A Primer on Property Insurance
for Offshore and Onshore Energy Risks

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I. INTRODUCTION TO THE ENERGY INDUSTRY

A. THE THREE SECTORS

The oil industry is a massive, multi-faceted environment that spans a number of different processes and occupations. Because it is so complex and encompasses so much, it is divided into three distinct sections based on the steps from drilling to refinement to ultimate use. These three distinct subdivisions of the energy industry are: Upstream, Midstream, and Downstream.¹

Upstream can be broken into many components, but the main ones are: searching out and selecting potential oil sites, evaluation of these sites, drilling exploratory wells, and operating these wells to extract crude oil.² The offshore energy package policy provides coverage for Upstream energy risks.

The Midstream industry involves the transportation and storage of oil and gas. Midstream takes the oil and gas retrieved in the Upstream sector and gets it to the Downstream processing facilities so that it can be turned into the various finished products in consumers’ daily lives. There are quite a few logistical pathways that the Midstream sector may follow, including gathering and processing, logistics, pipelines, compressor stations, trucking, barges, rail, and terminals.³

The Downstream sector provides the closest connection to everyday consumers. In the Downstream sector, crude oil or natural gas arrives at processing plants where it is refined and eventually turned into various products which will then be sold and distributed, including: Gasoline, Diesel Fuel, Jet Fuel, Asphalt, Fertilizers, and Liquified Natural Gas (LNG), among others.⁴

Some in the energy industry classify only the Upstream and Downstream sectors. When that classification is used, the Midstream sector is traditionally classified with the Downstream sector.⁵ The onshore energy package policy typically provides coverage for Downstream energy risks and some Midstream risks, such as pipelines and processing terminals.

B. INSURING THE ENERGY INDUSTRY

Energy insurance coverage is generally “arranged on a ‘package’ basis by specialist insurance brokers for upstream, midstream, and downstream exposures, with the latter sector

² Explaining Upstream, supra note 1.
³ See e.g., What is Upstream?, supra note 1.
dominating business interruption.”⁶ Energy insurance packages typically include covers for onshore property, offshore property, business interruption, well control/redrill, and some include third-party liabilities, including pollution clean-up. *Cost of Oil & Gas Claims, supra* note 6.

According to one experienced commentator, “[a] mini cottage industry has evolved to handle complex business interruption losses involving loss adjusters, accountants, engineers, schedulers, and attorneys to provide specialist legal advice on the correct interpretation of the complicated contractual and policy language.” *Id.* When there are insurance claims in the oil and gas industry, they can be very large. The average claim in the energy sector is in excess of $25 million, according to the Global Claims Review 2014 issued by Allianz Corporate Global & Specialty.

II. **THE OFFSHORE ENERGY PACKAGE POLICY**

A. **Operators Extra Expense / Control of Well Insurance**

1. **Overview**

The somewhat tortured history of the development of today’s predominant Control of Well (“COW”) wording over the past 70 years is a classic study in the London Market’s creative adaptation of policy language to match practical and judicial interpretation realities so that the risks in drilling could be realistically and actuarially insured. Today’s COW language expresses in writing the blend of risks which can be feasibly insured. While nothing is perfect and language is fluid, the resulting Energy Exploration and Development Policy (“EED (8/86)”) form is, by any fair measure, a splendid work of underwriting art.

The focus of this section of the paper is the Market dominant EED (8/86) form. The best way to truly understand the development and application of the EED Policy is to first absorb its history, rather than simply reading the policy language itself or dry summaries of its various provisions.

From a macroscopic view, there are two distinct tranches to the history of the Offshore Energy Package Policy. The first was development of the COW policy beginning in the 1940s and how that grew significantly to the Operators Extra Expense (“OEE”) Policy, and then to the EED/86 Policy today with its own multiple endorsements. The second roughly parallel tranche was the London Market’s beginning to provide insurance for offshore property in the 1960s which then allowed the rapid and concomitant development of the full Offshore Energy Package Policy by combining all of the requisite operational and property covers into the Offshore Energy Package Policy— the heart of which remains the COW policy.

1940s-1970s

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Beginning in the 1940s, as an add-on to Onshore Property Damage policies, the London Market began offering Control Of Well policies (“COW”) covering expenses to control a blowout, crater or fire stemming from a blowout. The basic thinking was that the oil industry presented a unique risk exposure that had to be treated separately from property damage.\(^7\)

The early COW policies, a bit naively, provided above-ground blowouts were covered and “kicks”\(^8\) were not, but neither was defined, or if so, poorly.\(^9\) These terms, even when defined, basically foundered in ambiguity construed in favor of the insured. The result was that Insurers were covering risks well beyond those that they had intended to cover and upon which they had based their insufficient premiums. Employing “clarifying” terms such as “total blowout,” “continuous flow,” and “wild wells” often fared no better and were likewise deemed on occasion by the courts as ambiguous. The policies had to yield to some degree to the practical realities of operating in the oil patch with risks which should be deemed insured as viewed by the courts.


Insurers understandably imposed operational warranties and due diligence provisions on the Insured. The warranty centered on the use of the Blowout Preventer (“BOP”) and, unfortunately at first, engendered further confusion. So much that, led by Chief Judge John R. Brown in the Fifth Circuit, the Courts began to fuse construction of the literal wording of the COW

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\(^7\) See DAVID SHARP, UPSTREAM AND OFFSHORE ENERGY INSURANCE at 339 (Witherbys Insurance 2009) (Sharp) at 123.

\(^8\) A kick is generally defined as the entry of water, gas, oil, or other formation fluid into the wellbore during drilling operations. Kicks occur when the pressure exerted by the column of drilling fluid is not great enough to overcome the pressure exerted by the fluids in the formation being drilled. Absent prompt action, a kick may become a blowout. See, e.g., In re DEEPWATER HORIZON, 2014 WL 4375933 (E.D. La. 2014) (describing drilling and well control process in great detail).

\(^9\) See Blackstock Drilling Co. v. Olsen Oil Co., 72 F.Supp. 358 (W.D. Okla. 1947) for an excellent discussion of general drilling operations including an explanation of lost circulation. There are numerous treatises on the subject, e.g., Robert D. Grace, ADVANCED BLOWOUT CONTROL AND WELL CONTROL, HANDBOOK (2003); Douglas B. Owen, BLOWOUTS: WELL CONTROL INSURANCE AND RISK MANAGEMENT (1982); David Watson, Terry Brittenham & Preston L. Moore, ADVANCED WELL CONTROL (2003); and Michael Summerskill, OIL RIGS: LAW AND INSURANCE (1979). See also In Re Equinox Oil Company, Inc., 300 F.3d 614, 619 (5th Cir. 2002) (describing COW policy somewhat incongruously in a pollution context as “particularly analogous to a standard fire policy which is designed to reimburse the insured for repairs to his structure after a fire.”

\(^10\) For an extensive history of energy exploration including that of blowouts, see NATIONAL COMMISSION ON THE BP DEEPWATER HORIZON OIL SPILL AND OFFSHORE DRILLING, THE HISTORY OF OFFSHORE OIL AND GAS IN THE UNITED STATES (CreateSpace Independent Publishing Platform 2012).
Policy with an underlying public policy principle that realistic risks should or would be covered, irrespective of the precise policy language – not a good situation.

1970s-1985

Something had to be done to clarify the language, or the COW policy was in danger of fading away as being actuarially unsustainable in the Market place. The solution lay in a new linguistic structure where the risks covered would be described in language reflecting the practical realities of drilling, with a fair balance between risks which could be insured in ordinary prudent operation, on the one hand, and attendant difficulties inherent in drilling which cannot be economically insured but the cost of which should be borne instead by the insured as a normal cost of doing business in the oil patch, on the other.

By the 1970s, the predominant form of this conglomerate COW package was the Operators Extra Expense ("OEE") policy.\(^\text{11}\) See Phillip Rosamond Drilling Company, Inc. v. St. Paul Fire and Marine Insurance Company, 305 So. 2d 630 (La. App. 1974); Atlantic Richfield Company v. Underwriters at Lloyd’s London, 398 F. Supp. 708 (S.D. Tex. 1975). The development generally followed the gradual evolution of drilling from onshore to offshore. By the early 1960s, the London Market developed a policy that covered redrilling expenses as a separate but complimentary coverage to the Control of Well policy. In other words, in addition to providing the Control of Well to reimburse expenses to bring the well under control, the ancillary coverage for redrill included the cost of redrilling the damaged well. Eventually, these forms were converted to a single package policy. Also, by the late 1960s, one could purchase property damage for fixed platform equipment and supplies to add to the package as well.\(^\text{12}\)

Following some catastrophic events in the late 1960s which illustrated the serious risks arising from seepage and pollution from wells following a blowout, the London Market created a separate section for pollution liability, including certain cleanup and containment costs to the Control of Well package. This combined policy became known as the OEE Policy and emerged as the standard policy form for exploration and production companies at that time.\(^\text{13}\)

The development of the OEE Policy was in two phases. First, the original OEE Policy, and then in 1978, the OEE Composite Policy, a more definitive version of an OEE form which became known as the London Composite “all risk” of physical damage and/or operator’s extra expense (“the OEE Composite Policy”). It contained a Control of Well section covering expenses to regain control of a well out of control, a redrilling section covering the cost of redrilling, a well lost or damaged as a result of blowout, crater, or fire, as well as a seepage and pollution coverage.\(^\text{14}\)

\(^{11}\) C. Stuart, *Downhole, Offshore and Blowouts - A Primer on Oil and Gas Coverage: The Offshore Energy Package Policy*, University of Texas, 18th Annual Insurance Law Institute (2013), and authorities cited therein.

\(^{12}\) See Sharp at 12.3.

\(^{13}\) See Sharp at 124.

\(^{14}\) See Sharp at 12.4-12.5.
As with earlier forms, the final phase of the development of the EED policy came about from problems encountered in the American legal system with the construction of the OEE form. Against a somewhat arguably ambiguous policy form, the American courts struggled with drawing a line between an uncovered kick and a covered blowout, and interpreted the policy to cover events that were probably not within the intent of the Insurers. Thus, as the final development of the OEE Policy, it was virtually superseded by the EED (9/85) and then the definitive EED (8/86) Policy forms put together by the Joint Rig Committee.

The broad judicial hints from the Fifth Circuit, and the hard won experience of Insurers from the adverse case law, led the Joint Rig Committee to craft its solution beginning in 1985. The idea would be to view and define with clarity the continuum of the risk of an incipient blowout when drilling as having a beginning and an ending point: a well out of control and a well under control. Each would be defined in such a way as to have a clear beginning and ending point in time as to impose operational warranties and due diligence practices on the operator and thereby encompass the practical realities of the task at hand. The idea was to separate the insurable from the uninsurable risks in a practical, workable, understandable and actuarially possible manner by use of temporal clarity.

In the late 1980s, the Operator’s Extra Expense policy form was eclipsed by the Energy Exploration and Development Policy (“EED (8/86)”) (which itself had quickly eclipsed the short lived EED (9/85) form). However, one must be aware that many EED form policies are generically referred to in the same way that all copiers are “Xerox machines” as an “OEE Policy” or sometimes even just “Control of Well” as an all-inclusive term. Technically, the Control of Well policy now is simply Section A of either the EED or OEE Policy. While a bit confusing, this linguistic looseness must be kept in mind when reading the policies, cases and secondary authorities.

Until 1985 the definitions related predominantly to “continuous flows” which were either uncontrollable or could not be properly controlled by the equipment on site. The EED definitions represent an understandable attempt by insurers to avoid claims where flow exists within the wellbore which can be brought under control very quickly by regaining circulation through standard industry procedures.

Under the EED (8/86), a “well out of control” will be defined as an unintended flow from the well above the surface of the ground or water bottom which flow cannot be promptly:

(a) stopped by use of the equipment on site and/or the blowout preventer, storm chokes or other equipment required by the Due Diligence and Warranties clauses or

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15 See Sharp at 126.
16 The Joint Rig Committee “represents the interest of insurers writing offshore energy risks in London. Membership of the Committee comprises energy underwriters drawn from the membership of both the Lloyd’s Market Association and the International Underwriting Association.” See Lloyd’s Market Association www.lmalloyds.com.
17 See Sharp at 129.
(b) stopped by increasing the weight by volume of drilling fluid or by the use of other conditioning materials in the well or

(c) safely diverted in the production or which flow is declared to be out of control by the appropriate regulatory authority.

Nonetheless a well shall not be deemed out of control solely because of the existence or occurrence of a flow of oil, gas or water into the wellbore which can within a reasonable period to time be circulated out or bled off through the surface controls. Normal operational risks and procedures are not covered events.

On the other hand, a well is “under control” when:

(1) a flow giving rise to a claim is stopped or can be safely stopped or

(2) the operation taking place in the well immediately before the occurrence giving rise to a claim is resumed or can be resumed or

(3) the well can be returned to the same or similar status that existed immediately prior to the occurrence giving rise to the claim or

(4) the flow giving rise to a claim is or can be safely diverted into production, whichever occurs first, unless the well continues to be declared out of control by the appropriate regulatory authority but will be deemed to be brought under control when such authority ceases to designate the well as being out of control.

Note that “uncontrolled flow” is rephrased as “unintended flow” with the emphasis on control being on factors which can or cannot control a flow, e.g., blowout preventer, storm chokes, etc.

The EED (8/86) wording is designed in the form of a stand-alone package policy rather than a part of a multi-interest package policy. Nevertheless, the OEE or EED Policy is almost always included within a larger Offshore Energy Package Policy. It consists of three basic sections: (1) Section A, Control of Well, (2) Section B, Redrilling/Extra-Expense, and (3) Section C - Seepage and Pollution, Cleanup and Contamination. A “Control of Well” occurrence giving rise to a claim under Section A is an essential prerequisite for coverage under Sections B and C of the OEE or EED Policy.

The entire EED Policy must be read in conjunction with its general conditions. The general conditions contain among other things, definitions, attachment of coverage, termination of coverage, rating provisions, rating areas, warranties, due diligence, exclusions, subrogation, partial interest clause, cancellation, co-venturers, and other general conditions.

With some tweaks here and there as time has gone by, the EED (8/86) Policy is the dominant form in the Market today but, much like mitochondrial DNA, the OEE Policy, or at least portions of it, have not left (and may never completely leave) the genome. The two forms are not
entirely equivalent. There are some differences.\textsuperscript{18} The EED Policy continues to evolve today to meet changing Market conditions driven by evolving technology.

This paper attempts to explain in broad strokes how the Control of Well mini-package policy, if you will, then fits into the development and broader evolution of the full scale Offshore Energy Package Policy that is seen in the Market today covering a wide variety of property and operational risks. These include, but are not limited to, given the Market’s creativity and pragmatic response to insureds’ needs, the following:

1. OEE/EED policies\textsuperscript{19} which themselves aggregate a number of related covers into a harmonious whole:
   - Control of Well which itself includes:
     - Section A: Control of Well
     - Section B: Redrilling/Extra Expense
     - Section C: Seepage and Pollution, Cleanup and Contamination
   - Underground Control of Well
   - Extended Redrill and Restoration
   - Making Well Safe
   - Care Custody and Control
   - OPA Endorsement
   - OPOL Endorsement
   - Resultant Plugging and Abandonment Endorsement
   - Evacuation Expenses
   - Deliberate Well Firing
   - Contingent Joint Ventures
   - Turnkey Wells Endorsement
   - Farmout Wells Endorsement
   - Developmental Drilling Wells Endorsement
   - Wild Well Contractor Endorsement
   - No Claims Return of Premium Endorsement
   - Priority of Payments Endorsement
   - Various Excess Cover Endorsements
   - Windstorm Endorsement

\textsuperscript{18} For example, only the EED Policy in Section B 1.(A) contains the proviso expressly stated (implied inferentially in the OEE Policy) that reimbursable costs and expenses must be via the employment of “the most prudent and economical methods”.

\textsuperscript{19} The present and predominant EED form is the EED (8/86) Policy which supplanted and replaced the EED (9/85) Policy. All references to “EED,” unless otherwise stated, will be to the EED (8/86) form. The OEE Policy in its original pure form is rarely, if ever, seen in the Market today. Variations of it survive and, to be sure, the name lives on.
2. Physical Damage (“PD”)
   - Physical Damage
   - Removal of Debris (Removal of Wreck) (“ROD,” “ROW”)
   - Sue and Labor
   - Oil in Line
   - Property in Transit
   - Oil & Gas Well Drilling Tools Floater/All Risks

3. Pollution

4. Business Interruption (“BI”) including:
   - Contingent Business Interruption (“CBI”)
   - Loss of Production Income (“LOPI”)
   - Contingent LOPI
   - Loss of Hire
   - Delay of Start Up

5. Third Party Liability

6. Construction Risk

7. Charterer’s Liability

8. Windstorm

9. Crude Oil Storage

10. Political Risk

11. War and Related Risks

12. Contingent OEE/EED ("COEE")

It helps to keep in mind a mental image of a Matryoshka doll (Russian nesting doll) to grasp the policy within a policy within a policy framework of the Offshore Energy Package Policy – keeping in mind always that the OEE or EED Policy is its fundamental core and, in turn, the core of the EED Policy is the Control of Well section. Time does not permit a full explication of each of the above-listed components of the Offshore Energy Package; instead, the focus will be on the core control-of-well coverage around which the application of the others’ revolve.

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20 The OEE and EED Policies contain a seepage and pollution cover but it is restricted to a control of well event as the operative trigger so a broader third party liability pollution cover must be included in the Offshore Energy Package Policy.

21 There may be different markets for confiscation and expropriation.
B. THE EED (8/86) POLICY FORM

The EED (8/86) Policy in its basic form, before the addition of available endorsements, contains three sections: Section A- Control of Well; Section B- Redrilling/Extra-Expense; and Section C- Seepage and Pollution, Clean-up and Contamination.

1. Section A- Control of Well

The requisite trigger for either Section B or C, is a control of well event covered under Section A. Hence, we begin our analysis with Section A.

A typical policy provides in Section A:

1) Coverage

Underwriters agree, subject to the Combined Single Limit of Liability, terms and conditions of this policy, to reimburse the Assured for actual costs and/or expenses incurred by the Assured a) in regaining or attempting to regain control of any and all well(s) insured hereunder which get(s) out of control, including any other well that gets out of control as a direct result of a well insured hereunder getting out of control, but only such costs and/or expenses incurred until the well(s) is (are) brought under control as defined in Paragraph 2b of this Section A; and b) in extinguishing or attempting to extinguish i) fire above the surface of the ground or water bottom from well(s) insured hereunder or from any other well(s) which are burning as a direct result of a well insured hereunder getting out of control or ii) fire above the surface of the ground or water bottom which may endanger the well(s) insured hereunder.

Relief Wells are automatically held covered under this section subject to notice to Underwriters as soon as possible and rates to be established by Underwriters.

The form actually covers three different scenarios:

1. Wells out of control as defined in the policy;
2. Extinguishing or attempting to extinguish fire above the surface of the ground or water bottom from wells which are burning as a direct result of a well getting out of control; and,
3. Extinguishing or attempting to extinguish fire above the surface of the ground or water bottom which may endanger the wells insured.\(^{22}\)

\(^{22}\) Note that the third scenario appears not to be restricted by or related precisely to a well being out of control. Sharp observes “[t]he second insuring agreement (b) allows for a sue and labour type expense when fire above the wellhead, which may presumably originate from any cause, endangers the insured well(s).” Sharp II at 128. (emphasis
In dealing with the principles developed by and troubling the courts, the control of well has a beginning point—the well being out of control—and a terminus point—the well being brought under control. Both have highly elaborate practically and technically based definitions as follows:

Definitions

(a) Well Out of Control

For the purposes of this insurance, a well(s) shall be deemed to be out of control only when there is an unintended flow from the well(s) of drilling fluid, oil, gas or water above the surface of the ground or water bottom,

1. which flow cannot promptly be:
   (a) stopped by use of the equipment on site and/or the blowout preventer, storm chokes or other equipment required by the Due Diligence and Warranties clauses herein; or
   (b) stopped by increasing the weight by volume of drilling fluid or by the use of other conditioning materials in the well(s); or
   (c) safely diverted into production; or

2. which flow is declared to be out of control by the appropriate regulatory authority.

Nevertheless and for the purpose of this insurance, a well shall not be deemed out of control solely because of the existence or occurrence of a flow of oil, gas or water into the well bore which can, within a reasonable period of time, be circulated out or bled off through the surface controls.

(b) Well Brought under Control

A well(s) deemed out of control in accordance with Paragraph 2a) of this Section A shall, for the purposes of this insurance, be deemed to be brought under control at the time that:

1. the flow giving rise to a claim hereunder stops, is stopped or can be safely stopped; or

2. the drilling, deepening, servicing, working over, completing, reconditioning or other similar operation(s) taking place in the well(s) immediately prior to

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23 Notice the definition is negative in nature and deals only with above surface, unintended flows. This “Nevertheless” provision has sometimes been colloquially referred to as the “kick exclusion”. Obviously, it is not an exclusion but a policy coverage requirement, the burden of which is squarely on the insured.

24 Note that part of the definition depends on a hypothetical circumstance, e.g., when the flow can be safely stopped which may become the subject of expert testimony both as to if it can be and, if so, when.
the occurrence giving rise to a claim hereunder is (are) resumed or can be resumed; or
3. the well(s) is (are) or can be returned to the same producing, shut-in or other similar status that existed immediately prior to the occurrence giving rise to a claim hereunder; or
4. the flow giving rise to a claim hereunder is or can be safely diverted into production;

whichever shall first occur, unless the well(s) continues at that time to be declared out of control by the appropriate regulatory authority, in which case, for the purpose of this insurance, the well(s) shall be deemed to be brought under control when such authority ceases to designate the well(s) as being out of control.25

For a general discussion of where plugging and abandoning a well intersects an exclusion for “bringing under control” following a blowout, in a liability policy exclusion, see Pioneer Exploration, LLC v. Steadfast Insurance Company, 2013 WL 3557541 (W.D.La. 2013), aff’d 767 F.2d 503 (5th Cir. 2014).

(c) Expenses
Expenses recoverable hereunder shall include costs of materials and supplies required, the services of individuals or firms specialising in controlling wells, and directional drilling and similar operations necessary to bring the well(s) under control, including costs and expenses incurred at the direction of regulatory authorities to bring the well(s) under control, and other expenses included within Clause 1 of this Section A.

1. Termination of Expenses
In any circumstances and subject always to the Combined Single Limit of Liability of this policy, Underwriters’ liability for costs and/or expenses incurred in regaining or attempting to regain control of a well(s) shall cease when the well(s) is (are) brought under control as defined in Paragraph 2b) of this Section A.

Note that a “well out of control” requires an “unintended” flow from above the surface of the ground or water bottom.26 That unintended flow must be one which cannot “promptly” be stopped by the use of onsite equipment including a blowout preventer or other equipment required by the Due Diligence Warranties, stopped by increasing the weight of the volume of drilling fluid or other conditioning materials, safely diverted into production, by which flow is deemed out of control by appropriate regulatory authority.

