

**AMENDED PURSUANT TO THE ORDER OF LORD JUSTICE FLAUX AND  
MR JUSTICE BUTCHER DATED THE 26TH DAY OF JUNE 2020**

CLAIM NO: FL-2020-000018

**IN THE HIGH COURT OF JUSTICE  
BUSINESS AND PROPERTY COURTS  
COMMERCIAL COURT (QBD)  
FINANCIAL LIST  
FINANCIAL MARKETS TEST CASE SCHEME**

**BETWEEN**

**THE FINANCIAL CONDUCT AUTHORITY**

**Claimant**

**-and-**

- (1) ARCH INSURANCE (UK) LIMITED**
- (2) ARGENTA SYNDICATE MANAGEMENT LIMITED**
- (3) ECCLESIASTICAL INSURANCE OFFICE PLC**
- (4) HISCOX INSURANCE COMPANY LIMITED**
- (5) MS AMLIN UNDERWRITING LIMITED**
- (6) QBE UK LIMITED**
- (7) ROYAL & SUN ALLIANCE INSURANCE PLC**
- (8) ZURICH INSURANCE PLC**

**Defendants**

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**AMENDED PARTICULARS OF CLAIM**

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**A. Summary**

1. The Claim concerns the issue of whether business interruption losses arising from the COVID-19 pandemic (“**COVID-19 business interruption claims**”) are covered by certain insurance extensions or other coverage clauses that do not require damage to the insured’s property.
2. This is a test case by the FCA seeking a determination of a number of the key points of construction and principle that appear to be in dispute between policyholders and insurers.
3. The FCA, adopting the policyholders’ position for the purposes of testing these points, contends that, subject to proof of loss and individual policy points such as sub-limits, all relevant Wordings (as defined and explained in paragraph 11 below) written by the 8 insurer Defendants do respond to the events of COVID-19 and the Governmental action<sup>1</sup> responding to the disease in the first half of 2020.
4. In summary, as advanced in more detail below:
  - 4.1. The Government response, in the form of advice, instructions and legislation, was a single body of public authority intervention which did prevent and hinder access to and use of business premises, cause closure of and restrictions on activities at business premises, and interrupt and interfere with activities at business premises, within the meaning of the Wordings. This encompasses businesses that were not ordered to close at all or in their entirety, in that the package of other measures (beyond ordering closure of premises) was sufficient to satisfy these policy ‘triggers’ on their proper construction. In particular businesses were unable to operate normally.

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<sup>1</sup> By the UK Government, or, where applicable, the devolved administrations of Scotland, Wales and Northern Ireland.

- 4.2. There is no express or implied exclusion for pandemics in the Wordings in relation to the coverage clauses relied upon by the FCA (although there are such exclusions in some of the Wordings in relation to other coverage clauses; see further paragraph 33).
- 4.3. Nothing in the Wordings or in the law entitles the insurer to deny cover or requires the Court to find a lack of cover or reduce the indemnity by reason of loss not being caused by the insured peril, including where the Wordings require that loss, interference or other elements that must be proven ‘result from’, be ‘due to’, ‘arise from’, ‘follow’, or ‘result solely and directly’ from the insured peril. Moreover, if and to the extent that it is necessary and appropriate to consider what would have happened but for the insured peril (whether under an applicable ‘trends’ clause or otherwise), the correct counterfactual is a world in which there was no COVID-19 and no Government intervention related to COVID-19. Thus, for example, to take a simple case without any vicinity limit, the losses did ‘result solely and directly from an interruption... caused by... inability to use the insured premises due to restrictions imposed by a public authority... following an occurrence of’ COVID-19 (as in the Hiscox1-4 disease clauses Wording).
- 4.4. Those clauses which provide cover only where there was a danger, emergency, threat, disease, public authority action or other trigger within a certain distance or vicinity of the premises will usually be triggered by early/mid-March 2020, given the widespread prevalence of COVID-19 in reported cases, and even greater prevalence that was not reported but can be inferred. As an alternative to proving individual cases of COVID-19 in individual locations, presence can be proven by statistical evidence, especially for urban areas. Specific declarations are sought in this regard. Moreover, certain triggers, such as danger and

emergency, were nationwide—COVID-19 was a national emergency and danger (hence the national measures implemented)—and so automatically occurred within the vicinity, within 25 miles, etc without the need to prove any local COVID-19 event.

- 4.5. Where Wordings require a trigger to be within a certain distance or vicinity of the premises, that requirement on its proper construction does not limit cover to loss caused by disease or other trigger *only* where it occurred within the relevant proximity. Those Wordings on their proper construction provide cover for losses caused by a disease or other trigger occurring over a wide area providing it was not solely remote but instead (as in the case of COVID-19) extended in its manifestation to the specified locale as well as its occurrence further afield.

