limit of Insurance, unless otherwise specified.

SECTION II—DEFINITIONS

- 1. **Application(s)** means a form or document for insurance coverage, including any written or electronic materials or information attached to or incorporated therein, submitted by the **Named Insured** to the Insurer for procurement of this Policy. **Application(s)** also includes any materials submitted or required to be submitted.

**Application(s)** shall not include any publicly available material, information or facts unless such material is included in the materials provided or the public availability and means of accessing the material, information or facts is specifically referred to within the **Application(s)** or materials attached to or incorporated therein.

- 2. **Bodily Injury** means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time. **Bodily Injury** does not include mental anguish or physical distress unless directly resulting from physical injury, sickness or disease.
- 3. **Circumstance** means specific facts which the **Named Insured** reasonably expects to give rise to an **Insured Event** covered under this policy.
- 4. **Contaminated Supplied Product(s)** means any **Supplied Product(s)** that have sustained accidental or unintentional contamination, impairment or mislabeling during or as a result of its production, preparation, manufacture, packaging, co-packaging or distribution that when used or consumed as intended, results in or would result in **Bodily Injury** within three hundred and sixty-five (365) days following the use or consumption of the **Supplied Product(s)**.
- 5. **Contagious Person** means a person who has been diagnosed by a licensed medical professional to be infectious with one or more of the following pathogens, their mutations, or variations:

Bordetella pertussis	Legionella bacteria	Rabies virus
Corona virus	Monkeypox virus	Rotavirus
Corynebacterium diphtheria	Mycobacterium leprae (Leprosy)	Rubella virus
Ebola virus	Mumps virus	Rubeola virus (Measles)
Enterovirus (Hand, Food and Mouth Disease)	Mycobacterium tuberculosis (TB)	Varicella zoster (Chickenpox)
Flavivirus (Yellow Fever)	Neisseria meningitidis	Variola virus (Smallpox)
Human Papillomavirus (HPV)	Plasmodium parasite (Malaria)	Yersinia Pestis (Bubonic Plague)
Hepatitis A	Polio virus	
Influenza		

- 6. **Crisis Response Consultants** means food safety, security, public relations consultants or advisors, solely and exclusively used by the **Named Insured** to provide assistance assessing, managing, mitigating and responding to an **Insured Event** and are solely those entities listed in the Claim(s) Notification form attached to this Policy.
- 7. **Crisis Response Consultants Costs** means the reasonable and necessary expenses incurred by **Crisis Response Consultants** and invoiced directly to the Insurer in response to an **Insured Event** or incurred up to the moment that a **Circumstance** is determined not to be an **Insured Event**.

8. **Extortion Demand** means any threat or series of connected threats to commit **Malicious Product Tampering** or **Property Damage** to an **Insured Restaurant** owned or operated by the **Named Insured** for the purpose of demanding **Extortion Money**.
9. **Extortion Demand Costs** means:
  - a. **Extortion Money** paid in response to an **Extortion Demand**;
  - b. In transit loss of **Extortion Money** due to the destruction, disappearance, confiscation or wrongful appropriation of **Extortion Money** while being handled or transported by anyone who is authorized by the **Named Insured** to have custody for this purpose;
  - c. Cash paid by the **Named Insured** to any person, other than the **Named Insured** and their employees, who provides information not otherwise available in response to an **Extortion Demand** in order to mitigate the **Extortion Demand**;
  - d. Interest costs for a loan from a financial institution made to the **Named Insured** for the purpose of paying **Extortion Money**;
  - e. Expenses of travel and accommodation incurred by or on behalf of the **Named Insured** while attempting to negotiate the resolution of an **Extortion Demand**;
  - f. Medical services and hospitalization costs paid by the **Named Insured** on behalf of any person(s) directly involved in the handling or negotiating of an **Extortion Demand** and the handling of **Extortion Money** as the direct result of an **Extortion Demand** provided the costs are incurred within thirty-six (36) months following the last extortion threat determined to be credible by **Crisis Response Consultants** or other expert approved by the Insurer. Medical services include, but are not limited to, any costs for treatment by a neurologist or psychiatrist, costs for cosmetic surgery and expense of confinement for such treatment;
  - g. Fees and expenses of independent forensic analysts engaged by the **Named Insured** in connection with an **Extortion Demand**;
  - h. Fees and expenses of qualified interpreters assisting the **Named Insured** in connection with an **Extortion Demand**; and
  - i. Increased security costs due to an **Extortion Demand** for a period of up to ninety (90) days from the last extortion threat determined to be credible by **Crisis Response Consultants** or other expert approved by the Insurer, including, but not limited to hiring of security guards, hiring of armored vehicles, and overtime pay to existing security staff, provided:
    - (1) The **Crisis Response Consultants** designated in the Claim(s) Notification form attached to this Policy have recommended such measures; and
    - (2) Such costs have been approved in writing by the Insurer prior to the costs being incurred.
10. **Extortion Money** means cash, monetary instruments, electronic currency, or the fair market value of any securities, tangible personal property or services paid or provided by the **Named Insured** as a direct result of an **Extortion Demand**.
11. **First Discovered** means when the **Named Insured** first knew or should have known of any matter, **Circumstance**, occurrence or event likely to lead or develop into an **Insured Claim(s)**.
12. **Foodborne Illness** means **Bodily Injury** to a customer attributable to:
  - a. Consumption of **Insured Product(s)** purchased from an **Insured Restaurant**; or
  - b. The sanitary conditions within an **Insured Restaurant**;