25 This administrative declaration is somewhat of a “joker is wild card”. During the Hurricane Katrina/Rita cases it was not uncommon to find that the oil companies attempted to solicit “friendly” letters from the now extinct MMS to support the well being declared or remaining out of control. Sharp points out that this proviso can be problematic when the assured is state owned and is at once a well operator and appoints the regulatory authorities. Prominent examples include Saudi Aramco, Gazprom, China National Petroleum Corp., National Iranian Oil Co., Petróleos de Venezuela, Petrobras, and Petronas.
26 An extension for Underground Control of Well is available.
The question of when a flow can be “safely diverted into production” came up in *Goodrich Operating Company, Inc. v. Burnett & Company, Inc.*, 2006 WL 1118137 (S.D. Tex April 24, 2006). The trial court found the resolution of the issue was a “swearing match” and that summary judgment was inappropriate. *Id.* at 7.

There appears to only one reported decision (and a recent one) touching on the interpretation of the Due Diligence and Warranties in the OEE/EED Policy. In *Eagle Oil & Gas Co. v. Travelers Property Cas. Co. of Am.*, 2014 WL 3406686 (N.D.Tex. 2014), the court addressed whether the policy’s due-diligence clause was an exclusion/covenant or a condition precedent. The clause was located in the policy’s Common Conditions section and required the insured to exercise due care and diligence in conducting well operations by using generally prudent safety practices and equipment. But this section also contained a subsection entitled “Exclusions” that read, “There shall be no indemnity under this Section I for: [a]ny claim arising out of any “occurrence caused, in whole or in part, by any breach of any condition or warranty set forth in Paragraph 6. DUE DILIGENCE AND WARRANTIES below[.]”

Eagle argued that the due-diligence provision was its covenant – its agreement to act diligently – enforceable through an exclusionary clause. Travelers argued that the provision was a condition precedent to coverage and Eagle had to comply before Travelers had any coverage obligation. Unable to harmonize the provisions, the court reasoned that a parallel-worded condition and exclusion could not co-exist in an insurance policy; that the provisions created an ambiguity; that the due-diligence clause was a covenant/exclusion; and that Travelers had the burden to prove at trial that the insured failed to exercise “due care and diligence.” 2014 WL 3406686 at *10.

The *Eagle* court’s treatment of the due diligence clause as an exclusion is subject to criticism for muddying the waters, as it was clearly intended, given *inter alia* its historical development and context, as a condition on which the insured should have the burden of proof. Since the insured’s employment of due diligence is essential to both the practical production of oil and gas and to the logical basis for any underwriting of those activities, an insured’s failure to carry its burden to establish due diligence, if challenged, should void the policy.27 It would appear the court has swung and missed.

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The terminus point of a “well brought under control” occasionally raises a few issues such as when could a flow have been safely stopped or when it could have been resumed. In other words the use of the future possible “can” or “could” raises hypothetical questions which may involve expert opinion. Note again the proviso that the policy language can, in effect, be overridden by the regulatory authority.

It has been observed:

One coverage issue that frequently arises involves the meaning of a phrase “can be stopped.” Most blowouts occur as a result of human error, and is not uncommon for the crew on-site to fail to detect timely the warning signs of a kick. There is kick-detection equipment on the drill floor, and when a sudden increase in flow (or penetration rate) occurs, one can surmise that a kick is in progress. At this point, the BOP should be shut in, and recognized procedures to handle the kick should be implemented. If, however, the kick goes undetected for a significant amount of time (probably in the fifteen minute range or longer) before the well is shut in, the pressures encountered increase significantly. So what, then, does the phrase “can be stopped” mean? Underwriters can take the position that if the well could have been shut in had the kick been timely detected, coverage is not triggered. On the other hand, if the kick is so severe that it causes equipment failures leading to an uncontrolled flow, underwriters are inclined to treat that situation as a covered well-control event.

Another similar issue involves what is meant by the terms “promptly” and “within a reasonable period of time” in terms of stopping a flow. One way to conceptualize the issue is to distinguish the situation where routine control-of-well procedures can be used to handle the kick as opposed to the services of a well-control expert, like Boots & Coots or Wild Well Control, who might be called to the well in more complex situations. In any event, whether a flow may be stopped promptly or within a reasonable period of time, is fact-intensive and often involves expert opinion.

Hall I at 1312-13 (emphasis added).

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was unambiguous and its breach voided policy); Affiance Gen. Ins. Co. v. Club Hospitality, Inc., 1999 W L 118798 (N. D. Tex. Mar. 2, 1999) (warranties contained in firearms endorsement were unambiguous and failure to comply with them voided coverage) and warranties are susceptible of no construction other than mutual intent that policy is not binding unless the statement is literally true. A warranty is clearly not an exclusion. See David D. Hallock, Jr., Recent Development In Marine Hall Insurance: Charting a Course Through The Coastal States of The Fourth, Fifth, Ninth, and Eleventh Circuits, 10 U.S.F. Mar. L. J. 277, 301 (1998). “Due Diligence” essentially equates with the conduct of a “reasonable prudent operator,” Atlantic Richfield Co. v. Gray, 720 S.W. 2d 121, 123 (Tex. App. 1986). See also Green v. Farmers Ins. Exch., Case No. 12-0867 (Tex. 2012) (the Court accepted certiorari to consider whether a vacancy warranty in a homeowner context required causation between the breach of the warranty and the loss). The case may or may not have a significant effect on the issue as it might arise under an EED Policy, but is worth following.
As would be expected in Section A2(c), the expenses and their termination go hand-in-hand. The expenses are normally audited on a mutually agreeable basis by Insurer-appointed adjusting firms.

There are three (3) significant exclusions under Coverage A, Control of Well:

1. **Any loss of or damage to any drilling or production equipment,**
2. **Any loss of or damage to any well or wells or hole or holes; and,**
3. **Any loss damage or expense caused by or arising out of delay (including delayed and/or deferred production) and/or loss of use, and/or loss of or damage to production (including that due to loss of reservoir pressure) and/or loss of or damage to any reservoir or reservoir pressure.** Well control deals with expenses to control the well not any aftermath resulting from its damage.

2. **Section B: Redrilling/Extra-Expense**

Since the likely major result from a well being out of control is the necessary expense to redrill it, it was not long in the evolution of Control of Well insurance that Section B evolved. A currently used form provides as follows:

1. **Coverage**
   
   Underwriters agree, subject to the Combined Single Limit of Liability, terms and conditions of this policy, to reimburse the Assured for actual costs and/or expenses reasonably incurred to restore or redrill a well insured hereunder, or any part thereof, which has been lost or otherwise damaged as a result of an occurrence giving rise to a claim which would be recoverable under Section A of this policy if the Assured's Retention applicable to Section A were nil, subject to the following conditions:

   (a) Underwriters shall reimburse the Assured only for such costs and expenses as would have been incurred to restore or redrill a well had the **most prudent and economical methods been employed.**

   (b) There shall be no coverage under this Section B for restoration or redrilling of any well whose flow can be safely diverted into production, including by completing through drill stem left in the well insured hereunder, or which can be completed through a relief well(s) drilled for the purpose of controlling a well.

   (c) In no event shall Underwriters be liable for costs and/or expenses incurred (a) with respect to drilling wells, to drill below the depth reached when the well became out of control as defined in Clause 2 of Section A of this policy and (b) with respect to producing or shut-in wells, to drill below the geologic zone or zones from which said well(s) was (were) producing or capable of producing.

   (d) In respect of drilling wells, Underwriters' liability hereunder shall in no event exceed 130% of the cost incurred to drill the original well to the depth reached at the time when the well became out of control or fire occurred.
(e) In respect of producing, shut-in or workover wells, Underwriters' liability hereunder shall in no event exceed 130% of the cost incurred to drill the original well, plus 10% per annum compound thereof from the date of spudding of the original drilling of the well until the date of the occurrence giving rise to the aforesaid claim which would have been recoverable under Section A of this policy if the Assured's Retention applicable to Section A were nil, subject to a maximum of 250% of the original cost.

(f) In any circumstances, Underwriters' liability under this Section B for costs and expenses shall cease 1) if actual restoration or redrilling has not commenced within 540 days after a) the date of the accident or occurrence giving rise to coverage under this Section B or b) the date of cancellation or expiry of this policy, whichever shall later occur; and 2) in any event when the depths set forth in Paragraph lc of this Section B have been reached and the well restored to a condition comparable to that existing prior to the occurrence giving rise to the claim, or so far as possible utilising generally available equipment and technology.

(1) Exclusions

There shall be no indemnity or liability under this section for:

(a) any loss of or damage to any drilling or production equipment;
(b) any loss, damage or expense caused by or arising out of delay (including delayed and/or deferred production) and/or loss of use and/or loss of or damage to production (including that due to loss of reservoir pressure) and/or loss of or damage to any reservoir or reservoir pressure;
(c) costs and/or expenses incurred to restore or redrill any relief well, or any part thereof;
(d) any claim recoverable under this policy solely by reason of the addition or attachment to Section A of this policy of the Making Wells Safe Endorsement;
(e) redrilling and/or recompletion or for in-hole equipment in respect of any well that was plugged and abandoned prior to loss or damage covered under Section A hereof and that remained plugged and abandoned at the time of such loss or damage.

Recalling that a combined single limit of liability for all sections of the OEE or EED (A, B and C) is in play, Section B will reimburse expenses to restore or redrill a well that is damaged as a result of an occurrence giving rise to a Section A claim.

Under Section B, in addition to enforcing the due diligence warranties, Insurers will only pay for cost and expenses that would have been incurred to restore or redrill a well “had the most prudent and economical methods been employed.” The redrilling/extra-expense is further conditioned on:

28 See W.E. Rice, et al., WELL CONTROL INSURANCE: AN OVERVIEW AND OUTLOOK, SPE/IADC 16095, Drilling Conference at 6 (coverage is “only for such efforts conducted by the most prudent and economical means which the
(1) Only if the flow cannot be safely diverted into production including completing through a drill stem left in the well or which can be completed through relief wells drilled for the purpose of controlling the well.

(2) Wells drilled below the depth reached when the well became out of control or with respect to producing a shut in wells below the geologic zone which they had been producing or were capable of producing.

(3) Liability shall not exceed 130% of the cost incurred to drill the original well to the depth reached at the time when the well became out of control.

(4) For producing shut-in or workover wells, Underwriters liability shall not exceed 130% of the cost incurred to drill the original well plus 10% per annum compounded from the date of spudding of the original drilling until the date of the occurrence giving rise to the Section A claim subject to a maximum of 250% of the original cost.

(5) Underwriters’ liability shall cease if the actual restoration or redrilling has not commenced within 540 days of the date of the accident or occurrence giving rise to coverage under this section or the date of cancellation of the policy, whichever occurs later, and, in any event, when the depths set out in paragraph 1c of Section B have been reached and the well restored to conditions comparable to that existing prior to the occurrence giving rise to the claim or so far as possible, utilizing generally available equipment and technology.

David Sharp has observed:

“It is to be noted that the expression “reasonably incurred” has crept into the insuring agreement, reinforced by a provision further on in the coverage that “the most prudent and economical methods” are employed. Thus, insurers are expecting the Assured to have some control over the methods chosen to redrill the well and to keep the total AFE (approved for expenditure cost) within reasonable bounds. In any event, in respect of drilling wells, insurers’ maximum liability is limited to 130% of the cost incurred to drill the original well to the depth reached at the time when the well became out of control or the fire occurred. This formula is varied in respect of production wells to allow the 130% limitation to be increased by 10% per annum compound from the date of spudding of the original well until the date of the occurrence giving rise to the claim, limited overall to 250% of the original cost. These limitations can be deleted by purchasing ‘unlimited’ redrilling coverage as an option on payment of an additional premium. However, in all eventualities, insurers will not be liable for redrilling costs where the redrilling technology available at the time and place of the occurrence, meaning that Underwriter shall not be forced to bear the expense of either creation or utilization of technology not currently available at the time an occurrence takes place.”
operation is not commenced within 540 days after the date of the accident, or the
date of expiry of a policy, whichever shall occur later.

The indemnity payable is further restricted to expenditures incurred, with respect
to drilling wells, to redrill only to the depth at which the well became out of control,
and in respect of production or shut-in wells, to the geographical zone or zones
from which the well(s) were producing or capable of producing.”

Sharp at 132; see also Goodrich Operating Co., Inc. v. Burnett & Co., Inc., 2006 WL 1118137
(S.D. Tex. Apr. 24, 2006). There the Court upheld the 540 day limitation:

The blowout occurred on May 4, 2001 and the Policy expired on either March 1,
2003 or March 1 2002. Accordingly, the latest possible date the Plaintiffs could
have commenced restoration operations was August 23, 2004. The estimated cost
for the sidetrack well included in Plaintiffs’ Second Supplemental Claim have not
been incurred to date, so there is no question that they are outside the 540 day limit.
Again, Plaintiffs’ argued that this type of time limit is often waived in the industry.
However, as analyzed above, the language of the contract is clear and it is the
Underwriters’ prerogative to enforce the terms of the Policy as written.
Accordingly, the Court agrees with Underwriters that the above-quoted provision
of the Policy precludes Plaintiffs’ Second Supplemental Claim for drilling the
sidetrack well.

Goodrich Operating Co., 2006 WL 1118137 at *3; see, generally, Mobil Exploration & Prods.
US, Inc. v. Certain Underwriters, 837 So. 2d 11 (La. App. 2003) (discussing a redrill arising from
a blowout because pipe had been pulled too quickly.)

It is has also been observed:

One feature of redrill coverage that is often overlooked is the triggering event for
coverage. In order for redrill coverage to be triggered, the well must have been
damaged by a well-control event that would have been covered under Section A of
the Policy (i.e., a well out of control). The extended redrill endorsement
broadens this coverage by providing that when certain well equipment is damaged
by an enumerated peril listed in the endorsement, redrill coverage also will be
triggered. Where a well is damaged as a result of something other than a well-
control event or an enumerated peril, coverage does not attached. For example,
when problems are encountered as a result of loss circulation – such as a drill string
becoming stuck in the hole necessitating fishing or sidetracking operations –
coverage will not typically be afforded.

Hall I at 1316-17 (emphasis added).

3. Section C: Seepage and Pollution, Cleanup and Contamination

As earlier noted, the risk of seepage and pollution is inherent when a well gets out of
control. Insurers provide coverage for this exposure only when caused by a Section A event, under
the Control of Well.\textsuperscript{29} There are also circumstances where a general pollution carrier and EED Underwriter\textsuperscript{30} may have a difference of opinion as to which policy covers a specific event.

Section C provides:

1. **Insuring Agreements**

Underwriters, subject to the Combined Single Limit of Liability, terms and conditions of this policy, agree to indemnify the Assured against:

(a) all sums which the Assured shall by law or under the terms of any oil and/or gas and/or thermal energy lease and/or license be liable to pay for the cost of remedial measures and/or as damages for bodily injury (fatal or nonfatal) and/or loss of, damage to or loss of use of property caused directly by seepage, pollution or contamination arising from wells insured herein;

(b) the cost of, or of any attempt at, removing, nullifying or cleaning up seeping, polluting or contaminating substances emanating from wells insured herein, including the cost of containing and/or diverting the substances and/or preventing the substances reaching the shore;

(c) costs and expenses incurred in the defense of any claim or claims resulting from actual or alleged seepage, pollution or contamination arising from wells insured herein, including Defense Costs and costs and expenses of litigation awarded to any claimant against the Assured, provided, however, that the inclusion of the above costs and expenses shall in no way extend the Combined Single Limit of Liability of Underwriters over all sections of this policy;

provided always that such seepage, pollution or contamination results from both 1) an accident or occurrence taking place during the period of this insurance (including any continuation thereof provided for by Clause 16 of the General Conditions) and of which notice has been given in accordance with Clause 10 of the General Conditions hereto and 2) an occurrence giving rise to a claim which would be recoverable under Section A of this policy if the Assured's Retention applicable to Section A were nil.

\textsuperscript{29} The operator must obtain additional coverage for any pollution events caused by something other than a Section A claim.

\textsuperscript{30} A commentator has observed that OEE Policies provide a Seepage, Pollution and Contamination section, but it covers only pollution caused by occurrences under Section I of the Policy, that is wells out of control and fire above the surface. Coverage is also typically limited to above ground pollution. It is important to ensure that the liability program and the OEE program work together when there is a duplication of coverage, such as pollution caused by wells out of control. If the insurance carrier is agreeable, it is a good idea to have the OEE Policy respond as primary coverage for pollution caused by a blowout, but subject to a Priority of Payments Clause, and for the Liability program to be excess. … This structure allows the OEE program to respond to what could be a significant pollution loss, thus preserving the Liability program for other types of claims such as bodily injury claims. Again, it is important that the operator identify any liability policy requirements for maintaining pollution under an OEE Policy for wells that get out of control. Theresa M. Fadul, *Maximizing Insurance Protection as Part of Contractual Risk Allocation*, 2004 No. 2 Rocky Mountain Mineral Law Forum. Paper No. 12 (May 20-21, 2004).
2. Assured

As respects this Section C only, but subject always to the Combined Single Limit of Liability over all sections of this policy, the unqualified word “Assured” includes the named Assured, and any principal, officer, director or stockholder or employee thereof while acting within the scope of his duties as such.

Note that Section C cover provides for Cost and Appeals Clause as follows:

In the event of any claim and/or series of claims arising out of one occurrence where the Assured's final gross claim is likely to exceed the retention of the Assured, no costs shall be incurred on behalf of Underwriters without the consent of Underwriters, and if such consent is given, Underwriters shall consider such costs as part of the final claim hereunder. No settlement of losses by agreement shall be effected by the Assured without the consent of Underwriters where the Assured's final gross claim will exceed the retention of the Assured.

In the event that the Assured elects not to appeal against a judgment in excess of the retention of the Assured, Underwriters may elect to conduct such appeal at their own cost and expense, and shall be liable for the taxable cost and interest incidental thereto, but in no event shall the liability of Underwriters exceed the Combined Single Limit of Liability over all sections of this policy.

Section C does provide for certain Exclusions as follows:

There shall be no indemnity or liability under this section for:

(a) any loss of or damage to any drilling or production equipment at the site of any well insured herein;
(b) any claim recoverable under this policy solely by reason of the addition or attachment to Section A of this policy of the Underground Control of Well Endorsement;
(c) any claim arising directly or indirectly from seepage, pollution or contamination if such seepage, pollution or contamination:

1. is deliberate from the standpoint of the Assured or any other person or organisation acting for or on behalf of the Assured; or

32 Contrast the exclusion in Meridian Oil Production, Inc. v. Hartford Accident Indemnity Co., 27 F.3d 150, 152 (5th Cir. 1994) (“an operator knows when the drill stem goes through a fresh water aquifer and knows that if no surface casing or string of pipe is set and placed to protect the water from drilling mud, fluids and subsequent contaminants, the fresh water will be polluted. The operator knows that the pollution will continue if no plug or cemented pipe
2. results directly from any condition which is in violation of or noncompliance with any governmental rule, regulation or law applicable thereto; notwithstanding the foregoing, this exclusion does not apply with respect to any such condition which at the time of loss is in the process of being corrected by a schedule or program sanctioned and approved by the appropriate governmental authority with jurisdiction over such rule, regulation or law, to the extent that the Assured is in compliance with such schedule or program; 33

(d) any claim for mental injury, anguish or shock unless same results from physical injury to the claimant.

David Sharp aptly observed:

There are three main insuring agreements covering pollution, clean-up and costs of defense. Coverage is triggered under these insuring agreements by virtue of an accident or occurrence (occurrence is defined in the General Conditions) taking place during the policy period, or any continuation provided for the policy, that would give rise to a claim under Section A, deductible application notwithstanding. While the word “sudden” is not used, the Occurrence definition (refer 4.8.1) would infer that the event is instantaneous in time.

... 

There are several comments to be made with respect to the above. First, that the seepage and pollution must arise from wells insured (there is an appropriate definition of wells insured in the General Conditions). The EED wording is not covering seepage, pollution or contamination arising from leaks or ruptures from any of the installed facilities owned by the Assured or its partners, although some wording may be tweaked to cover “pollution from facilities,” but even so, the pollution must arise as a consequence of a covered event, namely a well becoming out of control.

A second observation is there is no definition provided for property damage and bodily injury, which is somewhat surprising given that a primary aim of the EED is clarification and that pollution losses are likely to embrace claims for environmental impairment. However, some of the exclusions in the General Conditions are of relevance here since there are exclusions relating to fines and penalties and punitive or exemplary damages. A specific exclusion in Section C is also pertinent as there will be no liability prevent migration of fluids up and down the wellbore. … The Marshall record establishes a matter of law that the damages to the Marshall’s land were not unexpected from the standpoint of the insured.”).

33 On the surface this exclusion is extremely broad and may grow more so particularly in light of the heightened regulatory oversight post-Macondo.
for claims in respect of “… mental injury, anguish or shock unless same results from physical injury of claimant.” There is, nevertheless, no restriction in terms of the identity of the claimant. Clearly claims from public and statutory authorities are contemplated by the reference to liabilities incurred under the terms of the license or lease, but claims for individuals or other entities would also be contemplated by reference to liability at law.

With respect to the second insuring agreement, a major benefit of this wording when compared to a typical umbrella liability policy is that clean-up expenditure is indemnified irrespective of legal liability. It is assumed that, in the majority of cases, the Assured would incur legal or statutory liability, but there is no necessity to demonstrate this or to wait for action to be commenced against the Assured. The triggering incident is the pollution itself, provided it arises from an insured well becoming out of control. This is a sensible position; it encourages immediate action, as would inevitably be needed, the Assured knowing that he will have a right of claim even absent legal or statutory liability.

Sharp at 133-34 (emphasis added); see Jones v. Southern Marine & Aviation Underwriters, Inc., 888 F.2d 358, 361 (5th Cir. 1989) (finding Underwriters had no liability under Section C since the insured was not personally liable); Jones v. Southern Marine & Aviation Underwriters, Inc., 739 F. Supp. 315, 321 (S.D. Miss. 1988) (discussing whether payment to the insured is based on liability or indemnity); Taylor Energy Co. v. Underwriters at Lloyd’s, 2010 WL 4553482 (E.D. La. 2010) (discussion of Section C). For a more recent case, see Pioneer Exploration, L.L.C. v. Steadfast Ins. Co., 2013 WL 3557541 (W.D.La. 2013), aff’d 767 F.2d 503 (5th Cir. 2014) (when insured chooses to use an umbrella policy as an excess well-control policy, beware of the umbrella’s numerous exclusions relating to well-control losses).

III. THE ONSHORE ENERGY PACKAGE POLICY

A. TYPES OF ENERGY RISKS

1. Insurance for Construction of Energy-Related Risks

New facilities are continuously being constructed in the energy sector, especially as many companies consider converting older coal-fired plants to more modern plants running on biofuels. All or part of a current facility might be involved in construction, or the facility may be built from the ground up. For damage to property during construction, owners and/or contractors typically purchase Construction All-Risk (CAR) policies. These are also known in the energy industry as Builder’s Risk (BR) or Erection All-Risk (EAR) policies.