## **B. Introduction**

5. The Claimant (“**the FCA**”), as the conduct regulator of the Defendants and other insurers in the UK, seeks declaratory relief in order to resolve the legal uncertainty in relation to COVID-19 business interruption claims so that it can determine and pursue its regulatory and supervisory policy in relation to the handling of these claims by the Defendants and other insurers. References to “insurers” and “insurance firms” in these Particulars of claim should be read as including Lloyd’s managing agents.
6. The FCA is bringing these proceedings against the Defendants pursuant to a Framework Agreement dated 31 May 2020 that has been agreed between the Parties.
7. The Parties consider that the claim raises issues of general importance in relation to which immediately relevant authoritative English law guidance is needed. They further consider that the claim is suitable for the Financial Markets Test Case Scheme.

## The Parties

8. The FCA is the conduct regulator of firms authorised to effect and carry out contracts of insurance in the United Kingdom and of firms authorised to manage the underwriting capacity of a Lloyd's syndicate as a managing agent at Lloyd's in the United Kingdom. By s1A(3) of the Financial Services and Markets Act 2000 ("**FSMA**"), the FCA has the functions conferred on it by or under the Act.
9. The Defendants each carry on an insurance business. The First, Third, Fourth, Sixth, Seventh and Eighth Defendants are each authorised under FSMA to effect and carry out contracts of insurance in the United Kingdom. The Second and Fifth Defendants are each authorised under FSMA to manage the underwriting capacity of a Lloyd's syndicate as a managing agent at Lloyd's.
10. The FCA's statutory functions and the regulatory and other background to this action are set out further in Annexe 1.

## **C. The policy wordings and applicable law**

11. The Defendants wrote insurance policies on the wordings listed respectively in Schedules 1 to 8 (with one Schedule per Defendant) which provide coverage for matters occurring in late 2019 and early 2020 ("**the Wordings**").
12. All the individual wordings listed in each Schedule under a particular wording type (e.g. Hiscox types 1-4) contain materially identical relevant cover clauses, save as set out further in these Particulars of Claim.
13. These Particulars of Claim are pleaded by reference to the particular terms of the lead wording for each wording type, as identified in the respective Schedule. The wording types are referred to by their label set out in that Schedule (such as or "**Hiscox1**" or "**MSAmlin2**"). However, save where otherwise indicated, any reference to a Wording

(and to cover under that wording) is intended also to refer to the other wordings of the same type identified in the respective Schedule.

14. The particular parts of the Particulars of Claim relevant to each Wording are identified in the relevant Schedule, as are specific declarations relevant to each Wording.
15. The Parties are seeking to agree a list of Questions for Determination, attached at Annexe 3, and an Issues Matrix identifying an illustrative list of disputed issues which may arise in relation to the Wordings, attached at Annexe 4, although neither is intended to be a statement of case or formal list of issues for the Court.
16. The Wordings are all governed by English law, either in all or some circumstances (as set in the choice of law sections of the extracts from the lead wordings set out in the Schedules). This claim seeks declarations only on the assumption that the law of England & Wales applies, although it is understood and intended that the decision will have at least substantial persuasive value for policies governed by the laws of other UK jurisdictions.

**D. COVID-19 and the public authority response to it**

17. Severe Acute Respiratory Syndrome Coronavirus-2 (also known as ‘SARS-CoV-2’) is a new strain of coronavirus first identified in humans in 2019. ‘COVID-19’ is the name given to the disease associated with the virus. Since at least early 2020, and as set out further below, SARS-CoV-2 and COVID-19 have been present in England and Wales and that disease, and steps taken by UK public authorities (especially the UK Government), have interrupted and interfered with many businesses and their activities.
18. The FCA is seeking to agree with the Defendants a chronology of key events relating to COVID-19’s arrival, impact and public authority response in the UK. However, in

summary, core events relating to COVID-19 and the public authority response in the UK include the following:

- 18.1. On 22 January 2020, given the increasing risk presented by COVID-19, the UK Department of Health and Social Care and Public Health England (“PHE”) raised the risk level in the UK from ‘very low’ to ‘low’. Eight days later, on 30 January 2020, the Department of Health and Social Care raised it to ‘moderate’.
- 18.2. On 30 January 2020, the World Health Organisation declared the outbreak of COVID-19 a Public Health Emergency of International Concern.
- 18.3. On 31 January 2020, the UK confirmed its first COVID-19 cases. Details as to prevalence of COVID-19 in the UK are pleaded at paragraphs 21 and following.
- 18.4. On 10 February 2020, the Health Protection (Coronavirus) Regulations 2020 came into force, to quarantine those believed to be contaminated or who had arrived into the UK and had been in an infected area in the preceding 14 days. Those regulations were repealed by the Coronavirus Act 2020 on 25 March 2020.
- 18.5. On 2 March 2020, the first UK death from COVID-19 took place.
- 18.6. On 3 March 2020, the UK Government published a COVID-19 action plan and guidance in relation to certain businesses. The following day, it provided guidance anticipating social distancing measures, including as to the risk of infection from standing within two metres of someone.
- 18.7. On 5 March 2020, the first UK death from COVID-19 was reported. Also on this date, COVID-19 became a notifiable disease in England, being added to the list of notifiable diseases in the Health Protection (Notification) Regulations