provided that the consumption of such **Insured Product(s)** or a customer's direct exposure to sanitary conditions has resulted in clear, identifiable, externally visible or internal physical symptoms of **Bodily Injury** within three hundred sixty-five (365) days following the sale or delivery to the customer.

13. **Government Recall** means:
  - a. The determination by an authorized regulatory or administrative agency or authority that a **Contaminated Supplied Product(s)** is unfit for human consumption by reason of being injurious to health; and
  - b. That results in a **Recall** of either the **Contaminated Supplied Product(s)** or an **Insured Product(s)** by such authority in compliance with regulations on food safety.
14. **Health Scare Event** means the closing of an **Insured Restaurant** by an authorized regulatory or administrative agency or authority due to one or more **Contagious Persons** having been at an **Insured Restaurant** owned or operated by the **Named Insured**.
15. **Indemnity Period** means the period of time that begins immediately after the first decrease in sales (as verified by a loss adjuster, forensic accountant or other financial expert acceptable to the Insurer) resulting solely and directly from an **Insured Event** and ends after the number of months shown on the Schedule of Coverage.
16. **Insured Claim(s)** means a written request by the **Named Insured** to the Insurer for **Insured Losses**.
17. **Insured Event** means:
  - a. **Contaminated Supplied Product(s)**;
  - b. **Extortion Demand**;
  - c. **Foodborne Illness**;
  - d. **Government Recall**;
  - e. **Health Scare Event**;
  - f. **Malicious Product Tampering**;
  - g. **Public Notification**;
  - h. **Security Crisis Event**; or
  - i. **Workplace Violence Event**.
18. **Insured Losses** means:
  - a. **Crisis Response Consultants Costs**;
  - b. **Extortion Demand Costs**;
  - c. **Loss of Gross Profit**;
  - d. **Medical Response Costs**;
  - e. **Pre-Recall Costs**;
  - f. **Recall Costs**;
  - g. **Rehabilitation and Marketing Costs**;
  - h. **Remediation Costs**; and
  - i. **Replacement and Restoration Costs**.

However:

- (1) If the **Insured Event** is an **Extortion Demand**, **Insured Losses** are limited to:
  - (a) **Crisis Response Consultants Costs**; and
  - (b) **Extortion Demand Costs**.
- (2) If the **Insured Event** is a **Security Crisis Event**, **Insured Losses** are limited to **Loss of Gross Profit**.
- (3) If the **Insured Event** is a **Workplace Violence Event**, **Insured Losses** are limited to:
  - (a) **Crisis Response Consultants Costs**; and
  - (b) **Loss of Gross Profit**.

19. **Insured Product(s)** means:

- a. Any goods or products (or any of their ingredients or components, including packaging, labelling and instructions for use) manufactured, produced, sold, supplied, treated, tested, distributed, packaged, labeled, printed or serviced:
  - (1) By the **Named Insured**; or
  - (2) On behalf of the **Named Insured**, whether or not such goods or products are in the **Named Insured's** care, custody or control;provided that such products have been reported to the Insurer in the **Application(s)** and shown on the Schedule of Coverages as **Insured Product(s)**; and
- b. Any products which are newly introduced or developed outside the products shown in the original **Application(s)**, provided that:
  - (1) The Insurer is advised in writing no less than sixty (60) days prior to the introduction of such products for sale; and
  - (2) The Insurer provides written confirmation of acceptance of such products, such acceptance not to be unreasonably withheld. The Insurer shall have the right to make a premium charge for any newly introduced or developed products for which coverage is afforded under this Policy.