These policies start with coverage for “direct physical damage,” which does not include coverage for time-related expenses that can be incurred by either the contractor or owner when the property is damaged and the Project Schedule is delayed. Insurance related to expenses incurred
during the time it takes to repair or replace the damaged property must be added by endorsement or coverage extension to the typical CAR Policy. These coverages often include:

- Delay in Completion
- Delay in Start-Up (DSU)
- Advanced Loss of Profits (ALOP)
- Soft Costs
- Contractor’s Extra Expense

There are few reported cases construing BR or CAR policies, especially those insuring energy risks. For a thorough and well-reasoned overview of what is usually covered by the typical construction policy, see the Illinois federal court’s opinion in *One Place Condominium, LLC v. Travelers Property Casualty Co. of America*, No. 11 C 2520, 2015 WL 2226202 (N.D. Ill. Apr. 22, 2015).

2. **Operational Property Insurance**

The “operational” onshore energy property policy is designed to cover the onshore energy risk after construction has been completed, the facility has been fully tested, and it is up and running as designed and producing the intended product (i.e. petroleum, LNG, gasoline, jet fuel). Onshore energy property policies typically provide cover for Property Damage (PD), Business Interruption (BI) and Extra Expense (EE) for facilities in operation. Sometimes coverage for Contingent Business Interruption (CBI), Extended Period of Indemnity (EPOI), or Machinery Breakdown (known as Boiler & Machinery insurance) is also included.

Issues often arise when a facility is transitioned from a CAR policy to an operational policy. Many terms used in the construction industry which mark the hand-off from contractor to owner, such as “Mechanical Completion,” “Substantial Completion” or “Hot Testing” indicate that construction activities are complete and are assumed by the insured or broker to mark the end of the construction policy and beginning of the operational policy. However, the facility may not have worked out all the bugs that can be found during performance testing and before full production begins. If this issue is not addressed during underwriting, an insured may be left without coverage under either the construction policy or operational policy.

Many London policies include a Testing and Commissioning clause, often by endorsement. An endorsement added to a London policy involved in a recent claim provides the following language:

**TESTING AND COMMISSIONING CLAUSE**

It is hereby noted and agreed that this Insurance does not, except as provided for within the Sub-limit for Incidental Course of Construction, Erection and
Assembly, extend to cover destruction or damage to property in course of construction or erection, dismantling, revamp or undergoing testing or commissioning including mechanical performance testing or any consequential loss resulting therefrom.

Acceptance of the [risk] hereon is subject to satisfactory completion of the following procedures and otherwise to the terms and conditions of this Policy.

1. The plant is mechanically complete. This requires all key items to be complete and that no temporary structures (such as pipe supports) remain awaiting permanent fixture.

2. Plant testing and commissioning has been completed with the design/construction/erection contract performance levels having been satisfactorily achieved.

3. Design performance criteria maintained by the entire plant in a stable and controlled manner for a continuous ongoing period of one hundred and sixty eight (168) hours.

4. The Insured has accepted the plant without reservation or waiver of guarantee conditions.

It is further noted and agreed that these provisions do not apply to normal routine maintenance activities and scheduled turnarounds.

In January 2014, the Lloyd’s Market Association’s (LMA) non-marine committee engineering business panel issued a new wording for its Property & Plant Testing & Commissioning Clause and a questionnaire template to insureds and brokers. The purpose of the questionnaire “is to facilitate the transfer of a newly constructed Onshore Oil, Gas & Petrochemical asset from a construction policy to an operational policy.” The new wording provides:

PROPERTY & PLANT TESTING AND COMMISSIONING CLAUSE

1. It is hereby noted and agreed that this (Re)insurance does not cover destruction of or damage to property in course of construction or erection,

34 The LMA is “the representative body for underwriting businesses at Lloyd’s.” See Lloyd’s Market Association, Non-Marine Committee Terms of Reference at § 2.1 (June 2013), available at http://www.lmalloyds.com/CMDownload.aspx?ContentKey=c8aa8e4b-9b40-4d8d-b77c-970367226922&ContentItemKey=c584132a-c68c-467a-a3d1-b6a1538fa175. Its mission is “to provide professional, technical support to the Lloyd’s underwriting community.” Id. at § 2.2. The various committees of the LMA draft wordings for various types of risks and submit the draft wordings to the Lloyd’s Wordings Repository.
35 See Testing and Commissioning Clause LMA5197A and questionnaire template, attached as Exhibit A.
36 Id.
dismantling, revamp or undergoing testing or commissioning including mechanical performance testing any business interruption resulting therefrom.

2. Acceptance of property hereon is subject to satisfactory completion of the following:

2.1. Mechanical Completion.

2.2. Testing and Commissioning.

2.3. Performance Testing conforming to 100% Contract Design Criteria having been maintained by the entire plant in a stable state and controlled manner for a continuous period of 72 hours duration.

2.4. Official acceptance by the Insured following formal hand over without reservation or waiver of guarantee conditions.

2.5. Any deficiencies identified during the testing, commissioning and start-up that may affect the mechanical integrity, process safety or reliability of the plant, having been declared to (Re)Insurers prior to attachment.

3. NOTWITHSTANDING THE ABOVE, ATTACHMENT OF PROPERTY AND PLANT HEREON TO BE AGREED BY (Re)Insurers. It is further noted and agreed that the terms and conditions to be reviewed, if required by (Re)Insurers.

4. It is further noted and agreed that the above provisions do not apply to normal routine maintenance activities, scheduled turnarounds and / or minor works (as defined in the policy).

Additionally, (Re)Insurers request completion of the attached information request template “INFORMATION TO SUPPORT THE TRANSFER OF ONSHORE OIL, GAS & PETROCHEMICAL ASSETS FROM CONSTRUCTION TO OPERATIONAL INSURANCE.”

LMA5197A
27 January 2014
B. KEY RISKS TO COVER IN THE ONSHORE ENERGY INDUSTRY

The LMA’s Joint Power Generation Committee recently issued wording for Onshore Energy policies for Power and Utilities. As this Wording demonstrates, Onshore Energy Property Insurance usually contains coverage for Property Damage and Business Interruption, with certain common extensions of coverage. More often than not, the first-party insurance coverages discussed herein make up the onshore energy package policy. Occasionally, these types of first-party insurance are combined with third-party liability insurance within the package.

C. PROPERTY DAMAGE INSURANCE

The goal of the Property Damage section of the onshore energy package policy is the insuring agreement to repair or replace physical damage to covered property, such as pipelines, compressors, processing equipment, refinery equipment, storage tanks and equipment, piping, boilers, gas or steam turbines, stock/inventory, and structures. In other words, tangible property owned or in the care and custody of the insured.

The Property Damage policy will describe what property is covered and what property is excluded. The covered property is usually described within the body of the policy or in an attached Schedule of Insured Values which lists the different property or locations and the value of each.

After stating what property is covered and not covered, the Property Damage policy for onshore energy will usually include a coverage grant for all risks of direct physical damage to covered property, except as excluded in the policy.

The insuring clause in the LMA Wording provides:

In consideration of the payment of premium specified in the Risk Details and subject to the terms, conditions and exclusions of this Contract, the Insurers agree to cover against risk of direct physical loss or physical damage to the Property Insured by a Peril not excluded by this Contract occurring during the Period of Insurance.

Other common coverage grants for physical damage insurance policies include:

Example 1:

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37 A copy of the Power & Utilities Property Damage and business Interruption Wording (USA), LMA3110, is attached as Exhibit B.
38 Onshore Energy policies often contain a section titled “Time Element” which combines coverage for Business Interruption and Extra Expense. Any other time-related coverages are usually included together in a Time Element section.
39 See Power & Utilities Property Damage and Business Interruption Wording (USA), LMA3110, at 13.
This Section insures against all risks of direct physical loss or damage in respect of property insured from perils not otherwise excluded, subject to the terms and conditions of this Section.

Example 2:

We will pay for direct physical loss or damage to Covered Property at the premises described in the Declarations caused by or resulting from any Covered Cause of Loss.

1. What is “direct physical loss or damage”?

In the typical uncomplicated case, the physical loss or damage is obvious and the issues are simply the scope and cost of the contemplated repair or replacement. However, ascertaining physical loss or damage in certain circumstances can become problematic. The terms “direct” and “physical” have been held to limit coverage. While there is scant direct authority in the energy insurance context on what constitutes “direct physical loss or physical damage,” there are cases that examine the issue in other contexts that may be relevant to and helpful in determining the restrictive scope of those phrases.

“The requirement that loss be physical is widely held to exclude alleged losses that are intangible or corporeal such as a detrimental economic impact unaccompanied by a distinct, demonstrable, physical alteration of the property.” One Place Condo., LLC, 2015 WL 2226202, at *3 (builder’s risk policy’s insuring clause covered only direct physical loss or damage).

One interesting case in the energy context is Hartford Insurance Co. of the Midwest v. Mississippi Valley Gas Co., 181 F. App’x 465 (5th Cir. 2006). In that case, the insured gas company claimed a loss because it paid more than once for the same gas recirculated through a meter. The court upheld the insurer’s denial of coverage, reasoning that the insured suffered a loss of money, not covered property. The gas from the wells was not physically lost or damaged in any way before it was eventually returned to the gas company after multiple passes through the meter, and was not returned to the insured in a damaged state.

In Trinity Industries, Inc. v. Insurance Co. of North America, 916 F.2d 267 (5th Cir.1990), the Fifth Circuit explained that “physical loss or damage” strongly implies that there was an initial satisfactory state that was changed by some external event into an unsatisfactory state—for example, the car was undamaged before the collision that dented the bumper. It would not ordinarily be thought to encompass faulty initial construction. Id. at 270–71.

A Texas court of appeals and the Texas Supreme Court held that weather stand-by charges incurred in connection with covered repairs on an offshore platform which were delayed by tropical storms were not “physical loss” or “physical damage.” Wellington Underwriting Agencies, Ltd. v. Houston Exploration Co., 267 S.W. 3d 277, 284 (Tex. App.—Houston [14th Dist.] 2008),
aff’d, 352 S.W.3d 462 (Tex. 2011). The insured argued that stand-by charges are covered under an all risks policy because they “naturally flowed” from the covered damage to the platform. The court disagreed, stating that “[t]he weather stand-by charges themselves did not constitute ‘physical loss’ of or ‘physical damage’ to covered property; rather, as a cost associated with repairing the original damage, they are a cost caused only by a delay in the repairs.” Id.

Contamination of product is certainly possible in the energy industry, and the existence of physical loss or physical damage has been raised in contamination cases in other industries. Compare Pirie v. Fed. Ins. Co., 696 N.E.2d 553, 554-55 (Mass. App. 1998) (need for remediation is not physical damage; mere presence of lead paint not physical loss or damage) and Leafland Grp.-II, Montgomery Towers Ltd. P’ship v. Ins. Co. of N. Am., 881 P.2d 26, 28 (N.M. 1994) (presence of asbestos does not constitute “direct loss or damage”) with W. Fire Ins. v. First Presbyterian Church, 437 P.2d 52, 55 (Colo. 1968) (presence of gas vapors constitutes physical injury to property) and Farmers Ins. Co. v. Trutanich, 858 P.2d 1332, 1335 (Or. App. 1993) (fumes from methamphetamine cooking sufficient to constitute physical injury to property).

2. Property Covered and Excluded

Many onshore energy policies cover a broad range of property. The LMA Wording provides:

PROPERTY INSURED

This Contract insures the following property, unless otherwise excluded elsewhere in this Contract, located at an Insured Location or within one thousand (1,000) feet thereof:

A Real Property, including new buildings and additions under Construction at an Insured Location, in which the Insured has an insurable interest;

B Personal Property:

1 owned by the Insured, including the Insured’s interest as a tenant in improvements and betterments. In the event of direct physical loss of or physical damage to the Property Insured by a Peril not excluded by this Contract, the Insurers agree to accept and consider the Insured as sole and unconditional owner of improvements and betterments, notwithstanding any contract or lease to the contrary;

2 of officers and employees of the Insured;
of others in the Insured’s custody to the extent the Insured is under obligation to keep insured for direct physical loss or physical damage insured by this Contract;

4. of others in the Insured’s custody to the extent of the Insured’s legal liability for direct physical loss or physical damage insured by this Contract. The Insurers will defend that portion of any suit against the Insured that alleges such liability and seeks damages for such direct physical loss or physical damage. The Insurers may, without prejudice, investigate, negotiate and settle any claim or suit as the Insurers deem expedient.

This Contract also insures the interest of contractors and subcontractors in Property Insured during Construction at an Insured Location or within one thousand (1,000) feet thereof, to the extent of the Insured’s legal liability for direct physical loss or physical 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 such interest will not extend to any Business Interruption coverage provided under this Contract.

Another example is:

A.1.B. PROPERTY INSURED

This Section covers all Onshore real and personal property of every kind and description owned, operated, controlled, leased, rented, used or intended for use by the Assured, provided that such property is scheduled and declared at inception and includes but is not limited to improvements and betterments, property of others in the care, custody and control of the Assured or in the care, custody and control of others on behalf of the Assured, property for which the Assured is responsible, personal property of the Assured’s employees or officials while on premises owned or controlled by the Assured at the option of the Assured, electronic data equipment and media, valuable papers and records, property in the course of construction and/or alteration and/or extension and/or addition and/or repair and/or installation and/or erection and/or assembly in progress at inception or any time during the policy period or acquired subsequent thereto, and property in transit. This Section includes but is not limited to pipelines, compression and pump stations, terminals, and gas or other product in lines and/or storage, including but not limited to petroleum products, natural gas and its by-products, liquids derived from natural gas, liquefied natural gas, ethanol and ethanol production by-products.

Onshore energy property damage insurance typically excludes certain types of property, such as:
• Land or improvements to land
• Water (except that normally contained in a piping system, tank or processing equipment)
• Money, currency, notes, securities
• Mines or underground property
• Crops, timber
• Livestock
• Railroads, railroad rolling stock
• Offshore property except docks, wharves, piers, or jetties, extending from shore
• Electrical power distribution lines
• Motor vehicles, aircraft

3. Perils Excluded from Coverage

Onshore energy property damage insurance typically exclude damage caused by certain perils. While policy language varies, these policies almost universally exclude perils, such as:

   a. Faulty Workmanship, Faulty Materials, Defective Design or Specifications

Most onshore energy property insurance contains an exclusion for faulty workmanship or design, and many of these exclusions contain an exception for “ensuing loss.” A typical exclusion is:

   This Policy does not insure loss, damage or expense caused directly or indirectly by any of the following. Such loss, damage or expense is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss.

   ***

14. Cost of making good;

   A. Error, omission or deficiency in design, plans, specification engineering or surveying; or

   B. Faulty or defective workmanship, materials and supplies;

unless direct physical loss or damage by an insured peril ensues, and then, only to the extent otherwise covered by this policy, any direct physical loss or damage directly resulting from such insured peril is covered.
Courts have generally enforced faulty workmanship and defective design exclusions. See Am. Concept Ins. Co. v. Jones, 935 F. Supp. 1220, 1229 (D. Utah 1996) (holding “damage to the pipe itself is not covered, but the ensuing [collapse] loss to the Joneses’ home is covered unless it is otherwise excluded or excepted in the policy.”); City of Burlington v. Hartford Steam Boiler Inspection and Ins. Co., 190 F. Supp. 2d 663, 672 (D. Vt. 2002) (finding “a large majority of courts which examined the issue held that ‘faulty workmanship’ is unambiguous when used in an exclusionary clause of an insurance contract.”).

In RK Mechanical, Inc. v. Travelers Property Casualty Co. of America, 944 F. Supp. 2d 1013, 1016-17 (D. Colo. 2011), the court explained:

An ensuing loss clause, however, does not reinsert coverage for excluded losses, but rather reaffirms coverage for secondary losses ultimately caused by the excluded perils. The cost of making good faulty work or defective products is not contemplated nor covered by the policy at issue since this kind of loss is specifically excluded. . . . if this Court were to ignore the nature of the policy and its exclusions in order to allow coverage, the result would be to turn these policies into something they are not: performance bonds or guarantees of contractual work.

Id. at 1021 (citations and internal quotations omitted).

The court further held that an “ensuing loss provision does not cover loss caused by the excluded peril; it covers loss caused to the property wholly separate from the defective property itself, in this case the escaping water, not the cracked flange.” Id. (internal citations omitted).

The same reasoning is generally applied in defective design cases. See Vt. Elec. Power Co., Inc. v. Hartford Steam Boiler Inspection & Ins. Co., 72 F. Supp. 2d 441 (D. Vt. 1999) (“The loss . . . was not the design defect, but the damage to the transformers; the defective design was the cause.”); Swire Pac. Holdings, Inc. v. Zurich Ins. Co., 845 So. 2d 441, 168 (Fla. 2003) (the contractor was not entitled to recover expenses associated with repairing the design defect); Allianz Ins. Co. v. Impero, 654 F. Supp. 16, 18 (E.D. Wash. 1996) (holding ensuing loss provision was not applicable because claim was solely for cost of correcting deficiencies in construction not covered under exclusionary clause); Narob Dev. Corp. v. Ins. Co. of N. Am. 219 A.D.2d 454, (N.Y. App. Div. 1995) (ensuing loss exception is not applicable if the ensuing loss was directly related to the original excluded risk); Schloss v. Cincinnati Ins. Co., 54 F. Supp. 2d 1090 (M.D. Ala. 1999) (when a non-covered loss occurs, only a separate loss that occurs as a result of the non-covered loss would be protected by ensuing loss provision); Montefiore Med. Ctr. v. Am. Protection Ins. Co., 226 F. Supp. 2d 470, 479 (S.D.N.Y. 2002) (“An ensuing loss provision does not cover loss caused by the excluded peril, but rather covers loss caused to other property wholly separate from the defective property itself.”).
b. **Corrosion**

Most energy-generating plants and oil refineries require large metal processing equipment which, when exposed to the elements, naturally deteriorates and corrodes over time. Thus, onshore energy property insurance policies typically include an exclusion for gradual deterioration and corrosion. A typical corrosion exclusion is:

This Policy does not insure against:

e) Gradual deterioration, depletion, rust or corrosion, wear and tear, inherent vice or latent defect; but not excluding ensuing physical loss caused by a peril not otherwise excluded hereunder;


4. **Extensions of Coverage to Property Damage Insurance**

The PD section of a typical onshore energy policy often includes one or more of the following extensions of coverage which broaden coverage to include certain costs in addition to repair or replacement of physical damage, usually subject to sublimits of liability:

- Debris Removal
- Demolition and Increased Costs of Construction
- Expediting Costs
- Professional Fees (Claims Preparation Costs)
- Service Interruption

**D. ** **BUSINESS INTERRUPTION INSURANCE**

The onshore energy policy typically includes coverage for Business Interruption and Extra Expense. Business Interruption coverage developed as an outgrowth of, and supplement to, Property Damage coverage for the insured’s own premises. Consider the landlord whose building is destroyed by fire. Business Interruption (known in the early days as “loss of use and occupancy”) protects his lost income stream during repairs while the Property Damage coverage permitted rebuilding his building.

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40 See *Power & Utilities Property Damage and Business Interruption Wording (USA), LMA3110*, at 29-41.
While the basic concept is clear, “business interruption” is a somewhat misleading term. The Business Interruption policy is not designed to cover all risk of loss of an insured’s profits. Rather, because of its historical development, the coverage is tied to a requirement of actual physical damage to covered property by a peril not excluded in the Property Damage section of the policy.

Courts and commentators have described the purpose of BI coverage as follows:

(1) To indemnify the insured for loss caused by the interruption of a going business due to the destruction of the building, plant or parts thereof.\(^4^1\)

(2) To reimburse the insured for lost income and extra expenses that are sustained during the interruption and that result from a covered cause of loss that caused the insured to temporarily cease its business operations, i.e., to place the insured in the position it would have occupied had no interruption occurred.\(^4^2\)

(3) To cover the insured against “actual loss sustained,” which is to say that it is designed to keep the insured’s business in essentially the same position that it would have maintained for itself absent an interruption – to do for the insured during a period of suspended operations what the business itself would have done had no loss occurred.\(^4^3\)

1. **Typical Business Interruption Policy Language**

1. Coverage

a) Business Interruption

This Policy covers loss sustained by the Insured resulting from the necessary interruption of business caused by destruction or damage, by a peril insured against, to property insured herein, occurring during the term of this Policy.

\[\text{\ldots}\]

\[\text{\ldots}\]

e) Expenses to Reduce Loss:


\(^4^3\) See also *Paramount Fire Ins. Co. v. Aetna Cas. & Sur. Co.*, 353 S.W.2d 841, 844 (Tex. 1962) (purpose is to put insured in same position had the event causing loss not occurred, but not to provide the insured a windfall where no loss has occurred); *Royal Indemn. Ins. Co. v. Mikob Props. Inc.*, 940 F. Supp. 155, 157-60 (S.D. Tex. 1996) (business interruption insures against loss of insured’s earnings when covered causes of loss prevents use of insured’s premises and continuing normal operations); and *Cora Pub, Inc. v. Cont’l Cas. Co.*, 619 F.2d 482, 488 (5th Cir. 1980) (purpose of business interruption is to preserve continuity of insured’s earnings and place it in same financial posture as if there had been no casualty).
This Policy also covers such expenses as are necessarily incurred for the purpose of reducing loss under this Policy and such expenses, in excess of Normal, as would necessarily be incurred in replacing any finished stock used by the Insured to reduce loss under this Policy; but in no event shall the aggregate of such expenses exceed the amount by which the loss under this Policy is thereby reduced.

2. Measure of Recovery

The measure of recovery in the event of loss hereunder shall be the reduction in “Gross Earnings” directly resulting from such interruption of business but not exceeding such length of time as would be required, with the exercise of due diligence and dispatch, to rebuild, repair, or replace the destroyed or damaged property, commencing with the date of such destruction or damage and not limited by the date of expiration of this Policy but not exceeding the ACTUAL LOSS SUSTAINED by the Insured resulting from such interruption of business.

3. Resumption of Operations

It is the condition of this Insurance that if the Insured could reduce the loss resulting from the interruption of business:

a). By complete or partial resumption of operations of the property herein described whether damaged or not, or

b). By making use of Stock (Raw, In Process or Finished) at the location of the loss or elsewhere, or

c). By making use of other property at the location(s) described herein and elsewhere.

Then such reduction shall be taken into account in arriving at the amount of loss hereunder.

2. The Elements Necessary for a Covered BI Claim

While policy language of the BI section varies, in order for the business loss to be covered, generally it must result directly from (1) a covered peril that causes (2) physical loss or damage to
covered property that causes (3) an interruption of the Insured’s business operations (4) during the period of restoration.\textsuperscript{44}

3. What is “Interruption” of the Insured’s Business?

A common issue addressed by courts “is whether the level of interruption to the business has been sufficient under the policy language. Business interruption insurance commonly uses the phrase ‘necessary suspension of operations.’ The issue is whether a significant slowdown in operations is sufficient, or whether the policy requires a total shutdown in operations.”\textsuperscript{45} The majority of courts have held that in order for business interruption insurance to be triggered, the loss must result from a “complete cessation” of business activity. Lantheus Med. Imaging, Inc. v. Zurich Am. Ins., No. 10 Civ. 9371, 2015 WL 1914319, at *9-*10 (S.D.N.Y. April 28, 2015), app. filed (2d Cir. May 26, 2015).\textsuperscript{46}

Some policy language requires only a “necessary interruption of business, whether total or partial.” See Aztar Corp. v. U.S. Fire Ins. Co., 224 P.3d 960, 966-67 (Ariz. Ct. App. 2010) That language has been interpreted to specifically allow less than a complete shutdown of operations, in order to trigger business interruption coverage. Id.