2010, and SARS-CoV-2 was added to the list of notifiable causative agents in Schedule 2 of those Regulations. (COVID-19 had previously become notifiable in Scotland and Northern Ireland on 22 and 29 February 2020 respectively, and was made notifiable in Wales on 5 March 2020.)

- 18.8. On 11 March 2020, the World Health Organisation stated that COVID-19 can be characterised as a pandemic. On 12 March 2020, the UK Government elevated the risk level to ‘high’ (where it has remained as at the date of these Particulars of Claim), and told those with symptoms to self-isolate for 7 days.
- 18.9. On 16 March 2020, the UK Prime Minister gave a public statement on COVID-19, announcing that: those with symptoms should stay home for 14 days; everyone (regardless of symptoms) should “*stop non-essential contact with others and stop all unnecessary travel*”; people should work from home where they could; people should “*avoid pubs, clubs, theatres and other such social venues*” and “*avoid... confined spaces such as pubs and restaurants*”; and there would be a move away from “*mass gatherings*”.
- 18.10. On 17 March 2020, the UK Government unveiled a package of financial measures in relation to COVID-19.
- 18.11. On the evening of 17 March 2020, as recorded in Hansard, the Chancellor of the Exchequer, Mr Rishi Sunak, stated:

“The right hon. Gentleman asked about insurance for the leisure sector. I can confirm that, after extensive meetings today between my hon. Friend the Economic Secretary to the Treasury and the insurance industry, the insurance industry will honour insurance contracts that would have been triggered if the advice had been to ban certain things, rather than it being advisory not to do them. That has been agreed and negotiated by my hon. Friend. I thank him for those efforts, and I thank the insurance industry for doing the right thing.”<sup>2</sup>

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<sup>2</sup> The FCA does not seek to prove that any particular matter was agreed between insurers and the Government, but relies on paragraphs 18.121 to 18.123 to indicate that whether or not there was agreement between the insurers and the Government, the Government informed Insurers that it considered that insurance ought to respond by

18.12. On 18 March 2020, during a Treasury Committee meeting, Mr Sunak stated:

“What we did yesterday was to agree with the insurance companies as regards anyone who had a policy that would have paid out had we said, ‘The restaurant is shut,’ rather than, ‘It is best if people do not go to restaurants.’ That is the instance, rightly, about which there was the most uncertainty, and that is what we cleared up. We ensured that the insurance company would do the right thing, and they have said that they would. I appreciate that.”

18.13. Also on 18 March 2020, the UK Government published the following statements in its COVID-19 Fact Sheet (emphasis in original):

**“If the only barrier to your business making an insurance claim was a lack of clarity on whether the government advising people to stay away from businesses, rather than ordering businesses to shut down, was sufficient to make a claim on business interruption insurance:**

- The government’s medical advice of 16 March is sufficient to enable those businesses which have an insurance policy that covers both pandemics and government ordered closure to make a claim - provided all other terms and conditions in their policy are met. Businesses should check the terms and conditions of their specific policy and contact their providers if in doubt.
- However, most businesses have not purchased insurance that covers pandemic related losses. As such, any affected businesses should note the government’s full package of support, including the Coronavirus Business Interruption Loan Scheme and business rates holiday.”

18.14. Also on 18 March 2020, the UK Government announced that schools would close from the end of 20 March 2020.

18.15. On 20 March 2020:

- (a) the UK Government launched the Coronavirus Job Retention Scheme, including a furlough scheme; and
- (b) the UK Prime Minister announced that cafes, pubs, bars, restaurants and other leisure venues (such as nightclubs, theatres and gyms) would have to close that night, and confirmed that the public should stay at home.

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reference to actions that the Government had taken insofar as policies were triggered by the Government requiring closure, and it was incumbent on insurers to inform the Government if they disagreed so that the Government could have the opportunity to take further steps to ensure that such policies were triggered.