20. **Insured Restaurant** means:

- a. Any restaurant that is occupied by or is under the care, custody, or control of the **Named Insured** provided that such restaurant is shown on the Schedule of Locations; or
- b. A restaurant not owned or operated by the **Named Insured** but operates under the same trade name as the **Named Insured**.

21. **Loss of Gross Profit** means the shortfall in sales after the **Waiting Period** and resulting solely and directly from an **Insured Event** and is the calculation of:

- a. The result of applying the rate of gross profit earned on the turnover during the financial year immediately prior to the **Insured Event** to the amount by which the standard sales fall short during the **Indemnity Period**; less
- b. Any sum saved during the **Indemnity Period** for charges and expenses payable out of the gross profit which may be reduced; plus the offset of
- c. Any increased sales of **Insured Product(s)** not subject to the **Insured Event** within the same product line.

Standard sales are the turnover during the twelve (12) month period before the **Indemnity Period**.

Gross profit is calculated as:

- (1) The sum of the turnover and the amounts of the closing stock and work in progress; less
  - (2) The sum of the amounts of the opening stock and work in progress and the variable costs of production including, but not limited to expense of ingredients, raw materials, transportation, and utilities.
22. **Malicious** means any act that has an intention to cause harm or damage to the **Named Insured** or to attempt to cause **Bodily Injury** or **Property Damage**.
23. **Malicious Product Tampering** means a threat to commit or the commission of an actual, intentional, **Malicious** and wrongful alteration of the **Insured Product(s)**, whether or not by an employee of the **Named Insured**, with the intention to render it unfit or create the impression it is unfit or dangerous for its intended use.
- Malicious Product Tampering** includes any unauthorized access to the **Named Insured's** computer systems, whether hardware and software, utilized in the operations of the **Named Insured's** facilities, manufacturing, labeling, or distribution of **Insured Product(s)** with the intention to render it unfit or create the impression it is unfit or dangerous for its intended use.
24. **Medical Response Costs** means the reasonable and necessary expense of preventative inoculations, initial vaccination series and current testing for the employees and customers following an **Insured Event** at an **Insured Restaurant** that is owned or operated by the **Named Insured**.
25. **Named Insured** means the person(s) or organization(s) designated as such in the Schedule of Coverage.
26. **Pre-Recall Costs** means the reasonable and necessary expenses of examination and inspection including, but not limited to the expenses of engineering, mechanical or chemical analysis, or other such efforts to identify the causes of a product deficiency that may give rise to an **Insured Event**.
27. **Property Damage** means physical deterioration to, destruction of or loss of use of tangible property other than the **Insured Product(s)**.
28. **Public Notification** means any news report in local, regional or national media including, but not limited to radio, television, printed publications or the internet or any government publication reporting:
- a. A health risk to humans related to the consumption of any food or beverage at the **Insured Restaurant** due to **Contaminated Supplied Product(s)**, **Government Recall**, **Malicious Product Tampering**, **Foodborne Illness**; or
  - b. One or more **Contagious Persons** was at an **Insured Restaurant** owned or operated by the **Named Insured**.
29. **Recall(s)** means the following acts that are solely and directly as a result of an **Insured Event**:
- a. Withdrawal or request for the return of an **Insured Product(s)** already supplied and distributed to any third party, customer or distributor; or
  - b. Withholding of an **Insured Product(s)** not yet supplied and distributed that are still in the **Named Insured's** care, custody and control.
30. **Recall Costs** means the following reasonable and necessary expenses incurred as a result of an **Insured Event**:
- a. Media and general advertising expenses of correspondence, printed publications, radio, television, telephone, cellular, internet or other media announcement to inform customers and the distribution channels about an **Insured Event**;