4. What is the “Period of Restoration”?

The Period of Restoration (also referred to as Period of Indemnity) is typically limited to the amount of time that would be required with the exercise of due diligence and dispatch to rebuild, repair or replace such property which has been lost or damaged.

A period of “suspension” or “restoration” is a common feature of business interruption policies. The purpose of the period of restoration is to restrict coverage to earnings lost during the period of time “necessary to restore the business to its pre-accident condition.” Courts have observed that, without a temporal limitation, “[t]here would be no available method to determine with any degree of accuracy the amount of [business interruption] losses.”

\textsuperscript{44} See Randy Paar, The Elements of a Business Interruption Claim, 2 NO. 7 E-COMMERCE & TECH. 13 (April 30, 2002).
\textsuperscript{45} Id. at 4 (emphasis in original).
\textsuperscript{46} See generally 11 COUCH ON INS. § 167:11 (“[A] business ... ‘suspension’ triggering coverage typically involves a total cessation of business, not merely a slowdown or reduction of operations.”); see also, e.g., GBP Partners, Ltd. v. Md. Cas. Co., 505 F. App’x 389, 392 (5th Cir. 2013) (unpublished opinion) (“Under Texas law, a suspension of operations clause requires business to have completely ceased for some interval.”); H & H Hosp. LLC v. Discover Specialty Ins. Co., No. H-10-1886, 2011 WL 6372825, at *3 (S.D. Tex. Dec. 20, 2011) (“While the Policy does not define ‘necessary suspension of your operations,’ courts have interpreted language identical or similar to the clause in this policy to cover the risk of a complete cessation of business activities at the covered premises[].”); Quality Oilfield, 971 S.W.2d at 639 (“[W]e find that ‘interruption of business’ is an unambiguous term meaning ‘cessation or suspension of business.’ Therefore, [plaintiff] was not entitled to business interruption coverage for the work slowdown it experienced, and we find the trial court did not err in granting [defendant’s] motion for summary judgment.”).
Typical policy language provides that the period of restoration begins on the date of physical loss or damage that caused the business interruption, and ends when the repairs are completed, or if the repairs have been delayed, the date that the insured reasonably could have completed such repairs with due diligence. In the latter case, the period of indemnity is a hypothetical reasonable amount of time that the repairs could have been made. Generally, the period of restoration “runs concurrently with an interruption due to an insured peril and lasts until the damaged property is restored.” Pennbarr Corp. v. Ins. Co. of N. Am., 976 F.2d 145, 154 (3d Cir. 1992) (business interruption insurance does not cover lost sales sustained beyond the period of restoration).

Consider the refinery that suffers an explosion in a 30-year-old boiler. The explosion damages the boiler, related electrical equipment and piping, and causes a small fire. The period of restoration, for the purpose of the refinery’s lost income and extra expense coverage, would be the time it should take to repair or replace all of the damage and restart the boiler equipment. The refinery’s and insurers’ experts agree that the repairs could be completed in three months. However, if the refinery takes an additional six months to decide whether it prefers to repair the old boiler or purchase a new one (or some other reason not related to the actual repairs), that delay in completing the repairs is not included in the period of restoration—the period is still three months.

5. **Idle Periods Exclusion**

A common exclusion found in the Business Interruption section of onshore energy policies is for “Idle Periods.”

The LMA Wording provides:

In addition to the Exclusions elsewhere in this Contract, this Section does not insure:

A. any loss during any idle period, (including but not limited to when production, operation, service or delivery or receipt of goods would cease, or would not have taken place or would have been prevented):

1. due to planned or scheduled shutdown or outage;
2. due to strikes or other work stoppage;
3. when it is not possible to attain or maintain Profitable Output for reasons other than direct physical loss or physical damage; or

4. for any other reason other than direct physical loss or physical damage insured by this Contract.\(^{47}\)

Onshore energy facilities usually plan a shutdown or outage to perform maintenance on equipment, such as turbines and boilers, from time to time.

For example, industrial plants schedule plant “turnarounds” during which times the facility will be down for annual or periodic scheduled maintenance and repairs. If a catastrophe strikes during or just before or after a scheduled plant outage, such “normal” downtimes may need to be factored into the business interruption loss calculation such that only downtime caused by the insured peril is reflected in the calculated loss.


**E. CONTINGENT BUSINESS INTERRUPTION COVERAGE**

Given the interconnected nature of modern commerce, physical damage to the insured’s sources of supply, output, distribution, and customers can obviously cause serious interruption of the insured’s income stream, even in the absence of physical damage to the insured’s own property. Historically, insurers broadened Business Interruption coverage to cover the insured’s business interruption caused by physical damage to certain third party premises upon which the insured’s business was dependent, by developing the Contingent Business Interruption (CBI) policy. “Contingent” is used in the sense that the insured’s business is dependent upon others.

\(^{47}\) See Power & Utilities Property Damage and Business Interruption Wording (USA), LMA3110, at 41.
Given the historical development of the Business Interruption policy, Contingent Business Interruption insurance also requires physical damage at the third party premises due to the type of risk that would be covered under the insured’s own Property Damage policy.\textsuperscript{48}

An example of a CBI coverage grant is as follows:

Subject to all its provisions, this policy insures against loss resulting directly from necessary interruption of business conducted on the Insured’s premises occupied by the Insured, caused by physical loss or damage of the type insured against to:

1. Real or personal property of the type covered at locations situated within the territorial limitations for up to USD 20,000,000 per occurrence as respects direct suppliers to the Insured, unless otherwise endorsed hereon, not operated by the Insured, which wholly or partially prevents the delivery of materials or provision of services to the Insured or to others for the account of the Insured.


F. Broker-Drafted Policy Language

Most Onshore Energy Package Policies in the United States, especially for larger risks such as power-generating plants and oil refineries, are quota-share subscription policies drafted by specialized insurance brokers that are issued by a combination of Lloyd’s Syndicates, domestic insurers, and foreign insurers based in Bermuda, Germany, and Switzerland. Although the Lloyd’s Wordings Repository is filled with suggested policy language that has been vetted by experts in the particular sector of insurance coverage, the suggested Lloyd’s Wordings are often not used. For that reason, especially with these individually tailored insurance policies, it is imperative to

analyze the actual language used by the broker in the policy at issue. It is not unusual for the language included in the manuscript policy wording to be inconsistent with underwriters’ intent.

One example of the broker-drafted policy language which led to a dispute between the Insurers and Insured was:

3. **Arbitration**

   If the Insured and the Underwriters fail to agree on the amount of loss, each will, on the written demand of either, select a competent and disinterested appraiser after:
   
   a. The Insured has fully complied with all provisions of this Policy, and
   
   b. The Underwriters have 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 thirty (30) days then, on the request of the Insured or the Underwriters, the umpire will be selected by a judge of a court of record in the jurisdiction in which the **arbitration** 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 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 (2) will determine the amount of loss.

   The Insured and the Underwriters will each:

   a. Pay its chosen appraiser; and
   
   b. Bear equally the other expenses of the **arbitration** and umpire.

   A demand for **arbitration** shall not relieve the Insured of its continuing obligations to comply with the terms and conditions of this Policy.

   The Underwriters will not be held to have waived any of its rights by any act relating to **arbitration**.

   The Insured and the Underwriters shall each bear the expenses of their own appraisers and shall bear equally the expenses of the umpire.

   The seat of **arbitration** shall be the State of New York.

   This wording is not a model of clarity, and led to years of litigation regarding whether the coverage issues would be resolved in court or in arbitration. After examining the intent of all involved in the development of the manuscript policy wording, the court found the clause required the arbitration of all disputes in a New York arbitration. See **Aker Kvaerner/IHI v. Nat’l Union Fire Ins. Co. of Pittsburgh, Pa.,** Nos. 2:10-CV-00278, 2:10-CV-1041, 2014 WL 547042 (W.D.)

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49 Bold type was included in the Policy.
The point is that broker manuscript forms or wording can sometimes be an amalgamation of different wordings that have been interpreted by courts and carry definite legal concepts. Underwriters should attempt to clarify these types of issues on the front end in order to avoid unnecessary confusion in the interpretation or application of the policy provisions.

IV. CONCLUSION

The authors hope that this high-level, high-speed fly-by has enabled the reader to gain a sense of the scope of the energy industry and the insurance coverages involved in the energy “package” policy, while also providing some starting points for the authorities construing and applying them.
Exhibit A
PROPERTY & PLANT TESTING & COMMISSIONING CLAUSE

1. It is hereby noted and agreed that this (Re)insurance does not cover destruction of or damage to property in course of construction or erection, dismantling, revamp or undergoing testing or commissioning including mechanical performance testing and any business interruption resulting therefrom.

2. Acceptance of property hereon is subject to satisfactory completion of the following:
   2.1. Mechanical Completion.
   2.2. Testing and Commissioning.
   2.3. Performance Testing conforming to 100% Contract Design Criteria having been maintained by the entire plant in a stable and controlled manner for a continuous period of a minimum of 72 hours duration.
   2.4. Official acceptance by the Insured following formal hand over without reservation or waiver of guarantee conditions.
   2.5. Any deficiencies identified during the testing, commissioning and start-up that may affect the mechanical integrity, process safety or reliability of the plant, having been declared to (Re)Insurers prior to attachment.

3. NOTWITHSTANDING the above, attachment of property and plant hereon to be agreed by (Re)Insurers. It is further noted and agreed that terms and conditions to be reviewed, if required by (Re)Insurers.

4. It is further noted and agreed that the above provisions do not apply to normal routine maintenance activities, scheduled turnarounds and / or minor works (as defined in the policy).

Additionally, (Re)Insurers request completion of the attached information request template "INFORMATION TO SUPPORT THE TRANSFER OF ONSHORE OIL, GAS & PETROCHEMICAL ASSETS FROM CONSTRUCTION TO OPERATIONAL INSURANCE".

LMA5197A
27 January 2014
INFORMATION TO SUPPORT THE TRANSFER OF
ONSHORE OIL, GAS & PETROCHEMICAL ASSETS
FROM CONSTRUCTION TO OPERATIONAL INSURANCE

Purpose

The purpose of the following information request template is to facilitate the transfer of a newly constructed Onshore Oil, Gas & Petrochemical asset from a construction policy to an operational policy.

The information provided is intended to:

- Support paragraphs 2.1 to 2.5 of the Testing & Commissioning Clause.
- Help define items of critical importance to (Re)Insurers for the initial safe operation of an asset following start-up.
- Help (Re)Insurers understand the risks to be transferred thus allowing an informed judgement to be made.
- Be of mutual benefit to the Insured, Broker and (Re)Insurers by clarifying expectations for the transfer to operational cover.

Any issues identified within this information request template are not necessarily a barrier to transfer but more likely can form the basis for discussion between the Insured and (Re)Insurers.

This information request template is not intended to replace any other information which may be provided within the Insured’s/Broker’s submission.

Process

It is intended that this information request template will be completed by persons knowledgeable in the specific topic areas. By definition, therefore, completion of the template may require coordination between a number of different departments.

It is expected that the template will be completed for each and every applicable endorsement to a policy.

The completed template should be submitted to (Re)Insurers shortly before the anticipated operational policy inception date. The intent is that the information contained herein reflects the status of the asset as close to inception as possible whilst allowing a reasonable time for the information to be reviewed by (Re)Insurers.
<table>
<thead>
<tr>
<th><strong>Operational Insured’s Name</strong></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Project Name</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Proposed Date of Inception of Operational Cover</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Endorsement Reference Number</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Date Information Completed</strong></td>
<td></td>
</tr>
</tbody>
</table>

Please provide attachments where necessary to support the following information requests.

### 0 Overview

0.1 Provide details of the full scope of assets to be transferred to the operational policy under this endorsement.

0.2 Provide details of the start-up plan including a schedule with the order and approximate dates in which units will be/were started up. Include details of any units which will be started up and subsequently idled.

0.3 Provide details of any restrictions on the ability to demonstrate 100% Contract Design Criteria (e.g. feedstock availability).

### 1 Mechanical Completion *

*A contractual milestone and can be the point of transfer of care, custody and control from the (EPC) Contractor to the Owner. Normally prior to this only ‘cold testing’ has been completed (i.e. non energised/pressurised systems but would include flushing and cleaning, hydrostatic and pneumatic testing and ‘bumping’ of electric motors). Some of these activities are typically called pre-commissioning.*

1.1 Was a certificate of Mechanical Completion issued to the Owner?

<table>
<thead>
<tr>
<th>YES</th>
<th>NO</th>
</tr>
</thead>
</table>

1.2 Provide details of any significant quality related issues with materials or equipment (e.g. major fabrication defects, material non-conformity) which could affect the mechanical integrity of the plant and provide a summary of what has been done to rectify these faults.
2 Testing & Commissioning *

* This is normally regarded as ‘hot testing’ and comprises:

- **Commissioning** - including all dynamic and energised checking and test work such as starting up of machinery and function testing.
- **Start-Up** - milestone at which hydrocarbon feedstock is introduced with subsequent ramp-up to operating conditions, optimisation and troubleshooting.

2.1 Have there been any insurance claims to the Construction policy?
If yes, provide details below.

<table>
<thead>
<tr>
<th>YES</th>
<th>NO</th>
</tr>
</thead>
</table>

2.2 Have there been any significant incidents, not necessarily resulting in an insurance claim, during the project?
Examples would include a significant Loss of Primary Containment (LOPC), fire, explosion, machinery breakdown, dropped load or equipment damage.
If yes, provide details below.

<table>
<thead>
<tr>
<th>YES</th>
<th>NO</th>
</tr>
</thead>
</table>

2.3 Are there any significant remaining construction works taking place on the plant that could present a risk to the plant when handed over to Operations i.e. simultaneous construction and operation (SIMOPS)?
If yes, provide details below.

<table>
<thead>
<tr>
<th>YES</th>
<th>NO</th>
</tr>
</thead>
</table>

2.4 Provides details of the current status of Safety Critical Equipment as per the definitions below and the following table.

(i) **Tested** - all such systems have been tested against a predefined performance standard. This should include the full loop from detection device (e.g. sensor) to final element (e.g. isolation valve). In the case of fire protection systems, this should include a full ‘wet test’. In the case of mechanical relief devices, this is taken to mean the items have been bench tested and certified as per the original design specification.

(ii) **Available** - all such systems are available to the process should a demand be placed upon them i.e. no impairment/override/bypass of individual systems.

(iii) **Deviations/Impairments** - record any individual systems which do not meet the Tested and/or Available criteria as outlined above. Details of any long term impairments should be provided here.
<table>
<thead>
<tr>
<th>Safety Critical Equipment</th>
<th>100% Tested</th>
<th>100% Available</th>
<th>Deviations/Impairments</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Safety Instrumented Functions</strong> for example:</td>
<td>YES</td>
<td>NO</td>
<td>YES</td>
</tr>
<tr>
<td>- Emergency Shut Down (ESD), Isolation &amp; Depressurisation systems</td>
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<tr>
<td>- Reactor kill &amp; dump systems</td>
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<tr>
<td>- Safety trips &amp; interlocks</td>
<td></td>
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<tr>
<td>- Safety critical alarms</td>
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<tr>
<td>- Safety critical analysers</td>
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<tr>
<td>- Machinery protection systems (overspeed, vibration etc.)</td>
<td></td>
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<tr>
<td>- Fired heater protection systems (fuel supply low pressure etc.)</td>
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<tr>
<td>- Any safety instrumentation as part of a vendor supplied package</td>
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<tr>
<td><strong>Mechanical Relief Devices</strong> for example:</td>
<td>YES</td>
<td>NO</td>
<td>YES</td>
</tr>
<tr>
<td>- Over Pressure Protection Devices</td>
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<tr>
<td>- Vacuum Relief Devices</td>
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<tr>
<td>- Thermal Relief Devices</td>
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<tr>
<td><strong>Mechanical Interlocks</strong></td>
<td>YES</td>
<td>NO</td>
<td>YES</td>
</tr>
<tr>
<td><strong>Emergency Power Supply</strong> for example:</td>
<td>YES</td>
<td>NO</td>
<td>YES</td>
</tr>
<tr>
<td>- Uninterruptible Power Supply (UPS)</td>
<td></td>
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<tr>
<td>- Emergency Diesel Generator(s)</td>
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<tr>
<td><strong>Remotely Operable Emergency Isolation Valves (ROIVs)</strong></td>
<td>YES</td>
<td>NO</td>
<td>YES</td>
</tr>
<tr>
<td><strong>Fire &amp; Gas Detection</strong> systems for example:</td>
<td>YES</td>
<td>NO</td>
<td>YES</td>
</tr>
<tr>
<td>- Smoke detection in business critical buildings</td>
<td></td>
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<tr>
<td>- Flammable gas detection in open plant &amp; enclosures</td>
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<tr>
<td>- Flame &amp; heat detection in open plant &amp; enclosures</td>
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<tr>
<td><strong>Fire Protection</strong> systems for example:</td>
<td>YES</td>
<td>NO</td>
<td>YES</td>
</tr>
<tr>
<td>- Firewater storage, pumps &amp; distribution</td>
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<tr>
<td>- Hydrants, monitors &amp; deluge systems</td>
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<td>- Foam &amp; powder systems</td>
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<tr>
<td>- Gaseous extinguishing systems</td>
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</tr>
</tbody>
</table>
3 Performance Testing * conforming to 100% Contract Design Criteria ** having been maintained by the entire plant in a stable and controlled manner for a continuous period of a minimum of 72 hours duration.

* Performance Testing is demonstration of plant operation at 100% Contract Design Criteria for a minimum time period.

** Contract Design Criteria are the plant design specifications as stipulated in the project design basis.

3.1 Provide daily production data from the start of operations to date for the plant and identify the 100% / 72hrs Performance Test within the data.

3.2 If it is not possible to achieve the 100% / 72hrs Performance Test, provide details as to the reasons why not and provide daily production data to indicate the maximum throughput achieved to date.

3.3 Are there any major equipment items which have not yet been subject to Performance Test but are to be attached under this endorsement?

This is not intended to cover installed spare equipment (e.g. pump A & B) but rather major equipment items which have not yet been utilised, for example, due to product grade runs.

If yes, provide details below.

YES ☐ NO ☐

4 Official acceptance by the Insured following formal hand over without reservation or waiver of guarantee conditions.

4.1 Has the project been officially accepted by the Owner following formal handover without reservation or waiver of guarantee conditions?

If no, provide details below.

YES ☐ NO ☐
Any deficiencies identified during testing, commissioning and start-up that may affect the Mechanical Integrity\textsuperscript{5.1}, Process Safety\textsuperscript{5.2} or Reliability\textsuperscript{5.3} of the plant.

### 5.1 Mechanical Integrity

#### 5.1.1 Are there any equipment faults, warranty issues, fabrication defects, temporary modifications or punch list items remaining which could potentially affect the Mechanical Integrity of the plant?

If yes, provide details below.

<table>
<thead>
<tr>
<th>YES</th>
<th>NO</th>
</tr>
</thead>
</table>

#### 5.1.2 Provide a copy of the latest status of any punch list items which could potentially affect the Mechanical Integrity of the plant.

### 5.2 Process Safety

#### 5.2.1 Was a formal Pre Start-up Safety Review (PSSR) completed for the project?

<table>
<thead>
<tr>
<th>YES</th>
<th>NO</th>
</tr>
</thead>
</table>

Were the following items considered during the PSSR (or equivalent procedure) and their status deemed adequate by the Owner:

- Status of all Process Hazard Analysis (PHA) (e.g. HAZOP) | YES | NO |
- Availability of Start-Up, Shutdown & Emergency Operating Procedures? | YES | NO |
- Delivery of training to Operators and Maintenance technicians? | YES | NO |
- Availability of as-built P&IDs to Operational staff? | YES | NO |

If no to any of the above, provide details below.

#### 5.2.2 Is there a formal and documented Management of Change (MoC) procedure in place for the operational phase covering all permanent, temporary and emergency changes?

<table>
<thead>
<tr>
<th>YES</th>
<th>NO</th>
</tr>
</thead>
</table>

#### 5.2.3 Is there an operational procedure in place to manage and authorise the temporary override/bypass of Safety Instrumented Functions?

<table>
<thead>
<tr>
<th>YES</th>
<th>NO</th>
</tr>
</thead>
</table>

#### 5.2.4 Is there an operational procedure in place to manage and authorise the temporary impairment of fire protection systems and any other Safety Critical Equipment?

<table>
<thead>
<tr>
<th>YES</th>
<th>NO</th>
</tr>
</thead>
</table>
5.2.5 Is the Operations organisation fully staffed versus the agreed headcount? Is additional management and technical resource available during start-up? Are overtime hours being monitored and controlled?

If no to any of the above, provide details below.

5.2.6 Is the Emergency Response Team (ERT) fully staffed, equipped and trained? Is the ERT aware of current plant status and any special procedures necessary? Is free and uninhibited access to the plant possible?

If no to any of the above, provide details below.

5.3 Reliability

5.3.1 Are there any current known recurring process or equipment (Mechanical, Electrical and Instrumentation) issues affecting the reliability of plant operation?

If yes, provide details below.

5.3.2 Are major spares available for large unspared long delivery equipment items which could, if they failed, result in a significant Business Interruption impact (several months plant shutdown). Examples of these ‘Insurance’ spares are compressor or turbine shafts, large electric motors or large transformers.

If no, provide details below.
Exhibit B
Power & Utilities

Property Damage
and Business Interruption
Wording

(USA)
RISK DETAILS

UNIQUE MARKET REFERENCE: <<insert>>

TYPE: PROPERTY DAMAGE/BUSINESS INTERRUPTION INSURANCE

INSURED: <<insert>>

BUSINESS: The Business of the Insured as declared to Insurers at inception.

ADDRESS: <<insert>>

PERIOD OF INSURANCE: <<insert>>

Both dates at 12.01 a.m. Local Standard Time at the address of the Insured as shown above, and such further period or periods as may be mutually agreed upon.

INTEREST:

SECTION 1 - PROPERTY DAMAGE

All risks of direct physical loss of or physical damage to the Property Insured by a Peril not excluded by this Contract, but excluding the following coverages unless it is indicated here that they are insured by this Contract: <<Select>>

ACCIDENT (MACHINERY BREAKDOWN/EXPLOSION/COLLAPSE) (Y/N)
EARTH MOVEMENT (Y/N)
FLOOD (Y/N)
WINDSTORM (INCLUDING NAMED WINDSTORM) (Y/N)

If any of the above perils are not insured by this Contract, additional Exclusions apply (see Additional Exclusions to Section 1 below).

SECTION 2 - BUSINESS INTERRUPTION

BUSINESS INTERRUPTION (CONTRACTED SALES) (Y/N)
BUSINESS INTERRUPTION (MERCHANT SALES) (Y/N)
COMMISSIONS, PROFITS AND ROYALTIES (Y/N)
DEBT SERVICE CHARGES AND OPERATIONAL AND MAINTENANCE CHARGES (Y/N)
EXTRA EXPENSE (NON-GENERATION) (Y/N)
EXTRA EXPENSE (REPLACEMENT POWER CAPACITY) (Y/N)
RENTAL INSURANCE (Y/N)
LIMITS OF LIABILITY:
The Insurers’ maximum limit of liability in an Occurrence, including any insured Business Interruption loss shall not exceed "<<insert Total Sum Insured>>" and shall be subject to the Limit of Liability General Provisions stated within the General Conditions.