- 18.16. Following the announcements of the previous day, on 21 March 2020, the Health Protection (Coronavirus, Business Closure) (England) Regulations 2020 (“**21 March Regulations**”) came into force, ordering the closure of certain businesses.
- 18.17. On 22 and 23 March 2020, the UK Prime Minister announced the need for two metre social distancing, home lockdown save where necessary, and a ban on gatherings of more than two people. On 22 March 2020, the UK Government also issued guidance on the enforcement of business closures, and on 23 March 2020, the PHE published guidance on social distancing, including the need for people to stay two metres from one another.
- 18.18. Further, on 23 March 2020, the UK Government published additional guidance on business closures (describing closures of, or restrictions on, particular businesses). The UK Government subsequently updated this guidance on 25, 26 and 27 March 2020, as well as on 1 and 13 May 2020, to take into account (for example) updated legislative provisions.
- 18.19. On 24 March 2020, the UK Government issued guidance in relation to accommodation providers, stating that by now they should have taken steps to close for commercial use, and providing further detail as to closure requirements.
- 18.20. On 25 March 2020, the Coronavirus Act 2020 came into force, including provisions in relation to powers to close premises and also educational institutions.
- 18.21. On 26 March 2020, the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 (“**26 March Regulations**”) came into force. They ordered

the closure (or partial closure) of a broader list of businesses than that set out in the 21 March Regulations, and stipulated restrictions on movement.

18.22. Similar regulations came into force in Wales and Scotland on the same date, and in Northern Ireland on 28 March 2020. In Wales and Scotland, the regulations included a requirement, in the context of certain businesses, to “*take all reasonable measures*” to ensure that (save for two members of the same household, or a carer and the person being assisted by them): a distance of two metres be maintained between any persons on the premises, persons only be admitted to the premises “*in sufficiently small numbers to make it possible to maintain that distance*”, and a distance of two metres be maintained between any persons waiting to enter the premises. In Wales, the regulations also prescribed that particular businesses have regard to guidance issued by the Welsh ministers on reasonable measures to ensure the two-metre distance, and that such guidance could include codes of practice or other documents published by, for example, trade bodies. In Northern Ireland, the two-metre rule was prescribed in its regulations in relation to burial grounds.

18.23. On 4 April 2020, the Secretary of State made designations under the 26 March Regulations of specified authorities to enforce relevant provisions of the 26 March Regulations, including as to business closures and restrictions, by way of prohibition notices, fixed penalty notices and proceedings.

18.24. On 16 April 2020, the UK Government announced that the existing restrictions would be extended for at least the following three weeks.

18.25. On 28 April 2020, the Secretary of State for Health and Social Care, Mr Matt Hancock, responded to a question during a press briefing regarding lockdown measures and whether the approach should be regional or country-wide,

explaining that there was a benefit in “*the whole country moving together*”. The UK Government, he reported, had considered “*moving with London and the Midlands first*”, as they were more advanced in terms of the number of cases, but “*the shape of the curve*” had been “*similar across the whole country*”, hence the country-wide approach.

18.26. On 10 May 2020, the UK Prime Minister shifted the core message from “*stay at home*” to “*stay alert*”. This was adopted in England, but the “*stay at home*” message remained in place in Wales, Scotland and Northern Ireland. The following day, the UK Government published its COVID-19 Recovery Strategy and guidance to assist employers and employees to work safely.

19. The scheme of the 21 and 26 March Regulations, in combination with Government guidance and announcements, was to prohibit different conduct in relation to different categories of business at different times:

19.1. *Category 1 (restaurants etc closed):*

In the case of restaurants, cafes, bars and public houses, regulation 2(1) of the 21 March Regulations and regulation 4(1) of the 26 March Regulations required those businesses to close their premises, save for the sale of food or beverages for consumption off the premises.

19.2. *Category 2 (leisure closed):*

In the case of cinemas, theatres, nightclubs, gyms and other prescribed businesses, regulation 2(4) of the 21 March Regulations required the operator to cease those businesses, and regulation 4(4) of the 26 March Regulations expanded that list of businesses required to close fully (for example to include hairdressers).

19.3. *Category 3 (essential shops could stay open):*

In the case of certain food retailers (such as supermarkets), pharmacies, petrol stations, banks, medical or other health services and other prescribed businesses, regulation 5(1) of the 26 March Regulations expressly permitted those businesses to stay open. Those businesses had to comply with UK Government advice (and, in Wales and Scotland, legislation: see paragraph 18.22 above) on social distancing, safety and hygiene. They also had to comply with employers' and occupiers' legal duties (such as tortious duties of care, health and safety legislative obligations, and contractual duties under employment contracts) owed to employees, customers, contractors and other visitors in the context of COVID-19. For example, in relation to employers, such duties included the need to ensure, so far as reasonably practicable, the health and safety at work of their employees, through implementation of a safe system of work.

19.4. *Category 4 (other goods shops closed):*

In the case of shops offering goods for sale or hire, regulation 5(1) of the 26 March Regulations required the operator to cease the business and close, save for making deliveries or otherwise providing services in response to orders received through a website, telephone or post, and close premises not required for those purposes.