- b. Examination and inspection expenses after an **Insured Event** including engineering, mechanical or chemical analysis expenses or other such efforts to identify the causes or potential effects of the **Insured Event**;
  - c. Transportation expenses incurred to return the **Insured Product(s)** to the location of the **Named Insured** or another location designated by the **Named Insured**;
  - d. Temporary expenses to rent storage for the **Insured Product(s)**;
  - e. Disposal or destruction expenses of **Insured Product(s)**;
  - f. Reworking, repacking, relabeling and redistribution expenses of **Insured Product(s)**;
  - g. Retail slotting fees and cancellation fees for any advertising or promotion programs, where legally permitted, which were scheduled, but were unable to be executed;
  - h. Out-of-pocket expenses of employees incurred solely and directly from an **Insured Event**, including transportation;
31. **Rehabilitation and Marketing Costs** means the reasonable and necessary expenses related to the marketing, rehabilitation, or re-establishing of the **Insured Product(s)** to the level of sales or market share that existed during the financial year prior to the **Insured Event** provided that:
- a. Such expenses are incurred solely to reduce the **Loss of Gross Profit**; or
  - b. Such expenses are otherwise approved in writing by the Insurer prior to the costs being incurred.
32. **Remediation Costs** mean reasonable and necessary expenses incurred by the **Named Insured** for the cleaning and sanitization of an **Insured Restaurant** owned or operated by the **Named Insured** where a **Foodborne Illness**, **Contaminated Supplied Product(s)** or a **Health Scare Event** occurred.
33. **Replacement and Restoration Costs** means any reasonable and necessary expense to replace any **Insured Product(s)** subject to an **Insured Event** with products of the same value.

Such expense will:

- a. Be based on and limited to the expense of ingredients, raw materials and other items of a like nature actually incurred during the process of replacement;
- b. Not include the **Named Insured's** profit; and
- c. Not include any salvage value of any **Insured Product(s)**.

In the event that it is not financially viable or reasonable to replace or restore the **Insured Product(s)**, the **Insurer** will have the discretion to reimburse the **Named Insured's** original expense of manufacturing or purchasing the **Insured Product(s)**.

34. **Security Crisis Event** means the taking of hostages solely within an **Insured Restaurant** owned or operated by the **Named Insured**.
35. **Self-Insured Retention** means the amount of all **Insured Losses** payable with respect to each **Insured Event** to be borne by the **Named Insured** before the Insurer shall be liable to make any payment. Any **Insured Event** or **Insured Losses** which are exempt from the application of the **Self-Insured Retention** are shown in the Schedule of Coverage.
36. **Supplied Product(s)** means any ingredients or products supplied to the **Named Insured** that are incorporated into or sold as an **Insured Product(s)** at an **Insured Restaurant**.
37. **Waiting Period** means the number of consecutive days identified on the Schedule of Coverage at each affected **Insured Restaurant**.

38. **Workplace Violence Event** means the intentional act or threat of physical harm or deadly force solely within an **Insured Restaurant** owned or operated by the **Named Insured**.

### SECTION III—EXCLUSIONS

The Insurer will not pay **Insured Losses** directly or indirectly caused by, arising out of or resulting from:

1. Asbestos

The use of or exposure to asbestos or material or products containing asbestos. This exclusion does not apply to **Malicious Product Tampering** or **Extortion Demand**.

2. Carcinogens

The **Insured Product(s)**, or any of its ingredients, being a cause of cancer as defined by the National Cancer Institute (NCI), or the Centers for Disease Control and Prevention (CDC) or other authority. This exclusion does not apply to **Malicious Product Tampering** or **Extortion Demand**.

3. Cross Liabilities

Any recovery, or attempted recovery, of **Insured Losses** incurred by one **Named Insured** from another **Named Insured**.

4. Design

Redesigning, designing, product development, engineering or reengineering expenses of any **Insured Product(s)**.

5. Deterioration, Decomposition or Transformation

Any deterioration, decomposition or transformation of the chemical structure of any **Insured Product(s)**, including, but not limited to any combination or interaction among ingredients, components or packaging.

However, this Exclusion does not apply if the deterioration, decomposition or transformation is itself a direct result of an **Insured Event**.

6. External Changes

Any change in governmental regulations or public perceptions with respect to the safety of dining at an **Insured Restaurant** or of any **Insured Product(s)** or any of its ingredients, consumer tastes, economic conditions, seasonal sales variations or competitive environment, unless solely and directly attributable to an **Insured Event**.

7. Fines and penalties

Any fines, penalties or liquidated damages incurred under contract with any third party or imposed by any official authority or government agency.

8. Fraudulent or Illegal Acts

The, intentional, fraudulent, illegal, malevolent, dishonest or criminal acts by any of the **Named Insured's** owners, members, partners, directors, officers, or trustees.