Subject, however, to Sub-Limits of Liability as follows:

SECTION 1 - PROPERTY DAMAGE

ACCOUNTS RECEIVABLE "<<insert applicable limit/none>>"

AUTOMATIC COVERAGE (time limit) "<<insert applicable time limit in days/none>> days"

DATA REPRODUCTION COST "<<insert applicable limit/none>>"

DEBRIS REMOVAL "<<insert applicable limit/none>>"

DEFERRED PAYMENTS "<<insert applicable limit/none>>"

DEMOLITION AND INCREASED COST OF CONSTRUCTION "<<insert applicable limit/none>>"

EARTH MOVEMENT in the aggregate during the Period of Insurance, Property Damage and Business Interruption Combined "<<insert applicable limit/none>>"

ELECTRONIC DATA PROCESSING MEDIA "<<insert applicable limit/none>>"

ERRORS AND OMISSIONS "<<insert applicable limit/none>>"

EXPEDITING COSTS "<<insert applicable limit/none>>"

FINE ARTS "<<insert applicable limit/none>>"

FIRE BRIGADE CHARGES AND EXTINGUISHING EXPENSES "<<insert applicable limit/none>>"

FLOOD in the aggregate during the Period of Insurance, Property Damage and Business Interruption Combined "<<insert applicable limit/none>>"

HAZARDOUS SUBSTANCES OR CONTAMINANTS "<<insert applicable limit/none>>"

LAND AND WATER CONTAMINANT OR POLLUTANT CLEANUP, REMOVAL AND DISPOSAL in the aggregate during the Period of Insurance "<<insert applicable limit/none>>"

LEASEHOLD INTEREST "<<insert applicable limit/none>>"

MISCELLANEOUS UNNAMED LOCATIONS "<<insert applicable limit/none>>"

NEW BUILDINGS AND ADDITIONS UNDER INCIDENTAL COURSE OF CONSTRUCTION (ESTIMATED CONTRACT VALUE) "<<insert applicable limit/none>>"

PROFESSIONAL FEES (CLAIMS PREPARATION COSTS) "<<insert applicable limit/none>>"
RADIOACTIVE CONTAMINATION (SUDDEN AND ACCIDENTAL) <<insert applicable limit/none>>

SERVICE INTERRUPTION PROPERTY DAMAGE and SERVICE INTERRUPTION BUSINESS INTERRUPTION combined <<insert applicable limit/none>>

TEMPORARY REMOVAL OF PROPERTY (OFFSITE STORAGE) <<insert applicable limit/none>>

TRANSPORTATION <<insert applicable limit/none>>

VALUABLE PAPERS AND RECORDS <<insert applicable limit/none>>

WINDSTORM (INCLUDING NAMED WINDSTORM), Property Damage and Business Interruption Combined <<insert applicable limit/none>>

NAMED WINDSTORM (NOT INCLUDED IN WINDSTORM ABOVE), Property Damage and Business Interruption Combined <<insert applicable limit/none>>

SECTION 2 - BUSINESS INTERRUPTION

AVAILABILITY PAYMENTS as declared to and agreed by the Insurers <<insert applicable limit/none>>

BUSINESS INTERRUPTION (CONTRACTED SALES) Monthly Cap basis as declared to and agreed by the Insurers <<insert applicable limit/none>>

BUSINESS INTERRUPTION (MERCHANT SALES) Monthly Cap basis as declared to and agreed by the Insurers <<insert applicable limit/none>>

BUSINESS INTERRUPTION (CONTRACTED SALES) Revenue Profile basis as declared to and agreed by the Insurers <<insert applicable limit/none>>

BUSINESS INTERRUPTION (MERCHANT SALES) Revenue Profile basis as declared to and agreed by the Insurers <<insert applicable limit/none>>

CAPACITY AND/OR BONUS PAYMENTS as declared to and agreed by the Insurers <<insert applicable limit/none>>

COMMISSIONS, PROFITS AND ROYALTIES <<insert applicable limit/none>>

CONTINGENT BUSINESS INTERRUPTION <<insert applicable limit/none>>
Named Direct Customers/Named Direct Suppliers:
<<names of customers>>
<<names of suppliers>>

DEBT SERVICE CHARGES AND OPERATIONAL AND MAINTENANCE CHARGES
<<insert applicable limit/none>>

EXTRA EXPENSE (NON-GENERATION)
<<insert applicable limit/none>>

EXTRA EXPENSE (REPLACEMENT POWER CAPACITY)
<<insert applicable limit/none>>

RENTAL INSURANCE
<<insert applicable limit/none>>

SERVICE INTERRUPTION (day limit)
<<insert maximum no of days>>

DEDUCTIBLES:
Subject to the Deductible General Provisions stated within the General Provisions, in each case of loss covered by this Contract, the following Deductibles apply:

SECTION 1 – PROPERTY DAMAGE
Deductible(s):
<< insert category and applicable amounts>>

SECTION 2 – BUSINESS INTERRUPTION
Deductible(s):
<< insert dd>> days worth of the otherwise indemnifiable business interruption at the average daily value of the loss.

INDEMNITY PERIOD:
SECTION 2 – BUSINESS INTERRUPTION

Maximum Indemnity Period(s):
In addition to any Maximum Indemnity Periods shown elsewhere in the Contract, the following shall apply:

<<insert dd>> day period BUSINESS INTERRUPTION COVERAGES other than

<<insert dd>> day period AVAILABILITY PAYMENTS

<<insert dd>> day period BUSINESS INTERRUPTION (CONTRACTED SALES)

<<insert dd>> day period BUSINESS INTERRUPTION (MERCHANT SALES)

<<insert dd>> day period CIVIL OR MILITARY AUTHORITY
<<insert dd>>  day period CONTINGENT BUSINESS INTERRUPTION
<<insert dd>>  day period DEBT SERVICE CHARGES AND 
OPERATIONAL AND MAINTENANCE CHARGES
<<insert dd>>  day period INGRESS/EGRESS
<<insert dd>>  day period ORDINARY PAYROLL

TERRITORIAL LIMITS:  <<insert>>

NOTICES:  << Insert if appropriate, if none state “None”>>

CHOICE OF LAW AND JURISDICTION:
Choice of Law:  <<insert applicable data here>>
Service of Suit Nominee:  <<insert here if applicable>>
Arbitration
Rules of Arbitration:  LCIA << amend here if not appropriate>>
Seat of Arbitration:  London, England << amend here if not appropriate >>
Language of Arbitration:  English << amend here if not appropriate>>
Governing Law:  England and Wales << amend here if not appropriate >>

PREMIUM:  <<insert details>>

PREMIUM PAYMENT TERMS:  <<insert details>>

TAXES PAYABLE BY INSURED AND ADMINISTERED BY INSURERS:  <<insert details>>

ENDORSEMENTS (IF ANY):  <<insert details of any variations from the pre-printed form>>
CONTRACT DEFINITIONS

The terms used in this Contract shall have the following meanings or as they are defined elsewhere. To the extent that any terms are differently defined here and in any section hereof the definition to be adopted is that which the context so requires:

ACCIDENT

the term Accident wherever used in this Contract means any sudden direct physical loss of or physical damage to the Property Insured by this Contract which the Insured could not reasonably have foreseen and which occurs at an Insured Location at any specific time during the Period of Insurance due to any Machinery Breakdown, Explosion or Collapse not specifically excluded and which results in the Property Insured needing to be repaired or replaced.

ACCRUALS BASIS

the term Accruals Basis wherever used in this Contract means accruals basis as defined by the International Accounting Standards Board (IASB).

ACTUAL CASH VALUE

the term Actual Cash Value wherever used in this Contract means the cost to repair or replace Property Insured, on the date of loss, with material of like kind, operating capacity and quality, with proper deduction for obsolescence, age and physical depreciation.

AVAILABILITY PAYMENTS

the term Availability Payments wherever used in this Contract means those payments that would have accrued during the Indemnity Period if the direct physical loss of or physical damage to the Property Insured by a Peril not excluded by this Contract had not occurred, and which would have been receivable by the Insured under the Power Purchase Agreement and identified as Availability Payments within the Power Purchase Agreement.

For those payments that are receivable by the Insured on a rolling availability basis, all loss of Gross Earnings attributable wholly to interruption of business on a single day shall, for the purpose of applying the Indemnity Period and Deductible, be deemed to have been lost on that day notwithstanding that under the terms of the rolling availability agreement the cash may be payable at a later date.

AVERAGE DAILY VALUE

the term Average Daily Value wherever used in this Contract means the average daily value for the affected power unit calculated in accordance with the Revenue Profile provided by the Insured at inception.

CAPACITY AND/OR BONUS PAYMENTS

the term Capacity and/or Bonus Payments wherever used in this Contract means excess payments that become receivable by the Insured in return for attaining (Capacity Payments) or exceeding (Bonus Payments) certain production levels required in a Power Purchase Agreement between the Insured and the Offtaker.

These excess payments represent the amount that the Offtaker would pay to the Insured in excess of the then avoided cost of power purchase rates made under the terms of the Power Purchase Agreement.
COLLAPSE

the term Collapse as specified under the Accident Definition means the sudden and dangerous distortion of any part of a boiler or pressure vessel caused by the crushing stress of external steam or fluid pressure, whether attended by rupture or not; it shall not mean any slowly developing deformation due to any cause.

CONSTRUCTION

the term Construction wherever used in this Contract means incidental construction or erection of buildings or machinery, other than hot testing or commissioning, with an estimated contract value not exceeding that specified in the Risk Details.

DEDUCTIBLE

the term Deductible wherever used in this Contract means the amount specified in the Risk Details. The Insurers will be liable only if the Insured sustains a loss in a single Occurrence greater than the applicable Deductible specified in the Risk Details, and only for its share of that greater amount.

EARTH MOVEMENT

the term Earth Movement wherever used in this Contract means any natural or man-made earth movement including, but not limited to earthquake, sequeake, volcanic eruption, landslide or subsidence and any ensuing tsunami, regardless of any other cause or event contributing concurrently or in any other sequence of loss. Earthquake means a shaking or trembling of the earth that is tectonic in origin.

However, direct physical loss or physical damage by fire, explosion, or sprinkler leakage resulting from Earth Movement will not be considered to be loss by Earth Movement within the terms and conditions of this Contract.

EXPLOSION

the term Explosion as specified under the Accident Definition means the sudden and violent rending or tearing apart or rupture of the structure of a boiler or pressure vessel; or any part or parts thereof, by force of internal steam, air or fluid pressure, causing bodily displacement of said structure or part thereof accompanied by the forcible ejection of its contents, or part thereof.

Explosion in this sense shall not mean any damage to the structure of a boiler or pressure vessel by force of the combustion or explosion of ignited furnace or flue gases.

FINE ARTS

the term Fine Arts wherever used in this Contract means paintings; etchings; pictures; tapestries; rare or art glass; art glass windows; valuable rugs; statuary; sculptures; antique furniture; antique jewellery; bric-a-brac; porcelains; and similar property of rarity, historical value, or artistic merit, but does not include automobiles, coins, stamps, furs, jewellery, precious stones, precious metals, watercraft, aircraft, money and securities.

FLOOD

the term Flood wherever used in this Contract means flood; rising waters; waves; 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, surface waters or sewer back-up resulting from any of the foregoing; regardless of any other cause or event contributing concurrently or in any other sequence of loss. However direct physical loss or physical damage by:

1. fire, explosion or sprinkler leakage resulting from Flood;
2. Storm Surge;

is not considered to be loss by Flood within the terms and conditions of this Contract.

HAZARDOUS SUBSTANCES OR CONTAMINANTS

the term Hazardous Substances or Contaminants wherever used in this Contract means any solid, liquid, gaseous, or thermal irritant, contaminant, or pollutant, which includes, but is not limited to, smoke, soot, vapour, fumes, acids, alkalis, chemicals, and waste. Waste includes materials to be reconditioned, recycled, or reclaimed.

INSURED LOCATION

the term Insured Location wherever used in this Contract means:

1. that listed on a Schedule of Insured Locations on file with the Insurers during the Period of Insurance.
2. that which is covered as a Miscellaneous Unnamed Location. However, a Miscellaneous Unnamed Location will not include tracks, trestles, bridges, tunnels; transmission and distribution lines including wire, cables, poles, pylons, standards, towers, or other supporting structures which may be attendant therewith; pipes; wind turbine units and any apparatus or equipment attendant therewith.
   
   If not so specified or if a Miscellaneous Unnamed Location, a building, yard, dock, wharf, pier or bulkhead (or any group of the foregoing) bounded on all sides by public streets, clear land space or open waterways, each not less than fifty (50) feet wide. For the purpose of this provision any bridge or tunnel crossing such street, space or waterway will render such separation inoperative.
3. that covered under the terms and conditions of the Automatic Coverage or Errors and Omissions Extensions.

LIMIT OF LIABILITY

the term Limit of Liability wherever used in this Contract means the Insurers’ maximum liability in a single Occurrence regardless of the number of Insured Locations or coverages involved. However, when a Sub-Limit of Liability for an Insured Location or other specified property or coverage is specified in the Risk Details, such Sub-Limit of Liability will be the maximum amount payable for any Property Damage or Business Interruption loss at such Insured Location or involving such other specified property or such coverage.

MACHINERY BREAKDOWN

the term Machinery Breakdown as specified under the Accident Definition means the actual breaking or burning out of any component of the Property Insured by this Contract, as a direct result of its own internal electronic, electrical or mechanical defect, defective or faulty materials or workmanship causing stoppage of Normal operation and necessitating repair or replacement before Normal operation can be resumed.
MAXIMUM INDEMNITY PERIOD
the term Maximum Indemnity Period wherever used in this Contract shall be the applicable Maximum Indemnity Period as specified in the Risk Details.

MONTHLY CAP
the term Monthly Cap wherever used in this Contract means the Schedule of Monthly Caps declared to and agreed by Insurers at inception for the relevant power generating Insured Location.

NAMED WINDSTORM
The term Named Windstorm wherever used in this Contract means a Windstorm that has been identified and named by the National Oceanic and Atmospheric Administration’s National Hurricane Center or any similar weather organization.

NORMAL
the term Normal wherever used in this Contract means the condition that would have existed had no direct physical loss of or physical damage to the Property Insured by a Peril not excluded by this Contract occurred.

OCCURRENCE
the term Occurrence wherever used in this Contract means the sum of all individual losses or series of individual losses resulting from or arising out of and directly occasioned by any one insured event regardless of the number of Insured Locations affected.

Reference to Machinery Breakdown, Explosion or Collapse wherever used in this Contract means that form of an Occurrence which is an Accident.

In respect of the following perils Occurrence shall be limited to:

1  72 consecutive hours as regards a Windstorm;
2  72 consecutive hours as regards Earth Movement;
3  72 consecutive hours and within the limits of one city, town or village as regards riots, strikes, civil commotions and malicious damage;
4  72 consecutive hours as regards any Occurrence which includes individual loss or losses from any of the causes mentioned in 1, 2 and 3 above;

and no individual loss from whatever insured cause, which occurs outside these periods or areas, shall be included in that Occurrence.

The Insured may choose the date and time when any such period of consecutive hours commences and if any event is of greater duration than the above period, the Insured may divide that event into two or more Occurrences provided no two periods overlap and provided no period commences earlier than the date and time of the happening of the first recorded individual loss to the Insured in that event during the Period of Insurance.

In respect of Flood, Occurrence means all losses, wherever occurring, which arise between the time of movement of water into, onto, or over the Property Insured and the receding of the same, regardless of the period of time so embraced; except, no Occurrence shall be deemed to commence earlier than the date and time of the happening of the first recorded individual loss to the Insured in that occurrence during the Period of Insurance, nor to extend to beyond thirty (30) days after the expiry of this Contract.
OFFTAKER
the term Offtaker wherever used in this Contract means any customer who purchases electricity from the Insured.

ORDINARY PAYROLL
the term Ordinary Payroll wherever used in this Contract means the entire payroll expense for all employees of the Insured except officers, executives, department managers, qualified engineers and employees under contract.

PROFITABLE OUTPUT
the term Profitable Output wherever used in this Contract means the difference between the selling price of power and the purchase price of fuel, together with the Insured’s usual profit margin and criteria that would be sufficient to make it economic to generate power for sale on the Spot Market.

REMAINING USEFUL LIFE
the term Remaining Useful Life wherever used in this Contract means the Normal useful life of the material in months minus the number of months that the material had been in use at the date of loss divided by the Normal useful life of the material in months.

SPOT MARKET
the term Spot Market wherever used in this Contract means a market in which the Insured would normally operate in which electrical energy could have been bought or sold on a short term basis for immediate delivery or delivery in the immediate future with immediate payment.

SPOT PRICE
the term Spot Price wherever used in this Contract means the applicable price on the Spot Market listing.

STORM SURGE
the term Storm Surge wherever used in this Contract means water driven inland from coastal water by high winds or low atmospheric pressure or both.

TAKE OR PAY CONTRACT
the term Take or Pay Contract wherever used in this Contract shall mean the agreement between a buyer and a seller in which the buyer will become contractually bound to pay an agreed amount even if the product or service is not provided.

VALUABLE PAPERS AND RECORDS
the term Valuable Papers and Records wherever used in this Contract means written, printed or otherwise inscribed documents and records, including books, maps, films, drawings, abstracts, deeds, mortgages and manuscripts, all of which must be of value to the Insured.
WINDSTORM

The term Windstorm wherever used in this Contract means:

1. the force or direct action of wind;
2. direct physical loss or physical damage caused by any material, object or debris that is carried, propelled or in any manner moved by wind;

and the term Windstorm shall include:

i. Storm Surge that is concomitant with a Windstorm;
ii. tornado;
iii. hail that is as a result of the actions or effects of a Windstorm;
iv. rain or water, whether the rain or water is driven by wind or not, that enters into the Property Insured through an opening created by the force or direct action of the wind.
SECTION 1 - PROPERTY DAMAGE

In consideration of the payment of premium specified in the Risk Details and subject to the terms, conditions and exclusions of this Contract, the Insurers agree to cover against risks of direct physical loss of or physical damage to the Property Insured by a Peril not excluded by this Contract occurring during the Period of Insurance.

BASIS OF SETTLEMENT

Adjustment of the physical loss amount under this Contract will be computed as of the date of loss at the location of the loss, and for no more than the interest of the Insured, subject to the following:

A  On stock in process, the value of raw materials and labour expended plus the proper proportion of overhead charges.

B  On finished goods manufactured by the Insured, the regular cash selling price at the Insured Location where the loss happens, less all discounts and charges to which the finished goods would have been subject had no loss happened.

C  On raw materials, supplies and other merchandise not manufactured by the Insured:
   1 if repaired or replaced, the actual expenditure incurred in repairing or replacing the property which has sustained direct physical loss or physical damage; or
   2 if not repaired or replaced, the Actual Cash Value.

D  On exposed films, records, manuscripts and drawings, that are not Valuable Papers and Records, the value blank plus the cost of copying information from back-up or from originals of a previous generation. These costs will not include research, engineering or any costs of restoring or recreating lost information.

E  On property covered under Deferred Payments, the lesser of the:
   1 total amount of unpaid instalments less finance charges;
   2 Actual Cash Value of the property on the date of loss; or
   3 cost to repair or replace with material of like size, kind and quality.

F  On Fine Arts articles, the lesser of:
   1 the reasonable and necessary cost to repair or restore such property to the physical condition that existed immediately prior to the loss;
   2 cost to replace the article; or
   3 the value, if any, stated on a schedule on file with the Insurers.

In the event a Fine Arts article is part of a pair or set, and the article which has sustained direct physical loss or physical damage cannot be replaced, or repaired or restored to the condition that existed immediately prior to the loss, the Insurers will be liable for the lesser of the full value of such pair or set or the amount specified in the Risk Details. The Insured agrees to surrender the pair or set to the Insurers.

G  On Valuable Papers and Records, the lesser of the:
   1 cost to repair or restore the item to the physical condition that existed immediately prior to the loss;
   2 cost to replace the item; or
   3 amount designated for the item on a schedule on file with the Insurers.
**H** On property in transit:

1. property shipped to or for the account of the Insured will be valued at actual invoice to the Insured. Included in the value are accrued costs and charges legally due. Charges may include the Insured's commission as selling agent.

2. property sold by the Insured and shipped to or for the purchaser's account will be valued at the Insured's selling invoice amount. Prepaid or advanced freight costs are included.

3. property not under invoice will be valued:
   - (i) for property of the Insured, at the applicable provisions incorporated under the Basis of Settlement of this Contract applying at the location from which the property is being transported; or
   - (ii) for other property, at the actual cash market value at the destination point on the date of Occurrence, less any charges saved which would have become due and payable upon arrival at destination.

**I** On catalyst or refractory material, the Actual Cash Value of the material which equals the replacement cost at the date of loss multiplied by the Remaining Useful Life for such material.

**J** On machinery, equipment, plant or apparatus used in the generation of power the loss amount will not exceed the lesser of the following:

1. all with due diligence and dispatch
   - (i) the cost to repair;
   - (ii) the cost to rebuild or replace on the same site with new materials of like size, operating capacity, kind and quality; or
   - (iii) in respect of such property with an age of fifteen (15) years or more, the Actual Cash Value of said property which equals the replacement cost at the date of loss multiplied by the Remaining Useful Life for the particular machinery, equipment, plant or apparatus involved.

**K** On all other property, the loss amount will not exceed the lesser of the following:

1. all with due diligence and dispatch
   - (i) the cost to repair;
   - (ii) the cost to rebuild or replace on the same site with new materials of like size, operating capacity, kind and quality;
   - (iii) the cost in rebuilding, repairing or replacing on the same or another site, but not to exceed the size and operating capacity that existed on the date of loss; or
   - (iv) the cost to replace unrepairable electrical or mechanical equipment, including computer equipment, with equipment that is the most functionally equivalent to that which has sustained direct physical loss or physical damage, even if such equipment has technological advantages and/or represents an improvement in function and/or forms part of a program of system enhancement.

2. the selling price of Real Property, other than stock, offered for sale on the date of loss;

3. the increased cost of demolition, if any, resulting from loss covered by this Contract, if such property is scheduled for demolition;

4. the unamortized value of improvements and betterments, if such property is not repaired or replaced at the Insured's expense;

5. the Actual Cash Value if such property is:
(i) useless to the Insured; or
(ii) not repaired, replaced or rebuilt on the same or another site within two (2) years from the date of loss.

The Insured may elect not to repair or replace the insured Real and/or Personal Property which has sustained direct physical loss or physical damage. 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 (2) years from the date of loss. As a condition of indemnity under this item, such expenditure must be unplanned as of the date of loss and be made at an Insured Location under this Contract. This item does not extend to Demolition and Increased Cost of Construction.