19.5. *Category 5 (other businesses not prohibited or permitted):*

There were also businesses not expressly required by the 21 March Regulations or the 26 March Regulations to close (fully or partially), nor expressly permitted by the 26 March Regulations to stay open. Those businesses, including

manufacturers, accountants' offices and similar, to the extent they remained open (fully or partially) had to comply with UK Government advice (and, in Wales and Scotland, legislation: see paragraph 18.22 above) on social distancing, safety and hygiene. They also had to comply with employers' and occupiers' legal duties (such as tortious duties of care, health and safety legislative obligations, and contractual duties under employment contracts) owed to employees, customers, contractors and other visitors in the context of COVID-19. For example, in relation to employers, such duties included the need to ensure, so far as reasonably practicable, the health and safety at work of their employees, through implementation of a safe system of work.

19.6. *Category 6 (holiday and similar accommodation closed):*

In the case of hotels and other holiday accommodation, regulation 5(3) of the 26 March Regulations required the operators to cease the business, save for providing accommodation to certain prescribed categories of individuals, such as critical workers.

19.7. *Category 7 (schools and places of worship closed):*

From the end of 20 March 2020, nurseries and educational establishments were closed (save for vulnerable children, children of critical workers and the provision of online lessons), with relevant powers to enforce closures contained in section 37 and Schedule 16 of the Coronavirus Act 2020. Regulation 5(5) of the 26 March Regulations required places of worship to close, save for funerals, to broadcast an act of worship or provide essential voluntary services or urgent public support.

**E. The Defendants' refusal of cover**

20. The Defendants have received and declined some claims under policies written under the Wordings. The main grounds of refusal in those declinatures (which are therefore among the key issues on which certainty is sought by this action) comprise the following:

20.1. Unless a business was ordered to and did close completely, there was no prevention, denial or hindrance of access or inability to use the premises within the meaning of relevant Wordings;<sup>3</sup> and unless it ceased to trade completely, its activities were not interrupted;<sup>4</sup> and so cover is not triggered. The FCA disputes this: see section K and L below.

20.2. Guidance was not a 'restriction' 'imposed by' a public authority.<sup>5</sup> The FCA disputes this: see section K below.

20.3. The Wordings are not designed to and/or do not provide cover in the case of pandemics.<sup>6</sup> The FCA disputes this: see section H below.

20.4. An exclusion applies.<sup>7</sup> The FCA disputes this: see section M below.

20.5. The interference, interruption, loss or public authority-imposed restrictions did not 'follow' or 'result from' (or similar) or were not sufficiently directly or 'solely and directly' caused by the necessary local disease occurrence or danger but instead were caused by the wide-area pandemic, the fall in economic activity resulting from a general loss of confidence, or national government measures, and so cover is not triggered.<sup>8</sup> The FCA disputes this: see section N below.

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<sup>3</sup> Arch1, Hiscox 1-4.

<sup>4</sup> Hiscox1-4.

<sup>5</sup> Hiscox1-4.

<sup>6</sup> Argenta1, Ecclesiastical1.1-1.2, Hiscox1, MSAm1-2, RSA1, RSA4, Zurich1-2.

<sup>7</sup> Ecclesiastical1.1-1.2, RSA3.

<sup>8</sup> Argenta1, Hiscox1-4, MSAm1-3, QBE1-2, RSA1-4.



20.6. As to the causation and quantum of any claim: all or most loss would have been suffered anyway, even but for the insured peril/business closure (for example, because of the broader COVID-19 pandemic, the lockdown, self-isolation, social distancing, the fall in economic activity resulting from a general loss of confidence, or other national measures imposed by the UK Government).<sup>9</sup> The FCA disputes this: see section N below.

**F. Prevalence of COVID-19 in the UK**

21. To the extent that the following matters are not agreed, the FCA reserves the right to rely on expert evidence as to the prevalence of COVID-19 in the UK as follows:
22. Some policies state a relevant area surrounding the insured premises within which certain facts, such as the presence of COVID-19, must be proven. This may be stated as a radius of a certain number of miles from the insured premises; alternatively the Court may determine that such a relevant area is relevant in concluding what is meant by the term ‘vicinity’ in Wordings. In either case, the size of such an area (the “**Relevant Policy Area**”) can be mathematically calculated by reference to a circle with a known radius and with the insured premises at the centre of that circle.
23. Policyholders may be able to prove a case of COVID-19 at a particular location by specific evidence in a particular case (including, but not limited to, evidence from NHS data as to COVID-19 deaths in particular hospitals (“**the NHS hospital death data**”), or evidence of a hospital or care home even without a registered death), and that COVID-19 was therefore present within a Relevant Policy Area at a given date (and, including in the case of evidence of a death, was present during an immediately prior period).

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<sup>9</sup> Argenta1, Hiscox 1-4, MSAmclin3.