9. Genetic Engineering or Hormone Treatment of any **Insured Product(s)**.

10. Intentional Breach of Regulation

- a. Any intentional breach or violation by the **Named Insured** of any law or regulation in connection with the manufacture, testing, sale, storage or distribution of any **Insured Product(s)**; or
- b. Intentional use of materials, ingredients, or substances in any **Insured Product(s)** which have been banned or declared unsafe by any government entity or regulatory body.



However, this exclusion does not apply to **Malicious Product Tampering** or **Extortion Demand**.

11. Prior Knowledge

- a. Any matters the **Named Insured** knew of or reasonably should have known of prior to the effective date of the Period of Insurance shown in the Schedule of Coverage;
- b. Any matters that take place after the **Named Insured** knew or reasonably should have known of a defect or deviation in the production, preparation or manufacture of **Insured Product(s)** that could give rise to an **Insured Event**; and the **Named Insured** has failed to take reasonable corrective actions;
- c. Any matters that have resulted in a defect or deviation in the production, preparation or manufacture of **Insured Product(s)**, and the **Named Insured** has failed to take reasonable corrective actions; or
- d. Any matters that, had the Insurer known prior to the effective date of the Period of Insurance shown in the Schedule of Coverage:
  - (1) The Insurer would have declined to offer the Policy; or
  - (2) The Insurer would have offered substantially different premium, terms or conditions.

12. Liability for **Bodily Injury** or **Property Damage**

Any compensation or damages payable to any third party with respect to **Bodily Injury** or **Property Damage** and any resulting economic or financial loss.

13. Nuclear radiation

Any nuclear radiation or radioactive contamination unless arising out of processes or techniques approved by appropriate governmental or other applicable regulatory authority.

However, this exclusion does not apply to **Malicious Product Tampering** or **Extortion Demand**.

14. Prior Events

In the event the **Named Insured** acquires a new legal entity, this Policy does not apply to any **Insured Loss** caused by, arising out of or resulting from any **Insured Event** where the cause was known or reasonably should have been known prior to the acquisition.

15. Punitive Damages

Any liability with respect to punitive, exemplary, aggravated damages or any additional damages resulting from the multiplication of compensatory damages or other non-compensatory damages.

16. Similar Products

**Recall(s)** of an **Insured Product(s)** exclusively due to the recall of a third-party product which is similar to an **Insured Product(s)**.

17. Specifications

Any failure by an **Insured Product(s)** to meet required or contracted specifications, unless the failure to meet such specifications is also the cause of a **Product Defect**.

18. Terrorism

- a. Any act or acts including, but not limited to the use of force or violence or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organization(s) or government(s) that are: Committed for political, religious, ideological or similar purposes including:

- (1) The intention to influence any government; or
  - (2) To put the public, or any section of the public in fear; or
- b. Any preparation towards or any action taken in controlling, preventing, suppressing or in any way relating to any such act.

However, this exclusion does not apply to **Malicious Product Tampering** or **Extortion Demand**.

## 19. War

War, invasion, act of foreign enemy hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power, nationalization, confiscation, requisition, seizure or destruction by the government or any official authority.

## SECTION IV—GENERAL CONDITIONS

### 1. Acquisitions

In the event the **Named Insured** acquires or establishes any new legal entity, and:

- a. The **Named Insured** directly or indirectly holds a fifty percent (50%) share or more or has management control;
- b. The **Named Insured** gives the Insurer written notice within ninety (90) days of such acquisition or establishment; and
- c. The **Named Insured** pays the Insurer an additional premium computed from the date of the acquisition or establishment to the end of the current Period of Insurance;

such legal entity will be included as a **Named Insured** from the date of acquisition or establishment, but only with respect to the **Insured Product(s)** shown on the Schedule of Coverages.

In the event any additional premium computed as a result of the acquisition or establishment is not paid when due, coverage under this Policy for such other entity will cease thirty (30) days after the date of acquisition or establishment.

The **Named Insured** shall not be required to give the Insurer any written notice of any acquired or newly established legal entity until such time as the revenues associated with all acquired or newly established legal entities exceed five percent (5%) of the gross revenue of the **Named Insured** as disclosed within the **Application(s)** provided to the Insurer.