PROPERTY INSURED

This Contract insures the following property, unless otherwise excluded elsewhere in this Contract, located at an Insured Location or within one thousand (1,000) feet thereof:

A Real Property, including new buildings and additions under Construction at an Insured Location, in which the Insured has an insurable interest;

B Personal Property:

1 owned by the Insured, including the Insured’s interest as a tenant in improvements and betterments. In the event of direct physical loss of or physical damage to the Property Insured by a Peril not excluded by this Contract, the Insurers agree to accept and consider the Insured as sole and unconditional owner of improvements and betterments, notwithstanding any contract or lease to the contrary;

2 of officers and employees of the Insured;

3 of others in the Insured’s custody to the extent the Insured is under obligation to keep insured for direct physical loss or physical damage insured by this Contract;

4 of others in the Insured’s custody to the extent of the Insured’s legal liability for direct physical loss or physical damage insured by this Contract. The Insurers will defend that portion of any suit against the Insured that alleges such liability and seeks damages for such direct physical loss or physical damage. The Insurers may, without prejudice, investigate, negotiate and settle any claim or suit as the Insurers deem expedient.

This Contract also insures the interest of contractors and subcontractors in Property Insured during Construction at an Insured Location or within one thousand (1,000) feet thereof, to the extent of the Insured’s legal liability for direct physical loss or physical 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 such interest will not extend to any Business Interruption coverage provided under this Contract.
PROPERTY EXCLUDED

In addition to the Exclusions elsewhere in this Contract, the following Exclusions apply to this Section:

This Section does not insure:

A currency, money, precious metal in bullion form, notes, or securities;

B land, water or any other substance in or on land; except this Exclusion does not apply to:
   1 land improvements consisting of landscape gardening, roadways and pavements, but not including any fill or land beneath such property;
   2 water that is contained within any enclosed tank, piping system or any other processing equipment;
   subject to the value of such property being included in the values declared;

C railway locomotives or rolling stock other than at the Insured Location. However direct physical loss or physical damage to this property caused by Accident is excluded absolutely;

D animals, standing timber, growing crops;

E watercraft, aircraft, spacecraft and satellites;

F vehicles of officers and employees of the Insured or vehicles insured elsewhere for loss or damage;

G pipelines; open pit or surface mines; underground mines or mine shafts or any property within such mine or shaft; wells or caverns or any property within such well or cavern;

H dikes, levees;

I offshore property, except that structures and their contents extending from land or shore, and floating docks permanently moored to a dock, river bank or shore, are not deemed to be offshore. However docks, piers or wharves and property located thereon, shall be insured unless loss is due to ice water pressure or collision;

J dams, watershafs, power tunnels, gates, and flumes, except this Exclusion does not apply in respect of specified hydroelectric generating stations incorporated in the Schedule of Insured Locations on file with the Insurers;

K property in transit, except as otherwise specified in this Contract;

L property sold by the Insured under conditional sale, trust agreement, instalment plan or other deferred payment plan after delivery to customers, other than as provided for by the Deferred Payments coverage of this Contract;

M transmission and distribution lines including wire, cables, poles, pylons, standards, towers, or other supporting structures which may be attendant therewith except where situated on or within one thousand (1,000) feet of any power generating Insured Location;

N nuclear reactor power generating plants, including all auxiliary property on the site, or any other nuclear reactor installation; nuclear fuel or raw materials used in the nuclear fuel process at any point in the fuel cycle;

O in respect of an Accident:
   1 any such direct physical loss or physical damage to exchangeable tools (such as dies, moulds, and engraved cylinders); to parts which by their use and/or nature suffer a high rate of wear or depreciation (such as refractory linings, crushing hammers, objects made of glass, belts, ropes, wires, and rubber tyres); to operating media (such as lubricants, fuels or catalysts). However, this Exclusion applies only to the part itself, not to any ensuing direct physical loss or physical damage not otherwise excluded by this Contract;
any such direct physical loss or physical damage prior to the successful completion of performance/commissioning tests, or hand-over to the Insured, whichever occurs earlier;

any such direct physical loss or physical damage only discovered during planned maintenance as part of the recommendations of the suppliers or manufacturers of the Property Insured. Such maintenance shall include safety checks, preventative maintenance, rectification of direct physical loss or physical damage or faults arising from Normal operation, or wear and tear, as well as ageing, and shall also include the repair or replacement of components, modules or parts.
Provided that these Extensions for direct physical loss or physical damage insured by this Contract:
1. are subject to the applicable Limit or Sub-Limit of Liability;
2. will not increase the Contract Limit of Liability; and
3. are subject to the terms, conditions and exclusions of this Contract;
as shown in this Section and elsewhere in this Contract, this Contract extends to include:

A ACCOUNTS RECEIVABLE
1. all sums due to the Insured from customers, provided the Insured is unable to effect collection thereof as the direct result of direct physical loss or physical damage by a Peril not excluded by this Contract to records of accounts receivable during the Period of Insurance;
2. interest charges on any loan to offset impaired collections pending repayment of such sums made uncollectible by such direct physical loss or physical damage;
3. collection expense in excess of Normal collection cost and made necessary because of such direct physical loss or physical damage;
4. other expenses, when reasonably incurred by the Insured in re-establishing records of accounts receivable following such direct physical loss or physical damage.

For the purpose of this Extension, credit card company charge media shall be deemed to represent sums due to the Insured from customers, until such charge media is delivered to the credit card company.

Provided that:

When there is proof that a loss covered by this Extension has occurred but the Insured cannot accurately establish the total amount of accounts receivable outstanding as of the date of such loss, such amount shall be based on the Insured’s monthly statements and shall be computed as follows:
1. determine the amount of all outstanding accounts receivable at the end of the same fiscal month in the year immediately preceding the year in which the loss occurs;
2. calculate the percentage of increase or decrease in the average monthly total of accounts receivable for the twelve (12) months immediately preceding the month in which the loss occurs, as compared with such average for the same months of the preceding year;
3. the amount determined under 1 immediately above, increased or decreased by the percentage calculated under 2 immediately above, shall be the agreed total amount of accounts receivable as of the last day of the fiscal month in which said loss occurs;
4. the amount determined under 3 immediately above shall be increased or decreased in conformity with the Normal fluctuations in the amount of accounts receivable during the fiscal month involved, due consideration being given to the experience of the business since the last day of the last fiscal month.

There shall be deducted from the total amount of accounts receivable, however established, the amount of such accounts evidenced by records which have not sustained direct physical loss or physical damage, or otherwise established or collected by the Insured, and an amount to allow for probable bad debts which would normally have been uncollectible by the Insured. All unearned interest and service charges shall be deducted.

Excluding:
1. loss due to bookkeeping, accounting or billing errors or omissions;
2. loss, the proof of which as to factual existence, is dependent upon an audit of records or an inventory computation: but this shall not preclude the use of such procedures in support of
claim for loss which the Insured can prove, through evidence wholly apart therefrom, is due solely to such direct physical loss or physical damage to records of accounts receivable;

3 loss due to 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 but only to the extent of such wrongful giving, taking, obtaining or withholding.

B AUTOMATIC COVERAGE

property of the type insured by this Contract at any location rented, leased or purchased by the Insured after the inception date of this Contract. This coverage applies from the date of rental, lease or purchase.

This coverage will apply until whichever of the following occurs first:

1 the Insured Location is agreed to be insured by the Insurers;
2 agreement is reached that the location will not be insured under this Contract; or
3 the Limit of Liability specified as a number of days in the Risk Details has been reached. The Limit of Liability begins on the date of rental, lease or purchase.

Excluding property insured in whole or in part by any other insurance policy.

C DEBRIS REMOVAL

the reasonable and necessary costs incurred to remove debris from an Insured Location that remains as a result of direct physical loss of or physical damage to the Property Insured by a Peril not excluded by this Contract.

Excluding the costs of removal of:

1 contaminated uninsured property; or
2 the contaminant in or on uninsured property;

whether or not the contamination results from such direct physical loss or physical damage. Contamination includes, but is not limited to, the presence of Hazardous Substances or Contaminants.

D DEFERRED PAYMENTS

Direct physical loss or physical damage by a Peril not excluded by this Contract to Personal Property of the type insured by this Contract sold by the Insured under a conditional sale or trust agreement or any instalment or deferred payment plan and after such property has been delivered to the buyer.

In the event of such loss to property sold under deferred payment plans, the Insured will use all reasonable efforts, including legal action, if necessary, to effect collection of outstanding amounts due or to regain possession of the property.

Excluding loss:

1 pertaining to products recalled including, but not limited to, the costs to recall, test or to advertise such recall by the Insured;
2 from theft or conversion by the buyer of the property after the buyer has taken possession of such property;
3 to the extent the buyer continues payments;
4 arising from such direct physical loss or physical damage to such property occurring outside the Territorial Limits.
E  DEMOLITION AND INCREASED COST OF CONSTRUCTION

1  the reasonable and necessary costs incurred to satisfy the minimum requirements of the enforcement of any law or ordinance regulating the demolition, construction, repair, replacement or use of buildings or structures at an Insured Location, provided that:

(i) such law or ordinance is in force on the date of direct physical loss of or physical damage to the Property Insured by a Peril not excluded by this Contract; and

(ii) its enforcement is a direct result of such direct physical loss or physical damage;

2  (i) the cost to repair or rebuild the portion of such property which has sustained Damage with materials and in a manner to satisfy such law or ordinance; and

(ii) the cost:

a) to demolish the undamaged portion of such Property Insured; and
b) to rebuild it with materials and in a manner to satisfy such law or ordinance;

to the extent that such costs result when the demolition of the Property Insured which has sustained such direct physical loss or physical damage is required to satisfy such law or ordinance;

The Insurers’ maximum liability for this Extension at each Insured Location in any Occurrence will not exceed the actual cost incurred in demolishing the undamaged portion of the Property Insured in item 1 above plus the lesser of:

1  the reasonable and necessary actual cost incurred, excluding the cost of land, in rebuilding on another site; or

2  the cost of rebuilding on the same site.

Excluding:

1  loss due to any law or ordinance with which the Insured was required to comply had the loss not occurred;

2  any costs incurred as a direct or indirect result of enforcement of any laws or ordinances regulating any form of contamination including but not limited to the presence of Hazardous Substances or Contaminants.

F  ERRORS AND OMISSIONS

Direct physical loss of or physical damage to the Property Insured by a Peril not excluded by this Contract, to the extent that it would have been included in the coverage had an error or unintentional omission not been made if such direct physical loss or physical damage is not payable under this Contract solely due to an error or unintentional omission:

1  in the description of where Property Insured is physically located;

2  to include any location:

(i) owned, rented or leased by the Insured on the effective date of this Contract; or

(ii) rented, leased or purchased by the Insured during the Period of Insurance;

3  that results in deletion of the Property Insured under this Contract.
It is a condition precedent to operation of this Extension that upon discovery of any error or unintentional omission, such error or unintentional omission when discovered shall be reported as soon as practicable by the Insured to the Insurers and corrected.

G EXPEDITING COSTS

The reasonable and necessary costs incurred to pay for the temporary repair of Property Insured which has sustained direct physical loss or physical damage by a Peril not excluded by this Contract and to expedite the permanent repair or replacement of such damaged Property Insured.

Excluding costs:
1 recoverable elsewhere in this Contract;
2 of permanent repair or replacement of Property Insured which has sustained such direct physical loss or physical damage.

H FINE ARTS

Direct physical loss or physical damage by a Peril not excluded by this Contract to Fine Arts articles while anywhere within the Territorial Limits, including while in transit.

Excluding:
1 such direct physical loss or physical damage if the Fine Arts cannot be replaced with other of like kind and quality, unless it is specifically declared to the Insurers;
2 such direct physical loss or physical damage from any repairing, restoration or retouching process.

I FIRE BRIGADE CHARGES AND EXTINGUISHING EXPENSES

The reasonable and necessary:
1 fire department fire fighting charges imposed as a result of responding to a fire in, on, or exposing the Property Insured;
2 costs incurred of restoring and recharging fire protection systems following an insured loss;
3 costs incurred for the water used for fighting a fire in, on or exposing the Property Insured.

J HAZARDOUS SUBSTANCES OR CONTAMINANTS

The additional expenses incurred for cleanup, repair or replacement, or dispersal of damaged, contaminated or polluted property, if, as a result of direct physical loss of or physical damage to the Property Insured by a Peril not excluded by this Contract, such Property Insured at an Insured Location is damaged, contaminated or polluted by Hazardous Substances or Contaminants. Additional expenses means expenses incurred beyond those for which the Insurers would have been liable if no Hazardous Substances or Contaminants had been involved in the Occurrence of such direct physical loss or physical damage.

K LAND AND WATER CONTAMINANT OR POLLUTANT CLEANUP, REMOVAL AND DISPOSAL

The reasonable and necessary cost for the cleanup, removal and disposal of contaminants or pollutants from uninsured property consisting of land, water or any other substance in or on land at the Insured Location if the release, discharge or dispersal of contaminants or pollutants is a result of direct physical loss of or physical damage to the Property Insured by a Peril not excluded by this Contract occurring during the Period of Insurance.
Excluding the cost to cleanup, remove and dispose of contaminants or pollutants from such property:

1. at any Insured Location for Personal Property only;
2. at any Property Insured under any Automatic Coverage, Errors and Omissions or Miscellaneous Unnamed Location or similar coverage as may be provided by this Contract;
3. when the Insured fails to give written notice of loss to the Insurers within one hundred and eighty (180) days of the date of such direct physical loss or physical damage.

**L LEASEHOLD INTEREST**

Leasehold Interest incurred by the Insured of the following:

1. if the lease agreement requires continuation of rent; and if the property is wholly untenantable or unusable, the actual rent payable for the unexpired term of the lease; or if the property is partially untenantable or unusable, the proportion of the rent payable for the unexpired term of the lease;
2. if the lease is cancelled by the lessor pursuant to the lease agreement or by the operation of law; the Lease Interest (as defined under item 2(i) below) for the first three (3) months following the loss; and the Net Lease Interest (as defined under item 2(ii) below) for the remaining unexpired term of the lease.

For the purposes of this Extension, the following term(s) means:

(i) **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.

(ii) **Net Lease Interest:**

   that sum which placed at 6% interest rate compounded annually would equal the Lease Interest (less any amounts otherwise payable to the Insured).

Excluding:

1. 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.
2. the Insured’s loss of Leasehold Interest directly resulting from loss or damage to Personal Property.

**M PROFESSIONAL FEES (CLAIMS PREPARATION COSTS)**

The actual costs incurred by the Insured, of reasonable fees payable to the Insured’s accountants, architects, auditors, engineers, or other professionals and the cost of using the Insured’s employees, for producing and certifying any particulars or details contained in the Insured’s books or documents, or such other proofs, information or evidence required by the Insurers resulting from an insured loss payable under this Contract for which the Insurers have accepted liability.

Excluding the fees and costs of attorneys, public adjusters, and loss appraisers, all including any of their subsidiary, related or associated entities either partially or wholly owned by them or retained by them for the purpose of assisting them, nor the fees and costs of loss consultants who provide consultation on coverage or negotiate claims.

**N PROTECTION AND PRESERVATION OF PROPERTY**

The expenses incurred by the Insured in taking reasonable and necessary actions for the temporary protection and preservation of Property Insured hereunder, in case of actual or imminent direct physical
loss or physical damage of the type insured against by this Contract, which expenses shall be added to the direct physical loss or physical damage otherwise recoverable, if any, under the Contract and be subject to the applicable Deductible without increase in the limit provisions contained in this Contract.

The expenses so incurred shall be borne by the Insured and Insurers proportionally to the extent of their respective interests. The Insurers’ portion of such expenses shall be limited to the extent that such expenses reduce loss which would otherwise be payable under this Contract.

O SERVICE INTERRUPTION

Direct physical loss of or physical damage by a Peril not excluded by this Contract to Property Insured at an Insured Location when such direct physical loss or physical damage results from the interruption of the specified incoming services consisting of electricity, gas, fuel, steam, water, refrigeration or from the lack of outgoing sewerage service by reason of direct physical loss or physical damage of the type insured by this Contract to property of the type insured by this Contract of the supplier of such service located within the Territorial Limits that immediately prevents in whole or in part the delivery of such usable service.

Provided that the Insured immediately notifies the suppliers of services of any interruption of such services.

Excluding the interruption of such services if caused directly or indirectly by:

1. the failure of the Insured to comply with the terms and conditions of any contracts the Insured has for the supply of such specified services;
2. loss or damage to incoming overhead transmission lines located beyond one (1) mile from the affected Insured Location.

P TEMPORARY REMOVAL OF PROPERTY (OFFSITE STORAGE)

Property Insured when removed from an Insured Location for the purpose of being repaired or serviced or in order to avoid threatened direct physical loss or physical damage by a Peril not excluded by this Contract.

Such Property Insured is covered:

1. while at the location to which it has been moved; and
2. for direct physical loss or physical damage as provided at the Insured Location from which it was removed.

This Extension does not apply to Property Insured:

1. covered, in whole or in part, elsewhere in this Contract;
2. covered, in whole or in part, by any other insurance policy;
3. removed for Normal storage, processing or preparation for sale or delivery.

Q TRANSPORTATION

the following Personal Property, except as excluded by this Contract, while in transit within the Territorial Limits of this Contract:

1. owned by the Insured;
2. shipped to customers under free on board, cost and freight or similar terms. The Insured’s contingent interest in such shipments is admitted;
3. of others in the actual or constructive custody of the Insured to the extent of the Insured’s interest or legal liability;
4 of others sold by the Insured, that the Insured has agreed prior to the loss to insure during course of delivery;

during the period from the time the property leaves the original point of shipment for transit.

This Extension provides cover continuously in the due course of transit:

1 within the continent in which the shipment commences until the property arrives at the destination within such continent; or

2 between Europe and Asia, for land or air shipments only, from when the shipment commences until the property arrives at the destination.

However, coverage on

(i) export shipments not insured under ocean cargo policies ends when the property is loaded on board overseas vessels or aircraft;

(ii) import shipments not insured under ocean cargo policies begins after discharge from overseas vessels or aircraft.

Including:

1 general average and salvage charges on shipments covered while waterborne.

2 physical loss or damage caused by or resulting from:

(i) unintentional acceptance of fraudulent bills of lading, shipping or messenger receipts;

(ii) improper parties having gained possession of property through fraud or deceit.

Provided that:

1 this Extension will not inure directly or indirectly to the benefit of any carrier or bailee;

2 the Insured has permission, without prejudicing this insurance, to accept:

(i) ordinary bills of lading used by carriers;

(ii) released bills of lading;

(iii) undervalued bills of lading; and

(iv) shipping or messenger receipts;

3 the Insured may waive subrogation against railroads under side track agreements;

4 except as otherwise stated, the Insured will not enter into any special agreement with carriers releasing them from their common law or statutory liability.

Excluding:

1 samples in the custody of salespeople or selling agents;

2 Property Insured under import or export ocean marine insurance;

3 waterborne shipments, unless:

(i) by inland water;

(ii) by roll-on/roll-off ferries operating between European ports; or

(iii) by coastal shipments;

4 airborne shipments unless by regularly scheduled passenger airlines or air freight carriers;

5 property of others, including the Insured’s legal liability for it, hauled on vehicles owned, leased or operated by the Insured when acting as a common or contract carrier;

6 any transporting vehicle;

7 property shipped between continents, except by land or air between Europe and Asia.
R VALUABLE PAPERS AND RECORDS

Direct physical loss of or physical damage by a Peril not excluded by this Contract to Valuable Papers and Records while anywhere within the Territorial Limits, including while in transit.

Excluding:

1 loss or damage to:
   (i) currency, money or securities;
   (ii) property held as samples or for sale or for delivery after sale;
   (iii) Valuable Papers and Records, if such Valuable Papers and Records cannot be replaced with other of like kind and quality, unless specifically declared to the Insurers;

2 errors or omissions in processing or copying unless direct physical loss or physical damage by a Peril not excluded by this Contract results, in which event, only such resulting direct physical loss or physical damage is insured.
EXCLUSIONS TO SECTION 1 - PROPERTY DAMAGE

In addition to the Exclusions elsewhere in this Contract, the following Exclusions apply to this Section:

This Section does not insure:

A
1. indirect or remote loss or damage;
2. interruption of business;
3. loss of market or loss of use;
4. 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:
   (i) regulating the Construction, repair, replacement, use or removal, including debris removal, of any property; or
   (ii) requiring the demolition of any property, including the cost in removing its debris;
except as specified in the Demolition and Increased Cost of Construction Extension of this Section of this Contract;
7. the cost of removing any product subject to a product recall, whether the removal is voluntarily undertaken by the Insured or mandated by any executive, legislative, administrative or judicial order, and any Business Interruption losses resulting from such removal;
8. in respect of an Accident, any losses arising, directly or indirectly, out of loss of, alteration of, derangement of, or damage to, or a reduction in the functionality, availability or operation of a computer system, hardware, microchip, integrated circuit or similar device in computer or non-computer equipment, unless directly caused by an Accident.

B
any defect or fault in material, workmanship, specification or design or in planning, zoning, surveying, siting, or developing property. However, if such a defect or fault results in direct physical loss or physical damage by a peril not excluded by this Contract to other property otherwise insured by this Contract, then this Contract shall cover only such resulting direct physical loss or physical damage. The Insurers shall not be liable for the costs of rectifying or making good such defect or fault;

C
1. any dishonest act, including but not limited to theft, committed alone or in collusion with others, at any time:
   (i) by an Insured or any proprietor, partner, director, trustee, officer, or employee of an Insured; or
   (ii) by 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 Contract.

This Contract does insure acts of direct physical damage intentionally caused by an employee of an Insured or any individual specified in ii) above, and committed without the knowledge of the Insured. In no event does this Contract cover loss by theft by any individual specified in i) or ii) above.

2. lack of the following services:
   (i) incoming electricity, fuel, water, gas, steam, refrigerant;
(ii) outgoing sewerage;
(iii) incoming or outgoing voice, data or video;
all when caused by an Occurrence off the Insured Location, except as provided for in the Service Interruption Extension of the Property Damage or Business Interruption section of this Contract;

3 the release, discharge, or disposal of toxic or Hazardous Substances or Contaminants, all whether direct or indirect, except as specifically provided for under the Extensions to Section 1: Hazardous Substances or Contaminants Extension and Land and Water Contaminant or Pollutant Cleanup, Removal and Disposal Extension;

D 1 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;
2 deterioration, depletion, rust, corrosion or erosion, wear and tear, inherent vice or latent defect;
3 settling, cracking, shrinking, bulging, or expansion of:
   (i) foundations (including any pedestal, pad, platform or other property supporting machinery, boilers, or pressure vessels);
   (ii) floors;
   (iii) pavements;
   (iv) walls;
   (v) ceilings;
   (vi) roofs;
4 loss or damage following:
   (i) changes of temperature (except to machinery or equipment); or
   (ii) changes in relative humidity;
all whether atmospheric or not;
5 loss or damage caused by insects, animals or vermin;
6 electrical breakdown of any electrical machine or electrical apparatus while said equipment is undergoing an insulation breakdown test;
7 cracking or fracturing;
but, if direct physical loss or physical damage not excluded by this Contract results to other property otherwise insured by this Contract, then only such resulting direct physical loss or physical damage is insured.