24. In addition, the UK Government has released data showing confirmed cases of COVID-19 submitted to the PHE at a national and at more localised levels, including in relation to certain dates in March 2020 (“**Reported Cases**”). Relevant data from the Reported Cases are at <https://coronavirus.data.gov.uk>. They show, for all of England, regions (for example, London, South West, etc: “**regional Zones**”), and ‘Upper Tier Local Authorities (UTLA)’ and ‘Lower Tier Local Authorities (LTLA)’ (for example, Barnet) (“**UTLA Zones**” and “**LTLA Zones**”), the accumulated total number of Reported Cases in each of those Zones on each date since records began, including by way of example as at 4, 16, 21 and 26 March 2020.
25. Testing, diagnosis and reporting of cases of COVID-19 in the UK were limited during (at least) March 2020, and were restricted to particular categories (e.g. returned visitors from selected countries and hospitalised patients). Accordingly, the actual presence of COVID-19 in the UK was far higher than is reflected by the number of Reported Cases.
26. On the balance of probabilities, and by a methodology based on estimating the number infected from the daily number of deaths (such as in Flaxman, S. et al. ‘Report 13: Estimating the number of infections and the impact of non-pharmaceutical interventions on COVID-19 in 11 European countries’, Imperial College London (30 March 2020) (“**Imperial Analysis**”) and Birrell, P. et al. ‘COVID-19: Nowcast and Forecast’, Cambridge University (5 June 2020) (“**Cambridge Analysis**”)), the ratio between the likely actual number of cases of COVID-19 and the Reported Cases can reasonably ~~reliably~~ be estimated (“**the Undercounting Ratio**”).
27. The Cambridge Analysis shows that there were cases in every regional Zone of England by 17 February 2020, and from the Cambridge Analysis it is possible to estimate the Undercounting Ratios in England (e.g. 138:1 at 26 March 2020) and each regional Zone as follows:

Date (2020)	Relevant Data	England	Regional Zone						
			South West	South East	London	East of England	Midlands	North East and Yorkshire	North West
4 March	Reported Cases	225	29	34	59	19	29	19	24
	Estimated cases taken from Cambridge Analysis	25,600	791	3,370	13,800	1,270	3,830	715	1490
	<b>Undercounting Ratio</b>	<b>114:1</b>	<b>27:1</b>	<b>99:1</b>	<b>234:1</b>	<b>67:1</b>	<b>132:1</b>	<b>38:1</b>	<b>62:1</b>
16 March	Reported Cases	3,220	185	472	1306	192	516	186	271
	Estimated cases taken from Cambridge Analysis	391,000	11,400	41,700	198,000	25,900	63,800	19,800	30,000
	<b>Undercounting Ratio</b>	<b>121:1</b>	<b>62:1</b>	<b>88:1</b>	<b>152:1</b>	<b>135:1</b>	<b>124:1</b>	<b>106:1</b>	<b>111:1</b>
21 March	Reported Cases	7,851	355	1064	3079	506	1,350	552	705
	Estimated cases taken from Cambridge Analysis	1,200,000	34,300	117,000	572,000	89,300	201,000	78,400	102,000
	<b>Undercounting Ratio</b>	<b>153:1</b>	<b>97:1</b>	<b>110:1</b>	<b>186:1</b>	<b>176:1</b>	<b>149:1</b>	<b>142:1</b>	<b>145:1</b>
26 March	Reported Cases	17,956	751	2372	6353	1359	3,124	1,604	1863
	Estimated cases taken from Cambridge Analysis	2,470,000	74,600	240,000	1,060,000	206,000	430,000	205,000	250,000
	<b>Undercounting Ratio</b>	<b>138:1</b>	<b>99:1</b>	<b>101:1</b>	<b>167:1</b>	<b>152:1</b>	<b>138:1</b>	<b>128:1</b>	<b>134:1</b>

28. The FCA will seek declarations that, without prejudice to an insured's right to prove the presence of COVID-19 through other evidence specifically called by them, on the balance of probabilities:

28.1. The true number of individuals infected with COVID-19 on relevant dates in March 2020 in a regional, UTLA or LTLA Zone is at least as great as the number of Reported Cases for those dates for that Zone.