### 2. Arbitration

In the event of a disagreement between the **Named Insured** and the Insurer under this Policy, the disagreement shall be submitted to binding arbitration before a panel of three arbitrators. Within thirty (30) days of a written request for arbitration by either the **Named Insured** or the Insurer, each party will choose an arbitrator. If the two arbitrators are unable to agree within one month upon the third arbitrator, such arbitrator shall at the request of either party be selected by the American Arbitration Association in accordance with its rules and procedures.

The parties shall submit their cases to the panel by written and oral evidence at a hearing time and place selected by the third arbitrator. The panel shall be relieved of all judicial formality, shall not be obligated to adhere to the strict rules of law or of evidence, shall seek to enforce the intent of the parties hereto and may refer to, but are not limited to, relevant legal principles. The decision of at least two of the three panel members shall be binding and final and not subject to appeal except for grounds of fraud and gross misconduct by the arbitrators.

The award will be issued within thirty (30) days of the close of the hearings. Each party shall bear the expenses of its designated arbitrator and shall jointly equally share with the other the expenses of the third arbitrator and of the arbitration.

The arbitration proceedings shall take place in or the vicinity of New York, NY. The procedural rules applicable to this arbitration shall, except as provided otherwise herein, be in accordance with the Commercial Arbitration Rules of the American Arbitration Association.

### 3. Batch Clause

When two or more **Insured Events**:

- a. Happen within twelve (12) months after the initial such **Insured Event** is **First Discovered**; and
- b. That have as a common nexus any fact, event, **Circumstance**, cause, incident, situation, or transaction, or any series of facts, events, **Circumstances**, causes, incidents, situations or transactions.

all such **Insured Losses** shall be attributed to the initial **Insured Event**, irrespective of when any subsequent **Insured Event(s)** actually occurred. The coverage, terms, conditions and Limits of Insurance in effect at the time the initial **Insured Event** was **First Discovered** shall apply.

### 4. Cancellation

- a. The **Named Insured** may cancel this Policy by mailing or delivering an advance written notice to the Insurer stating when the cancellation is to take effect.
- b. the Insurer may cancel this Policy. If the Insurer cancels because of non-payment of premium, the Insurer will mail or deliver to the **Named Insured** not less than ten (10) days advance written notice when the cancellation is to take effect. If the Insurer cancels for any other reason, the Insurer will mail or deliver to the **Named Insured**, not less than ninety (90) days advance written notice stating the reason(s) for cancellation, as well as the date when the cancellation is to take effect.
- c. Mailing notice to the **Named Insured** at the mailing address shown in the Schedule of Coverage will be sufficient to prove notice.
- d. If this Policy is cancelled, the final premium will be calculated pro rata based on the time this Policy was in force. However, policy premium will be considered fully earned if there is any **Insured Loss** during the **Period of Insurance**.
- e. Premium adjustments may be made at the time of cancellation or as soon as practicable thereafter, but the cancellation will be effective regardless of whether the Insurer has offered or issued any refund due to the **Named Insured**. The Insurer's or its representative's check, mailed or delivered, will be sufficient tender of any refund due to the **Named Insured**.

### 5. Changes

Notice to any agent or knowledge possessed by any agent or any other person cannot change in any part of this Policy. This Policy can only be changed by a written endorsement that becomes part of this Policy.

### 6. Choice of Law

All disputes arising under or in relation to this insurance will be governed by the laws of the United States of America and the State of New York. The Insurer and the **Named Insured** expressly agree that all **Insured Claim(s)** and disputes will be brought for adjudication in the Supreme Court of the State of New York County or in the United States District Court for the Southern District of New York.

### 7. Confidentiality

The **Named Insured** agrees to use all reasonable efforts not to disclose the existence of the **Extortion Demand** coverage afforded under this Policy.

## 8. Crisis Response Consultants

Consultants or experts which are not listed in the Claims Notification form may be approved by the Insurer provided that the **Named Insured** requests such approval from the Insurer prior to any actual knowledge of a **Circumstance**.

The **Named Insured** will supply any information requested by the Insurer required to assess the preparation, expertise and expense of such consultant or expert. The Insurer will inform the **Named Insured** in writing of the approval or disapproval of any consultant or expert within fifteen (15) days from receiving the requested information necessary to make such determination and the Policy will be endorsed accordingly.

In cases where the Policy is endorsed to include consultants and experts not listed in the Claims Notification form, such expenses will be reimbursed by the Insurer to the **Named Insured**.