E unless directly resulting from other direct physical loss or physical damage not excluded by this Contract:
1 shrinkage;
2 changes in colour, flavour, texture or finish.
ADDITIONAL EXCLUSIONS TO SECTION 1 - PROPERTY DAMAGE

F  The following additional exclusion shall apply if Accident (Machinery Breakdown, Explosion/Collapse) is shown not to be insured by this Contract under the Risk Details:

This Contract does not insure against loss or damage caused by, resulting from, or coincident with an Accident. However, if a cause not otherwise excluded by this Contract results, then any direct physical loss or physical damage arising directly from that cause shall not be excluded under this Contract.

G  The following additional exclusion shall apply if Earth Movement is shown not to be insured by this Contract under the Risk Details.

This Contract does not insure against loss or damage caused by, resulting from, or coincident with Earth Movement. However, direct physical loss or physical damage by fire, explosion, or sprinkler leakage resulting from Earth Movement will not be considered to be direct physical loss or physical damage by Earth Movement within the terms and conditions of this Contract.

H  The following additional exclusion shall apply if Flood is shown not to be insured by this Contract under the Risk Details.

This Contract does not insure against loss or damage caused by or resulting from Flood regardless of any other event which contributes concurrently or in any sequence to such loss or damage. However, direct physical loss or physical damage by fire, explosion, or sprinkler leakage resulting from Flood will not be considered to be direct physical loss or physical damage by Flood within the terms and conditions of this Contract.

I  The following additional exclusion shall apply if Windstorm is shown not to be insured by this Contract under the Risk Details.

This Contract does not insure against loss or damage caused by, resulting from, or coincident with Windstorm. However, direct physical loss or physical damage by fire, explosion, or sprinkler leakage resulting from Windstorm will not be considered to be direct physical loss or physical damage by Windstorm within the terms and conditions of this Contract.
SECTION 2 - BUSINESS INTERRUPTION

This Contract insures Business Interruption loss, as provided for in the Business Interruption Coverages, resulting from direct physical loss of or physical damage to the Property Insured by a Peril not excluded by this Contract occurring during the Period of Insurance.

The following Business Interruption Coverages shall only apply if specified as insured in the Risk Details. The individual Business Interruption Coverages may only apply to certain Insured Locations specified in the Schedule of Locations reported to and on file with Insurers or as attached or otherwise endorsed to this Contract.

BUSINESS INTERRUPTION COVERAGES

A BUSINESS INTERRUPTION (CONTRACTED SALES)

Where power is generated and sold under a Power Purchase Agreement between the Insured and an Offtaker following direct physical loss of or physical damage to the Property Insured by a Peril not excluded by this Contract at the power generating Insured Location:

1 Gross Earnings:

(i) the recoverable Gross Earnings loss is the actual loss of Gross Earnings sustained by the Insured of the following, that the Insured would have accounted for on an Accruals Basis during the Indemnity Period:
   a) Gross Earnings (as defined below);
   b) plus all other earnings derived from the operation of the business;
   c) less all charges and expenses that do not necessarily continue during the interruption of production or suspension of business operations or services;
   d) less any amount arising from Force Majeure and/or Relief provisions as defined under the Power Purchase Agreement.

(ii) in determining the indemnity recoverable as the actual loss sustained, the Insurers will consider the continuation of only those Normal charges and expenses (including Ordinary Payroll for a period not to exceed the number of days as specified in the Risk Details) that would have been incurred had no interruption of production or suspension of business operations or services occurred;

(iii) there is recovery hereunder but only to the extent that the Insured is:
   a) wholly or partially prevented from producing electricity to comply with any Take or Pay Contract requirements agreed with an Offtaker;
   b) unable to continue such operations or services during the Indemnity Period;
   c) able to demonstrate a loss of sales for the operations, services or production prevented;
   d) wholly or partially prevented from taking advantage of any Take or Pay Contract arrangements for the supply of fuel to generate electricity; and
2 Expenses to reduce the loss:

expenses reasonably and necessarily incurred by the Insured to reduce the loss otherwise payable under this section of the Contract. The amount of such recoverable expenses will not exceed the amount by which the loss has been reduced;

3 Extra Expense (Replacement Power Capacity)

the increased cost incurred by the Insured for generation, transmission, purchase, replacement, trading or distribution of electrical power, over and above the cost that would have been incurred if the necessary interruption of business had not occurred, and which the Insured is required by contract or otherwise to provide;

Provided that the total of the above (1, 2 and 3) shall not exceed 110% of the Average Daily Value or the Monthly Cap.

Definitions

The following term means:

Gross Earnings, as used in item 1 (i)a):

(i) the actual loss sustained in respect of the total proceeds from Availability Payments, as itemized and declared to the Insurers,

a) less any sums saved during the Indemnity Period in respect of costs of fuel purchase necessitated to ensure adequate stockpiles of fuel;

b) less any sums saved in respect of planned outages;

c) less any sums saved in respect of Operational and Maintenance Costs;

(ii) the actual loss sustained in respect of the total proceeds from Capacity and/or Bonus Payments as itemized and declared to the Insurers,

a) less the cost of all raw stock, materials and supplies used in such production;

b) less any sums saved in respect of planned outages;

c) less any sums saved in respect of Operational and Maintenance Costs;

Exclusions

The following Gross Earnings (Contracted Sales) Exclusions shall also apply:

(i) loss of Availability and/or Capacity and/or Bonus Payments incurred by the Insured which are not a direct result of an Occurrence insured by this Contract;

(ii) loss of Availability and/or Capacity and/or Bonus Payments, incurred by the Insured after the end of the Indemnity Period.
**B BUSINESS INTERRUPTION (MERCHANT SALES)**

Where power is generated and to be offered for Spot Market sale where a Profitable Output can be achieved outside of a Power Purchase Agreement following direct physical loss of or physical damage to the Property Insured by a Peril not excluded by this Contract at the Insured Location:

1 **Gross Earnings:**
   
   (i) the recoverable Gross Earnings loss is the actual loss of Gross Earnings sustained by the Insured of the following, that the Insured would have accounted for on an Accruals Basis during the Indemnity Period:
      
      a) Gross Earnings (as defined below);
      
      b) plus all other earnings derived from the operation of the business;
      
      c) less all charges and expenses that do not necessarily continue during the interruption of production or suspension of business operations or services.

   (ii) in determining the indemnity recoverable as the actual loss sustained, the Insurers will consider the continuation of only those Normal charges and expenses (including Ordinary Payroll for a period not to exceed the number of days as specified in the Risk Details that would have been incurred had no interruption of production or suspension of business operations or services occurred.

   (iii) there is recovery hereunder but only to the extent that the Insured is:
      
      a) wholly or partially prevented from producing goods or continuing business operations or services;
      
      b) unable to continue such operations or services during the Indemnity Period;
      
      c) able to demonstrate a loss of sales for the operations, services or production prevented; and
      
      d) able to demonstrate the extent that Profitable Output could be achieved during the Indemnity Period.

2 **Expenses to reduce the loss :**

   expenses reasonably and necessarily incurred by the Insured to reduce the loss otherwise payable under this section of the Contract. The amount of such recoverable expenses will not exceed the amount by which the loss has been reduced;

3 **Extra Expense (Replacement Power Capacity)**

   the increased cost incurred by the Insured for generation, transmission, purchase, replacement, trading or distribution of electrical power, over and above the cost that would have been incurred if the necessary interruption of business had not occurred, and which the Insured is required by contract or otherwise to provide;

Provided that the total of the above (1, 2 and 3) shall not exceed 110% of the Average Daily Value or the Monthly Cap.

**Definitions**

The following term means:

Gross Earnings, as used in item 1(i) a):

the net sales value of production less the cost of all raw stock, materials and supplies used in such production.
C  COMMISSIONS, PROFITS AND ROYALTIES

Where the Insured has incurred a loss of Commissions, Profits and Royalties:

1  Measurement of Loss:
   
   (i) the recoverable Commissions, Profits and Royalties loss is the actual loss sustained by the Insured, calculated as:
      
      a) Commissions, Profits and Royalties (as defined under item 3 below); less
      b) non-continuing expenses and charges during the Indemnity Period;

   (ii) the Commissions, Profits and Royalties payable by Insurers hereunder will be the actual loss sustained of income that the Insured would have accounted for on an Accruals Basis during the Indemnity Period, under any royalty, licensing fee or commission agreement between the Insured and another party which is not realisable due to direct physical loss or physical damage by a Peril not excluded by this Contract to property of the other party, such property being of the type insured by this Contract located within the Territorial Limits;

   (iii) the Insured will influence, to the extent possible, said party(ies) with whom the agreements described above have been made to use any other machinery, supplies or locations in order to resume business so as to reduce the amount of loss hereunder, and the Insured will cooperate with that party in every way to effect this. This Contract does not cover any cost to effect the above unless authorised in advance by the Insurers;

   (iv) in determining the indemnity payable hereunder, the Insurers will consider the amount of income derived from such agreements before and the probable amount of income after the date of such direct physical loss or physical damage;

   (v) there is recovery hereunder but only if such direct physical loss or physical damage interrupts the delivery of goods in whole or in part to the Insured or for their account.

2  Exclusion C of the Exclusions to Section 2 does not apply.

3  The following term(s) means:
   
   (i) Commissions:
      The income that would have been received by the Insured from the sale of goods not owned by the Insured.

   (ii) Profits:
      The amount that would have been received by the Insured from the sale of goods belonging to the Insured, in excess of the cost to the Insured of such goods.

   (iii) Royalties:
      The income the Insured is not able to collect under royalty or licensing agreements.

D  DEBT SERVICE CHARGES AND OPERATIONAL AND MAINTENANCE CHARGES

Where sales of power are not insured by this Contract:

1  Measurement of Loss:
the recoverable loss is the actual loss sustained by the Insured of the following that the Insured would have accounted for on an Accruals Basis during the Indemnity Period:

a) Debt Service Charges;
b) Operational and Maintenance Charges

less

a) all charges and expenses that do not necessarily continue during the interruption of production or suspension of business operations or services;
b) any interest commitment, to the extent included in 1(i) a) above, which is permanently waived or otherwise saved;
c) any interest earned on monies invested which would not have been available for investment had no direct physical loss or physical damage occurred;

(ii) there is recovery hereunder but only to the extent that the Insured is:

a) wholly or partially prevented from producing goods or continuing business operations or services;
b) unable to continue such operations or services during the Indemnity Period; and

c) able to demonstrate a loss of sales for the operations, services or production prevented.

2 The following term(s) means:

(i) Debt Service Charges
the monies payable as interest by the Insured to service the continuing debt in respect of advances made under or monies borrowed applicable to the operations, services or production of the Insured.

(ii) Operational and Maintenance Charges
the fixed charges, costs and overheads that continue to be incurred by the Insured during the interruption of production or suspension of business operations or services.

E EXTRA EXPENSE (NON-GENERATION)

Where Extra Expense is incurred by the Insured other than in the generation or purchase of replacement power capacity:

1 Measurement of Loss:
the recoverable Extra Expense loss will be the reasonable and necessary extra costs incurred by the Insured of the following during the Indemnity Period:

(i) extra expenses to temporarily continue as nearly Normal as practicable the conduct of the business; and

(ii) extra costs of temporarily using property or facilities of the Insured or others;

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

2 The following Extra Expense (Non-Generation) Exclusions shall also apply:
(i) any loss of income;
(ii) costs that normally would have been incurred in conducting the business during the same period had no direct physical loss or physical damage occurred;
(iii) cost of permanent repair or replacement of property that has been damaged or destroyed;
(iv) any expense recoverable elsewhere in this Contract;
(v) any cost or expense incurred in the generation or purchase of replacement power capacity.

F EXTRA EXPENSE (REPLACEMENT POWER CAPACITY)
Where Extra Expense is incurred by the Insured in the generation or purchase of replacement power capacity lost during the Indemnity Period following direct physical loss of or physical damage to the Property Insured by a Peril not excluded by this Contract at the power generating Insured Location:

1 Measurement of Loss:
the recoverable Extra Expense loss will be the reasonable and necessary extra costs incurred by the Insured of the following during the Indemnity Period:
(i) extra expenses to temporarily continue as nearly Normal as practicable the conduct of the business;
(ii) extra costs of temporarily using property or facilities of the Insured or others;
less any value remaining at the end of the Indemnity Period for property obtained in connection with the above.

2 the following Extra Expense (Replacement Power Capacity) Exclusions shall also apply:
(i) any loss of income;
(ii) costs that normally would have been incurred in conducting the business during the same period had no direct physical loss or physical damage occurred;
(iii) cost of permanent repair or replacement of property that has been damaged or destroyed;
(iv) any expense recoverable elsewhere in this Contract.

3 any expense recoverable under this Business Interruption Coverage will be included within and not in addition to the applicable Monthly Cap in respect of Gross Earnings (Merchant Sales) specified elsewhere in this Contract.

G RENTAL INSURANCE
Where costs incurred in respect of Rental Insurance apply:

1 Measurement of Loss:
the recoverable Rental Insurance loss is the actual loss sustained by the Insured of the following, that the Insured would have accounted for on an Accruals Basis during the Indemnity Period:
(i) the fair rental value of any portion of the property occupied by the Insured;
(ii) the income reasonably expected from rentals of unoccupied or unrented portions of such property; and
(iii) 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 not to include non-continuing charges and expenses.

2 the following Rental Insurance Exclusion shall also apply:

Exclusion A of Exclusions to Section 2 does not apply and the following applies instead:

A any loss of rental income during any period in which the Property Insured would not have been tenantable for any reason other than an insured loss.
1. This Contract insures Business Interruption loss only to the extent it cannot be reduced through:
   (i) the use of any property or service owned or controlled by the Insured;
   (ii) the use of any property or service obtainable from other sources;
   (iii) working extra time or overtime; or
   (iv) the use of inventory,
   all whether at an Insured Location or at any other location.

   The Insurers reserve the right to take into consideration the combined operating results of all
   associated, affiliated or subsidiary companies of the Insured in determining the Business
   Interruption loss.

2. Where applicable in the Gross Earnings loss adjustment, the higher of the Spot Price or the
   contract price as advised to the Insurers in the form of a Revenue Profile (to calculate an
   Average Daily Value or Monthly Cap) will be used. However, the Gross Earnings loss otherwise
   payable to the Insured by the Insurers shall not exceed 110% of the applicable Average Daily
   Value or Monthly Cap declared by the Insured to the Insurers at inception. Interruption of
   business affecting only part of a month will be adjusted pro rata of the applicable Monthly Cap
   for the applicable Insured Location. Gross Earnings losses will be adjusted to reflect the number
   of MegaWatts of production and their impact on total production output of the power generating
   Insured Location.

3. In determining the amount of loss payable, the Insurers will consider the experience and trend
   of the business before and after and the probable experience during the Indemnity Period.

4. **INDEMNITY PERIOD**

   A. the Indemnity Period applying to all Business Interruption Coverages, except as shown
      below, or if otherwise provided for under the Business Interruption Coverage Extensions,
      is as follows:

   1. for building and equipment, the period of time (inclusive of the Deductible):
      (i) starting from the time of direct physical loss or physical damage of the
          type insured against; and
      (ii) ending when with due diligence and dispatch the building and equipment
          could be:
          a) repaired or replaced; and
          b) made ready for operations,
          and the Insured is in the position to achieve the same production as they
          would have achieved had such direct physical loss or physical damage
          not occurred, taking due account of variations and special circumstances
          that would have in any event affected the Insured’s Business during the
          Indemnity Period, save to the extent to which the market for the
          Insured and its competitors was generally impacted by the underlying
          Occurrence which caused the direct physical loss or physical damage.
      (iii) but not to be limited by the expiration of this Contract;
      (iv) and ending not later than the Maximum Indemnity Period as specified in
          the Risk Details.
2 for stock-in-process and mercantile stock, including finished goods not manufactured by the Insured, the period of time required with the exercise of due diligence and dispatch:

(i) to restore stock in process to the same state of manufacture in which it stood at the inception of the interruption of production or suspension of business operations or services; and

(ii) to replace damaged mercantile stock.

This item does not apply to Rental Insurance.

3 for raw materials and supplies, the period of time of actual interruption of production or suspension of operations or services resulting from the inability to get suitable raw materials and supplies to replace similar ones damaged; but limited to that period for which the damaged raw materials and supplies would have supplied operating needs.

4 if water, in respect of specified hydroelectric generating stations incorporated in the Schedule of Insured Locations on file with the Insurers:

(i) used for any generating purpose, including but not limited to, as a raw material or for power;

(ii) stored behind dams or in reservoirs; and

(iii) on any Insured Location;

is released as the result of direct physical loss or physical damage of the type insured against under this Contract to such dam, reservoir or connected equipment, the Insurers’ liability for the actual interruption of production or suspension of operations or services due to inadequate water supply will not extend beyond thirty (30) consecutive days after the dam, reservoir or connected equipment which has sustained such direct physical loss or physical damage has been repaired or replaced.

This item does not apply to Rental Insurance.

5 for damaged exposed films, records, manuscripts and drawings, the period of time required to copy from backups or from originals of a previous generation. This time does not include research, engineering or any other time necessary to restore or recreate lost information.

This item does not apply to Rental Insurance.

B the Indemnity Period does not include any additional period of time due to the Insured’s inability to resume operations for any reason, including but not limited to:

1 making changes to equipment;

2 making changes to the buildings or structures except as provided for in the Demolition and Increased Cost of Construction Extension to Section 1;

3 restaffing or retraining employees;

4 insufficient funds.

C if two or more Indemnity Periods apply such periods will not be cumulative.

D should the Indemnity Period incorporate a planned outage this will be taken into account in calculating the amount payable.

E the Maximum Indemnity Period specified in the Risk Details shall be inclusive of the Deductible specified in the Risk Details.
EXTENSIONS TO SECTION 2 - BUSINESS INTERRUPTION

Provided that the following Extensions:

1. are subject to the applicable Limit or Sub-Limit of Liability;
2. will not increase the Contract Limit of Liability; and
3. are subject to the terms, conditions and exclusions of this Contract;

as shown in this Section and elsewhere in this Contract, this Contract extends to include:

A CHANGE IN TAX TREATMENT

any tax liability incurred by the Insured in the event that the tax treatment of any proceeds of a covered loss under this Contract differs from the tax treatment of Profits that would have been earned by the Insured had no loss occurred. This Contract covers the amount of the increase in actual tax liability, including taxes incurred by the Insured for operations conducted to reduce a covered loss under this Contract that results in a tax liability greater than would have been incurred had no loss occurred.

B CIVIL OR MILITARY AUTHORITY

the actual loss sustained and Extra Expense incurred by the Insured that the Insured would have accounted for on an Accruals Basis during the Indemnity Period due to the necessary interruption of the Insured's business due to prevention of access to the Insured Location by order of a civil or military authority, provided that such order is a direct result of physical damage of the type insured by this Contract, to property of the type insured by this Contract situated within one (1) statute mile of the Insured Location.

Excluding cover for more than the number of consecutive days specified in the Risk Details.

C CONTINGENT BUSINESS INTERRUPTION

the actual loss sustained and Extra Expense incurred by the Insured that the Insured would have accounted for on an Accruals Basis during the Indemnity Period:

1. resulting from direct physical loss or physical damage of the type insured by this Contract; and
2. to property of the type insured by this Contract,

at any locations of Named Direct Customers or Named Direct Suppliers located within the Territorial Limits as specified in the Risk Details.

The term "customer or supplier" does not include any company supplying to or receiving from the Insured Location, electricity, fuel, gas, water, steam, refrigeration, or sewerage. However this limitation does not apply in respect of contracts for the supply of fuel for the purpose of generating electricity or contracts with Offtakers for the sale of electricity.

Excluding:

1. loss resulting from lack of incoming or outgoing transmission of voice, data or video;
2. cover for more than the number of consecutive days specified in the Risk Details.

D INGRESS/EGRESS

the actual loss sustained and Extra Expense incurred by the Insured that the Insured would have accounted for on an Accruals Basis during the Indemnity Period due to the necessary interruption of the
Insured's business due to prevention of ingress to or egress from an Insured Location, whether or not the premises or property of the Insured has sustained damage, provided that such prevention is a result of direct physical loss or physical damage of the type insured by this Contract, to property of the type insured by this Contract situated within one (1) statute mile of the Insured Location.

Excluding:

1. loss resulting from lack of incoming or outgoing service consisting of electricity, fuel, gas, water, steam, refrigerant, sewerage and voice, data or video;
2. loss resulting from picketing or other action by strikers except for direct physical loss or physical damage not excluded by this Contract;
3. cover for more than the number of consecutive days specified in the Risk Details.

E ON PREMISES SERVICES

the actual loss sustained and Extra Expense incurred by the Insured that the Insured would have accounted for on an Accruals Basis during the Indemnity Period resulting from direct physical loss or physical damage of the type insured by this Contract to the following property located within one thousand (1,000) feet of the Insured Location:

1. electrical equipment and equipment used for the transmission of voice, data or video;
2. electrical, fuel, gas, water, steam, refrigeration, sewerage, voice, data or video transmission lines.

This Extension shall only apply in respect of those ancillary services that are provided for the continuation of generation and shall not apply in respect of contracts for the supply of fuel for the purpose of generating electricity or contracts with Offtakers for the sale of electricity.

Excluding cover for more than the number of consecutive days specified in the Risk Details.

F PROTECTION AND PRESERVATION OF PROPERTY

the actual loss sustained by the Insured that the Insured would have accounted for on an Accruals Basis during the Indemnity Period resulting from direct physical loss or physical damage insured by this Contract subject to such action being necessary to prevent immediately impending direct physical loss or physical damage insured by this Contract.

This Extension is subject to the Deductible Conditions that would have applied had such impending direct physical loss or physical damage insured by this Contract occurred.

G SERVICE INTERRUPTION

only in respect of ancillary services provided for the continuation of generation and shall not apply in respect of contracts for the supply of fuel for the purpose of generating electricity or contracts with Offtakers for the sale of electricity:

1. the actual loss sustained and Extra Expense incurred by the Insured during the Period of Service Interruption (as defined under item 4 below) at Insured Locations when the loss is caused by the interruption of incoming services consisting of electricity, gas, fuel, steam, water, refrigeration or from the lack of outgoing sewerage service by reason of direct physical loss or physical damage of the type insured by this Contract to property of the type insured by this Contract of the supplier of such service located within the Territorial Limits, that immediately prevents in whole or in part the delivery of such usable services.
2 Conditions:
(i) the Insured will immediately notify the suppliers of services of any interruption of such services;
(ii) the Insurers will not be liable if the interruption of such services is caused directly or indirectly by:
   a) the failure of the Insured to comply with the terms and conditions of any contracts the Insured has for the supply of such specified services;
   b) loss or damage to overhead transmission lines located beyond one (1) mile from the affected Insured Location;

excluding cover for more than the number of consecutive days specified in the Risk Details.

4 the term Period of Service Interruption wherever used in this Contract means:
(i) the period starting with the time when an interruption of specified services occurs; and ending when with due diligence and dispatch the service could be wholly restored and the Insured 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 Indemnity Period;
(ii) the Period of Service Interruption is limited to only those hours during which the Insured would or could have used services(s) if it had been available;
(iii) the Period of Service Interruption does not extend to include the interruption of operations caused by any reason other than interruption of the specified service(s).
EXCLUSIONS TO SECTION 2 - BUSINESS INTERRUPTION

In addition to the Exclusions elsewhere in this Contract, this Section does not insure:

**A** any loss during any idle period, (including but not limited to when production, operation, service or delivery or receipt of goods would cease, or would not have taken place or would have been prevented):
1 due to planned or scheduled shutdown or outage;
2 due to strikes or other work stoppage;
3 when it is not possible to attain or maintain Profitable Output for reasons other than direct physical loss or physical damage; or
4 for any other reason other than direct physical loss or physical damage insured by this Contract.