28.2. Hence, given the Reported Cases, COVID-19 was sufficiently widespread that it was present within every LTLA Zone in England by at least 31 March 2020,

every LTLA Zone in England other than Rutland by at least 23 March 2020, and every LTLA Zone other than 19 LTLA Zones by at least 16 March 2020.<sup>10</sup>

- 28.3. The true number of individuals infected with COVID-19 on relevant dates in March 2020 in a regional, UTLA or LTLA Zone ~~can reasonably be estimated is at least as great~~ as the number of cases derived by applying ~~an appropriate the~~ Undercounting Ratio for the relevant regional Zone to the Reported Cases in the regional Zone (or any UTLA or LTLA Zone within the regional Zone as appropriate), ~~and an appropriate Undercounting Ratio can properly be inferred from the Imperial Analysis, the Cambridge Analysis or another relevant publicly available analysis from a suitably qualified institution.~~
- 28.4. ~~Subject, in any given case, to either a policyholder or an insurer being entitled to assert and show that the application of the methodologies set out below would be unreliable in relation to any particular Relevant Policy Area or that some weighting other than an average is appropriate, a~~ A case of COVID-19 ~~shall be treated as having been~~ ~~was~~ present in the Relevant Policy Area as at a particular date based on any one of the following methodologies (individually or in combination):
- (a) If any of the COVID-19 related deaths in a local authority area reported by the Office for National Statistics, when averaged across that area, have occurred within the Relevant Policy Area.

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<sup>10</sup> Adur, Burnley, City of London, East Cambridgeshire, Forest of Dean, Lincoln, North East Lincolnshire, North Devon, Oadby and Wigston, Pendle, Rochford, Rossendale, Rother, Rutland, Selby, Stafford, Tamworth, Tendring and West Lancashire.

- (b) If any of the Reported Cases in a regional, UTLA or LTLA Zone, when averaged across that Zone, have occurred within the Relevant Policy Area.
- (c) If any of the Reported Cases in a regional, UTLA or LTLA Zone, when uplifted to take account of an appropriate ~~the~~ Undercounting Ratio applicable to the regional Zone within which the UTLA or LTLA Zone sits, and then averaged across that UTLA or LTLA Zone, have occurred within the Relevant Policy Area.
- (d) If there is a hospital within the Relevant Policy Area and the NHS hospital death data shows a COVID-19 death at that hospital.
- (e) If the UK Government regional hospital COVID-19 admissions data, when averaged out across the hospitals in the region, shows that admissions have occurred at a hospital within the Relevant Policy Area.

**G. Assumed facts**

29. The Claimant proposes the Assumed Fact Patterns at Annexe 2 hereto, which pursuant to the Framework Agreement will be the subject of agreement with the Defendants. Assumed facts relating to policyholders are only relevant to the following extent:

29.1. The issue of whether the disease is notifiable or a human infectious or contagious disease or is an emergency/danger/threat to life requires no policyholder facts.

29.2. The issue of whether disease occurred within a specified proximity or 'vicinity' requires policyholder assumed facts limited to the geographical location of the business and the timing of the disease. However, the Court can decide in

principle based on the policy wording when the trigger for cover would arise (e.g. in the case of RSA4, disease is deemed to be notifiable from its initial outbreak, and the Court can then identify when the ‘initial outbreak’ occurred).

29.3. The question of whether the UK Government is a ‘public’ or other relevant authority, and which of the Government’s advice and laws (which themselves are likely to be agreed facts) are actions, advice, laws, orders or restrictions and whether or not they are ‘imposed’, requires no policyholder facts.

29.4. The nature of the interruption and interference to the business and what is required in order to ‘prevent access to’, ‘hinder access to’, ‘prevent use of’, ‘hinder use of’ or for there to be an ‘inability to use’ insured premises, does require the Court to consider some assumed facts based on the nature of the ‘interference’ for particular businesses, albeit many of them depend merely on the category of business under the scheme of the legislation (e.g. were they advised to close/required to close/permitted to stay open). There need to be some assumed opening or closure or impact permutations in order that the relevant wordings can be tested against a factual context.

29.5. The issues relating to exclusions require no policyholder facts.

29.6. The causation issues will require some, albeit limited, consideration of assumed facts for the purposes of consideration of possible counterfactual scenarios. For example, it may be relevant that a business such as a corner shop or pub depends on mostly local trade (or at least trade which is largely derived from customers inside the Relevant Policy Area, which may be large area, e.g. of 50 miles in diameter), or that a business depends on customers being able to travel to the business from a greater distance such as a holiday cottage.

29.7. The Court is not being asked to decide issues relating to the measure of indemnity, quantum, aggregation or issues that are only of individual or specific application.

30. The Parties may seek to agree some sample factual scenarios, as permutations of general facts as to the policyholder business and the effects of COVID-19 events upon it, by which to test questions of principle and their application during argument and in order to make the issues less hypothetical and more realistic. However, the FCA does not seek declarations by reference to assumed facts or such sample scenarios and it is not necessary for the Court to decide issues by reference to any fact patterns as if they were fictional or test claims.