## 9. Duties of the **Named Insured**

- a. When an **Insured Event** is **First Discovered**, and again upon receipt by the **Named Insured** in writing of any **Insured Claim(s)** or legal proceeding the **Named Insured** shall:
  - (1) Ensure that the Insurer is notified as soon as practicable of an **Insured Event** which may result in **Insured Losses** covered by the Policy. To the extent possible, notice will include how, when and where the **Insured Event** took place, and, the nature and location of any injury, damages or **Insured Losses** arising out of the **Insured Event**.
  - (2) Notify the Crisis Response Consultant Call Center as soon as practicable in accordance with the provisions of the Claim(s) Notification Instructions form attached to this Policy;
  - (3) Immediately notify the Insurer in writing of any impending prosecution inquest, fatal inquiry or civil proceedings and send to the Insurer every relevant correspondence received unanswered.
- b. The **Named Insured** will not, except at the **Named Insured's** own cost, voluntarily make a payment or assume any obligation without the Insurer's written consent. Such voluntary payment will not be reimbursable even if it would have been covered under the Policy with the Insurer's written consent.
- c. The **Named Insured** will submit to the Insurer with reasonable promptness an initial statement of **Insured Losses**, stating the full particulars of the **Insured Losses** and its initial calculations or projections of the elements and composition of the **Insured Losses**.
- d. A final statement of **Insured Losses** with respect to all items, containing particulars of the elements or components containing the amount of **Insured Losses** must be submitted by the **Named Insured** to the Insurer in writing:
  - (1) With respect to all items of **Insured Losses** except **Loss of Gross Profit** no later than eighteen (18) months from the time the **Insured Event** was **First Discovered**; and
  - (2) With respect to **Loss of Gross Profit**, not earlier than the conclusion of the **Indemnity Period** and not later than six months after the conclusion of the **Indemnity Period**.
- e. The **Named Insured** must cooperate with the Insurer in the investigation or settlement of the **Insured Claim(s)** or defense arising from the **Insured Event**.

## 10. **Loss of Gross Profit** Loss Settlement

- a. The rate of gross profit, amounts of the opening and closing stocks and work in progress shall be calculated in accordance with the **Named Insured's** normal accountancy methods, due provision being made for depreciation.

- b. Adjustments shall be made to the figures representing the percentage of gross profit and the turnover as may be necessary to provide for the trend of the business and for variations therein or other circumstances that affected or that would have affected the business had the **Insured Event** not occurred, so that the figures thus adjusted shall represent as nearly as may be reasonably practicable results which but for the **Insured Event** would have been obtained during the relevant period after the **Insured Event**.

11. Non-Disclosure or Misrepresentation

Without prejudice to the Insurer's other rights, the insurance afforded by this Policy is null and void in case of concealment, misrepresentation or non-disclosure by the **Named Insured** of:

- a. The information supplied in the **Application(s)**, or as supplementary material to the **Application** shown, or provided to the Insurer for the purpose of procuring the insurance afforded by the Policy and used by or relied upon by the Insurer within the underwriting process; or
- b. A material fact concerning the **Insured Product(s)**, or the **Named Insured(s)** interest in the **Insured Product(s)** or a material fact concerning an **Insured Event** or any **Insured Losses** or **Insured Claim(s)** under this Policy.

12. Other Insurance

This Policy will not be primary for any **Insured Event** which is insured by or would be insured (but for the existence of this Policy) by any other policy, except with respect to any excess beyond the amount payable under such other policy or which would have been payable under such other policy had this insurance not been affected.

13. Premium Payment Condition

The **Named Insured** undertakes that premium shall be paid in full to the Insurer within thirty (30) days of the inception of this Policy (or, with respect to installment premiums, when due) and shall have the burden of establishing that such payment has been made.

14. Reasonable Precautions

The **Named Insured** shall:

- a. Take all reasonable precautions to prevent or cease any activity which may give rise to an **Insured Event**;
- b. Take all steps to observe and comply with all statutory or local authority laws, obligations and requirements in connection with the **Insured Product(s)**; and
- c. Test any **Insured Product(s)** according to applicable regulations.

15. Sanctions

Whenever coverage provided by this Policy would be in violation of any U.S. economic or trade sanctions including, but not limited to those sanctions administered and enforced by the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC"), such coverage shall be null and void.

16. Territory

This Policy applies to **Insured Event(s)** in the Territory shown in the Schedule of Coverages.

17. Terrorism

An act of terrorism is presumed to be subject to the Terrorism exclusion unless the **Named Insured** provides conclusive proof to the contrary.