**B** the actual loss sustained within the Period of Insurance (but occurring prior to the start of the maintenance period) due to a Delay in completion of the incidental Construction caused by direct physical loss or physical damage insured under this Contract;
the term Delay means the period during which the Construction was interrupted caused solely by direct physical loss or physical damage to Construction leading to an actual loss sustained during the Period of Insurance.

**C** any increase in loss due to:
1 suspension, cancellation or lapse of any lease, contract, license or orders;
2 liquidated damages or any other fines or damages for breach of contract or for late or non-completion of orders;
3 penalties of any nature;
4 any other consequential or remote loss.

**D** any loss resulting from damage to finished goods manufactured by the Insured, nor the time required for their reproduction.
CLAIMS CONDITIONS

The following Claims Conditions apply to this Contract unless specifically amended by endorsement:

A  ABANDONMENT
There may be no abandonment of any property to the Insurers.

B  COLLECTION FROM OTHERS
The Insurers will not be liable for any loss to the extent that the Insured has collected for such loss from others.

C  CURRENCY FOR LOSS PAYMENT
All amounts, including Deductibles and Limits of Liability, indicated in this Contract are in the currency of the United States of America. Losses will be adjusted and paid in the currency of the United States of America, unless directed otherwise by the Insured.

In the event of a loss adjustment involving currency conversion, the exchange selling rate will be calculated as follows:

1  As respects the calculation of Deductibles and Limits of Liability, the rate of exchange published in The Wall Street Journal on the date of loss;

2  As respects direct physical loss or physical damage to Real and Personal Property:
   (i) the cost to repair or replace Real and Personal Property will be converted at the time the cost of repair or replacement is incurred based on the rate of exchange published in The Wall Street Journal;
   (ii) if such property is not replaced or repaired, the conversion will be based on the rate of exchange published in The Wall Street Journal as of the date of loss;

3  As respects Business Interruption loss the conversion will be based on the average of the rate of exchange published in The Wall Street Journal on the date of loss and the rate of exchange published in The Wall Street Journal on the last day of the period of interruption.

If The Wall Street Journal was not published on the stipulated date, the rate of exchange will be as published on the next business day.

D  INSURERS’ OPTION
The Insurers have the option to take all or any part of damaged property at the agreed or appraised value. The Insurers must give notice to the Insured of their intention to do so within thirty (30) days after receipt of proof of loss.

E  LOSS ADJUSTMENT/PAYABLE
Loss, if any, will be adjusted with and payable to the Insured, or as may be directed by the Insured. 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 in the evidences of Insurance.
F PARTIAL PAYMENT OF LOSS SETTLEMENT

In the event of a loss occurring which has been ascertained to be an insured loss under this Contract and determined by the Insurers’ representatives to be in excess of the applicable Deductible specified in the Risk Details, the Insurers will advance mutually agreed upon partial payment(s) on the insured loss, subject to this Contract’s other provisions. To obtain said partial payments, the Insured will submit a signed and sworn Proof of Loss as described in Claims Condition G 4 below, with adequate supporting documentation.

G REQUIREMENTS IN CASE OF LOSS

The Insured will:

1. give immediate written notice to the Insurers 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 Insurers within ninety (90) days after the loss, unless that time is extended in writing by the Insurers. The proof of loss must state the knowledge and belief of the Insured as to:
   (i) the time and origin of the loss;
   (ii) the Insured’s interest and that of all others in the property;
   (iii) 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;
   (iv) any changes in the title, use, occupation, location, possession or exposures of the property since the effective date of this Contract;
   (v) by whom and for what purpose any location insured by this Contract 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 which has sustained loss or damage.
6. as a condition precedent to Insurers’ liability and as often as may be reasonably required:
   (i) exhibit to any person designated by the Insurers all that remains of any property;
   (ii) submit to examination under oath by any person designated by the Insurers and sign the written records of examinations; and
   (iii) produce for examination at the request of the Insurers:
      a) all books of accounts, business records, bills, invoices and other vouchers, or certified copies if originals are lost;
      b) maintenance records provided by the Original Equipment Manufacturer (OEM) or as maintained by the Insured;
      c) contracts with the Original Equipment Manufacturer (OEM);
      d) contracts with customers;
      e) contracts with suppliers;
at such reasonable times and places that may be designated by the Insurers or their representative and permit extracts and copies to be made.

H SETTLEMENT OF CLAIMS
The amount of loss, except for Accounts Receivable coverage, for which the Insurers may be liable, will be paid within thirty (30) days after:

1 proof of loss as described in this Contract is received by the Insurers; and
2 when a resolution of the amount of loss is made either by:
   (i) written agreement between the Insured and the Insurers; or
   (ii) the filing with the Insurers of an award as provided for in General Conditions C.

I VALUES LIMITATION CLAUSE
The premium for this Contract is based upon the schedule of values reported to and on file with the Insurers, or as attached or otherwise endorsed to this Contract. In the event of any covered loss under this Contract, the liability of the Insurers relative to Property Damage and Business Interruption loss, as insured by this Contract, shall, notwithstanding anything contained in this Contract to the contrary, be limited to the least of the following:

1 The actual adjusted amount of the loss within the coverage of the Contract, less applicable Deductible(s).

2 (i) for Property Damage loss, 105% of the total property values for each location
   (ii) for Business Interruption loss, as insured by this Contract, 105% of the Business Interruption values for each location
        as reported on the above said schedule of values, less applicable Deductible(s).

3 The policy limit of liability or applicable sub-limit(s) of liability, less applicable Deductible(s).
The following General Conditions apply to this Contract unless specifically amended by endorsement:

A  ACCESS TO RECORDS

the Insured shall make available to the Insurers at all reasonable times, and the Insurers through their designated representatives shall have the right to inspect and copy at their own expense, during the Period of Insurance and thereafter, all books, papers and other records of the Insured and its agents or brokers in connection with this Contract or the subject matter hereof.

B  ADDITIONAL INSURABLE INTERESTS

additional insured interests are automatically added to this Contract as their interest may appear when named as additional named insured, lender, mortgagee and/or loss payee in the evidences of insurance. Such interests become effective on the date shown in the evidence of insurance and will not amend, extend or alter the terms, conditions, provisions and limits of this Contract.

C  ARBITRATION

Any dispute arising out of or in connection with this contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under the London Court of International Arbitration (LCIA) Rules, or as may be mutually agreed by the parties as indicated within the Risk Details, which Rules are deemed to be incorporated by reference into this clause.

The parties will choose whether to refer any such dispute to a panel of one or three arbitrators. In the event of non agreement there shall be three arbitrators.

If a single arbitrator tribunal is agreed upon, the arbitrator is to be agreed between the parties, or failing agreement within fourteen (14) days, after either party has given to the other a written request to concur in the appointment of an arbitrator, the arbitrator is to be appointed by the President or a Vice President of the LCIA, or the President or a Vice President of the body whose Rules have been mutually agreed by the parties as indicated within the Risk Details. The third arbitrator, who will act as chairman of the Arbitral Tribunal, shall be appointed by the two party nominated arbitrators after consultation with the parties.

If a three arbitrator tribunal is agreed upon, each party shall nominate one arbitrator. If a party fails to nominate an arbitrator, the appointment shall be made by the President or a Vice President of the LCIA, or the President or a Vice President of the body whose Rules have been mutually agreed by the parties as indicated within the Risk Details. The third arbitrator, who will act as chairman of the Arbitral Tribunal, shall be appointed by the two party nominated arbitrators after consultation with the parties.

The seat, or legal place, of arbitration shall be London, England, or as may be mutually agreed by the parties as indicated within the Risk Details.

The language to be used in the arbitral proceedings shall be English, or as may be mutually agreed by the parties as indicated within the Risk Details.

The governing law of the contract shall be the substantive law of England and Wales, or as may be mutually agreed by the parties as indicated within the Risk Details.

The parties shall bear the costs of the arbitrator(s) in equal shares.
D CANCELLATION
this Contract may be:
1 cancelled at any time at the request of the Insured by surrendering this Contract to the Insurers or by giving written notice to the Insurers stating when such cancellation will take effect;
2 cancelled by the Insurers by giving the Insured not less than:
   (i) ninety (90) days' written notice of cancellation; or
   (ii) ten (10) days' written notice of cancellation if the Insured fails to remit, when due, payment of premium for this Contract;

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

E CHOICE OF LAW
this Contract shall be subject to the applicable law specified in the Risk Details.

F CONFLICT OF STATUTES / LAW
any terms of this Contract which may conflict with applicable statutes (or statutes deemed applicable by a court of competent jurisdiction) are amended to conform to the minimum requirements of such statutes.

In the event that any provision of this Contract is found by a court of competent jurisdiction to be invalid or unenforceable, the other provisions of this Contract and the remainder of the provision in question shall not be affected thereby and shall remain in full force and effect.

G CONTRACT MODIFICATION
the Insured and the Insurers may request changes to this Contract. This Contract can be changed only by endorsements issued by the Insurers and made a part of this Contract.

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 Contract; or
2 prevent the Insurers from asserting any rights under the provisions of this Contract.

H CONTROL OF DAMAGED PROPERTY
this Contract gives control of Property Insured that sustains direct physical loss or physical damage by a Peril not excluded by this Contract as follows:
1 the Insured will have full rights to the possession and control of damaged Property Insured in the event of damage to such property provided independent non-destructive testing has been completed and the appropriate reports are available for inspection to show which property has sustained damage;
2 any salvage proceeds received will go to the:
   (i) Insurers 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.

However if the Property Insured is catered for under an Original Equipment Manufacturer Contract it is understood that the Insured and Insurer shall waive control of the Property Insured which has sustained
damage, provided that independent non-destructive testing has been completed and the appropriate reports are available for inspection to show which property has sustained damage.

I  DEDUCTIBLE GENERAL PROVISIONS

in each case of direct physical loss of or physical damage to the Property Insured by a Peril not excluded by this Contract, the Insurers will be liable only if the Insured sustains a loss in a single Occurrence greater than the applicable Deductible specified in the Risk Details, and only for its share of that greater amount.

Unless otherwise stated below:
1 when this Contract insures more than one location, the Deductible will apply against the total loss covered by this Contract in any one Occurrence;
2 if two or more Deductibles provided in this Contract apply to a single Occurrence, the total to be deducted will not exceed the largest Deductible applicable, unless otherwise provided.

However any Deductibles applicable to Business Interruption coverages shall apply in addition to the applicable Property Damage Deductible.

Any Business Interruption Deductibles expressed as a number of hours or days which are not otherwise defined or which are not intended to be converted into monetary equivalents shall be applied so that, in the event of direct physical loss or physical damage of the type insured by this Contract, the Insurers shall not be liable for the amount of any Business Interruption loss sustained during the number of consecutive hours or days, as specified in the Risk Details, which immediately follow the Occurrence of such direct physical loss or physical damage.

J  INSPECTIONS

the Insurers, at all reasonable times, will be permitted, but will not have the duty, to inspect the Property Insured.

The Insurers’:
1 right to make inspections;
2 making of inspections; or
3 analysis, advice or inspection report,

will not constitute an undertaking, on behalf of or for the benefit of the Insured or others, to determine or warrant that the Property Insured is safe or healthful. The Insurers will have no liability to the Insured or any other person because of any inspection or failure to inspect.

K  LIMIT OF LIABILITY GENERAL PROVISIONS

the Insurers’ maximum liability in a single Occurrence regardless of the number of Insured Locations or coverages involved will not exceed the Limit of Liability as specified in the Risk Details. However, when a Sub-Limit of Liability for an Insured Location or other specified property or coverage is shown, such Sub-Limit of Liability will be the maximum amount payable for any direct physical loss or physical damage at such Location or involving such other specified property or such coverage.

The Sub-Limits of Liability specified in the Risk Details are programme Sub-Limits of Liability and are part of and not in addition to the programme Limit of Liability over this Contract and all other programme policies combined.

The Sub-Limits of Liability specified in the Risk Details shall apply on a per Occurrence basis, unless otherwise specified as being on an aggregate basis, for all Insured Locations and coverages combined.
L MISREPRESENTATION AND FRAUD
this entire Contract and any loss or claim thereunder will be void if, whether before or after a loss, an Insured has:
1 wilfully concealed or wilfully misrepresented any material fact or circumstance;
2 engaged in fraudulent conduct; or
3 made false statements;
relating to this Contract or any loss or claim thereunder.

In the event that any provision of this Condition is found by a court of competent jurisdiction to be invalid or unenforceable, the other provisions of this Condition and the remainder of the provision in question shall not be affected thereby and shall remain in full force and effect.

M OTHER INSURANCE
1 if there is any other insurance that would apply in the absence of this Contract, this Contract will apply only after such insurance whether collected or not;
2 the Insured is permitted to have other insurance over any Limits or Sub-Limits of Liability specified elsewhere in this Contract without prejudice to this Contract. The existence of any such insurance will not reduce any Limit or Sub-Limit of Liability in this Contract. Any other insurance that would have provided primary coverage in the absence of this Contract will not be considered excess;
3 the Insured is permitted to have other insurance for all, or any part, of any Deductible in this Contract. The existence of such other insurance will not prejudice recovery under this Contract. If the Limits of Liability of such other insurance are greater than this Contract's applicable Deductible, this Contract will apply only after such other insurance has been exhausted;
4 in the event this Contract is deemed to contribute with other insurance, the Limit of Liability applicable at each Insured Location, for purposes of such contribution with other insurers, will be the latest amount described in this Contract or the latest Schedule of Insured Locations on file with the Insurers.

N REASONABLE PRECAUTIONS
the Insured shall take all reasonable precautions to prevent loss or damage to the Property Insured; to comply with relevant statutory requirements, sound engineering practices and manufacturers’ recommendations; and to maintain the Property Insured in good working condition.

O REDUCTION BY LOSS
claims paid under this Contract will not reduce the Limit of Liability, except claims paid will reduce any aggregate Limit of Liability for the Period of Insurance.

P SUSPENSION
on discovery of a dangerous condition, the Insurers may immediately suspend this insurance on any machine, vessel or part thereof by giving written notice to the Insured. The suspended insurance may be reinstated by the Insurers. Any unearned premium resulting from such suspension will be returned by the Insurers.
Q  SALVAGE AND RECOVERIES

all salvages, recoveries and payments recovered or received subsequent to a loss settlement under this Contract shall be applied as if recovered or received prior to the said settlement and all necessary adjustments shall be made by the parties hereto.

R  SERVICE OF SUIT

this Service of Suit Condition will not be read to conflict with or override the obligations of the parties to arbitrate their disputes as provided for in General Conditions C. This General Condition is intended as an aid to compelling arbitration or enforcing such arbitral award, not as an alternative to General Conditions C for resolving disputes arising out of this Contract.

It is agreed that in the event of the failure of the Insurers hereon to pay any amount claimed to be due hereunder, the Insurers hereon, at the request of the Insured, will submit to the jurisdiction of a Court of competent jurisdiction within the United States. Nothing in this Condition constitutes or should be understood to constitute a waiver of the Insurers' rights to commence an action in any Court of competent jurisdiction in the United States, to remove an action to a United States District Court, or to seek a transfer of a case to another Court as permitted by the laws of the United States or of any State in the United States.

It is further agreed that service of process in such suit may be made upon the person or persons specified in the Risk Details for this purpose, and that in any suit instituted against any one of them upon this Contract, the Insurers will abide by the final decision of such Court or of any Appellate Court in the event of an appeal.

The person or persons specified in the Risk Details are authorised and directed to accept service of process on behalf of the Insurers in any such suit and/or upon the request of the Insured to give a written undertaking to the Insured that they will enter a general appearance upon the Insurers' behalf in the event such a suit shall be instituted.

Further, pursuant to any statute of any State, territory or district of the United States which makes provision therefor, the Insurers hereon hereby designate the Superintendent, Commissioner or Director of Insurance or other officer specified for that purpose in the statute, or his successor or successors in office, as their true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of the Insured or any beneficiary hereunder arising out of this Contract, and hereby designate the person or persons as specified in the Risk Details as the person to whom the said officer is authorised to mail such process or a true copy thereof.

S  SUBROGATION

the Insured is required to cooperate in any subrogation proceedings. The Insurers may require from the Insured an assignment or other transfer of all rights of recovery against any party for loss to the extent of the Insurers’ payment.

The Insurers will not acquire any rights of recovery that the Insured has expressly waived prior to a loss, nor will such waiver affect the Insured’s rights under this Contract.

Any recovery from subrogation proceedings, less costs incurred by the Insurers 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.
SUIT AGAINST THE INSURERS

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 Contract; and
2. legal action is started within twelve (12) months after inception of the loss.

If under the insurance laws of the jurisdiction in which the property is located, such twelve (12) months’ limitation is invalid, then any such legal action needs to be started within the shortest limit of time permitted by such laws.

TITLES

the titles in this Contract are only for reference. The titles do not in any way affect the provisions of this Contract.
GENERAL EXCLUSIONS

The following General Exclusions apply to this Contract unless specifically amended by endorsement:

This Contract does not insure any loss, damage, claim, cost, expense or other sum of whatsoever nature directly or indirectly caused by, resulting from, arising out of, in connection with or relating to:

A  BIOLOGICAL OR CHEMICAL MATERIALS

the actual or threatened malicious use of pathogenic or poisonous biological or chemical materials regardless of any other cause or event contributing concurrently or in any other sequence thereto.

B  MICROORGANISM

mould, mildew, fungus, spores or other micro-organism of any type, nature, or description, including but not limited to any substance whose presence poses an actual or potential threat to human health.

This Exclusion applies regardless of whether there is:
1 any physical loss or damage to Property Insured;
2 any insured peril or cause, whether or not contributing concurrently or in any sequence;
3 any loss of use, occupancy, or functionality; or
4 any action required, including but not limited to repair, replacement, removal, cleanup, abatement, disposal, relocation, or steps taken to address medical or legal concerns.

C  RADIOACTIVE CONTAMINATION

any of the following regardless of any other cause or event, whether or not insured under this Contract, contributing concurrently or in any other sequence to the loss, nuclear reaction or nuclear radiation or radioactive contamination. However:
1 if direct physical loss or physical damage by fire or sprinkler leakage results, then only that resulting direct physical loss or physical damage is insured; but not including any loss or damage due to nuclear reaction, nuclear radiation or radioactive contamination:
2 this Contract does insure loss or damage directly caused by sudden and accidental radioactive contamination, including resultant radiation damage, from material used or stored or from processes conducted on the Insured Location, provided that on the date of loss, there is neither a nuclear reactor nor any new or used nuclear fuel on the Insured Location.

D  TERRORISM

any Act of Terrorism regardless of any other cause or event contributing concurrently or in any other sequence to the loss.

For the purpose of this Exclusion an Act of Terrorism means an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear.

This Exclusion also excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to any Act of Terrorism.
If the Insurers allege that by reason of this Exclusion, any loss, damage, cost or expense is not covered by this insurance the burden of proving the contrary shall be upon the Insured.

In the event any portion of this Exclusion is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

E  WAR AND POLITICAL RISKS
1  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 force; or
   (iii)  agent or authority of any party specified in (i) or (ii) above.
2  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;
3  insurrection, rebellion, revolution, civil war, usurped power, or action taken by governmental authority in hindering, combating or defending against such an event;
4  seizure or destruction under quarantine or custom regulation, or confiscation by order of any governmental or public authority;
5  risks of contraband, or illegal transportation or trade;
regardless of any other cause or event contributing concurrently or in any other sequence to the loss.
GENERAL ENDORSEMENTS

The following General Endorsements shall apply unless specifically overridden by subsequent Endorsements.

A. ASBESTOS

1 This Contract only insures asbestos physically incorporated in an insured building or structure, and then only that part of the asbestos which has been physically Damaged during the Period of Insurance by one of the following Listed Perils:

fire; explosion; lightning; Windstorm; hail; direct impact of vehicle, aircraft or vessel; riot or civil commotion, vandalism or malicious mischief; or accidental discharge of fire protective equipment.

This coverage is subject to each of the following specific limitations:

(i) The said building or structure must be insured under this Contract for damage by that Listed Peril.

(ii) The Listed Peril must be the immediate, sole cause of the damage of the asbestos.

(iii) The Insured must report to the Insurers the existence and cost of the damage as soon as practicable after the Listed Peril first damaged the asbestos. However, this Contract does not insure any such damage first reported to the Insurers more than twelve (12) months after the expiration, or termination, of the Period of Insurance.

(iv) Insurance under this Contract in respect of asbestos shall not include any sum relating to:

a) any faults in the design, manufacture or installation of the asbestos;

b) asbestos not physically damaged by the Listed Peril including any governmental or regulatory authority direction or request of whatsoever nature relating to undamaged asbestos.

2 Except as set forth in the foregoing Part 1, this Contract does not insure asbestos or any sum relating thereto.

B. ELECTRONIC DATA

1 Electronic Data

(i) this Contract does not insure loss, damage, destruction, distortion, erasure, corruption, or alteration of Electronic Data from any cause whatsoever (including but not limited to Computer Virus) or loss of use, reduction in functionality, cost, expense of whatsoever nature resulting therefrom, regardless of any other cause or event contributing concurrently or in any other sequence to the loss.

Electronic Data means facts, concepts and information converted to a form usable for communications, interpretation or processing by electronic and electromechanical data processing or electronically controlled equipment and includes programmes, software and other coded instructions for the processing and manipulation of data or the direction and manipulation of such equipment.

Computer Virus means a set of corrupting, harmful or otherwise unauthorised instructions or code including a set of maliciously introduced unauthorised instructions or code, programmatic or otherwise, that propagate themselves through a computer system or network of whatsoever nature. Computer Virus includes but is not limited to ‘Trojan Horses’, ‘worms’ and ‘time or logic bombs’.
(ii) However, in the event that a peril listed below results from any of the matters described in paragraph (i) above, this Contract, subject to all its terms, conditions and exclusions, will cover physical damage occurring during the Period of Insurance to Property Insured by this Contract directly caused by such Listed Peril.

Listed Perils
a) fire
b) explosion

2 Electronic Data Processing Media Valuation

Should electronic data processing media insured by this Contract suffer physical loss or damage insured by this Contract, then the basis of valuation shall be the cost to repair, replace or restore such media to the condition that existed immediately prior to such loss or damage, including the cost of reproducing any Electronic Data contained thereon, providing such media is repaired, replaced or restored. Such cost of reproduction shall include all reasonable and necessary amounts, not to exceed the Sub-Limit of Liability specified in the Risk Details any one loss, incurred by the Insured in recreating, gathering and assembling such Electronic Data. If the media is not repaired, replaced or restored the basis of valuation shall be the cost of the blank media. However this Contract does not insure any amount pertaining to the value of such Electronic Data to the Insured or any other party, even if such Electronic Data cannot be recreated, gathered or assembled.