#### **H. Policy intention**

31. The Wordings are to be construed objectively. The Defendants' subjective intentions (or their reasons behind the design of the Wordings) is not relevant or admissible.
32. This is particularly the case given that these policies are offered by the Defendants in a standard form to policyholders, and on which a large number of policyholders have policies. In construing the policies it is relevant that the Wordings are standard form and that the policyholders would be either predominantly, or at least to a material extent include, small and medium enterprises.
33. Insurers can and do define and exclude from their cover epidemics and pandemics, and actions relating to them, where that is the parties' intention. Zurich<sup>2</sup> excludes from its notifiable disease cover 'any infectious diseases which have been declared as a pandemic by the World Health Organisation' (and COVID-19 became a pandemic by that definition on 11 March 2020- see paragraph 18.8 above), while policies in Hiscox<sup>1-2</sup> and Hiscox<sup>4</sup> exclude from event cancellation cover any cancellation or abandonment

directly or indirectly due to ‘any action taken by any national or international body or agency to control, prevent or suppress or in any way relating to any infectious disease’.

The Defendants (including Zurich and Hiscox) elected not to adopt such exclusions in the Wordings in relation to the clauses relied upon in these proceedings.

34. Accordingly, it is denied if alleged that there is any admissible objective intention on the part of the Defendants to exclude or not to cover pandemics, available to the reasonable interpreting party in the position of the parties to policies written on the Wordings. The issue of whether there is or is not cover including as to disease amounting to a pandemic or government action in relation to the same is a matter of construction of the Wordings themselves.

35. Further, if and to the extent that it may be necessary and appropriate, the FCA will rely on the contra proferentem rule.

**I. The disease trigger**

36. COVID-19 was and is:

36.1. a disease (QBE3);

36.2. a human disease (Argenta1, Hiscox1-4, MSAmclin1-2, QBE1-2, RSA1, RSA3);  
and

36.3. an infectious and/or contagious disease (Argenta1, Hiscox1-4, MSAmclin1-2, QBE1-2, RSA3).

37. Further, in England and Wales COVID-19 became:



- 37.1. a disease an outbreak of which must be notified to the local authority (Hiscox1-4) and/or which the competent local authority has stipulated will or shall be notified to them (Argenta1, MSAmclin1-2, QBE1-2, RSA3);
- 37.2. a disease that may be and was notifiable under the Health Protection (Notification) Regulations 2010 (QBE3, RSA4); and
- 37.3. a ‘notifiable human disease’ within the meaning of that undefined term in RSA1 on 5 March 2020, when it was added to the list of notifiable diseases contained in Schedule 1 to the Health Protection (Notification) Regulations 2010, by regulation 2(2) of the Health Protection (Notification) (Amendment) Regulations 2020.
38. On that date there was also an ‘occurrence’ of a notifiable disease within the meaning of that term in Hiscox1-3. (Hiscox1-3 do not require the disease to be within any vicinity, but merely for it to have occurred, and for public authority action causing interruption to have followed the occurrence.)
39. Under RSA4, COVID-19 was deemed to be a notifiable disease from the date of its initial outbreak, by virtue of the following provision included within its definition of notifiable disease:
- ‘any additional diseases notifiable under the Health Protection Regulations (2010), where a disease occurs and is subsequently classified under the Health Protection Regulations (2010) such disease will be deemed to be notifiable from its initial outbreak’
40. For the purposes of RSA4 and paragraph 39 above, the date of the initial outbreak was 31 December 2019 when the first cases in Wuhan were confirmed, alternatively 31 January 2020 when the first two UK cases of COVID-19 were diagnosed, alternatively such later date as the Court shall determine.

**J. Presence of the disease within a certain distance from the premises**

41. Whenever and wherever a person or persons had contracted COVID-19 such that it was diagnosable (whether or not it was in fact verified by medical testing or a medical professional and/or formally confirmed or reported to the PHE and whether or not it was symptomatic):

41.1. There was an ‘illness sustained by any person’ (MSAmlin1-2), or the ‘occurrence’ of the same (Argenta1, QBE2-3, RSA3), ‘resulting from’ (Argenta1, MSAmlin1-2, QBE2-3, RSA3) COVID-19; and

41.2. COVID-19 was ‘manifested by any person’ (QBE1) or ‘manifested itself’ (RSA1).

41.3. Further, this illness or occurrence of illness or manifestation of COVID-19 was ‘within a radius of 25 miles’ or ‘within a 25 mile radius’ of the premises (Argenta1, MSAmlin1-2, QBE1-2, RSA1 and 3) when such a person or persons were within 25 miles of the premises. Further, whilst it may be proven on particular or individual facts that there was or was not a COVID-19 case within 25 miles, this can in many cases also be proven as at the relevant date merely by proving the location of the premises, as to which section F above is repeated. For example, if the premises are in the centre of a local authority or other Zone that is less than 25 miles across then there has been an occurrence/manifestation within 25 miles of the premises with the first case of COVID-19 in that local authority area that can be proven to have occurred (whether by positive evidence or inference).

41.4. Paragraph 41.3 above applies *mutatis mutandis* to the occurrence of COVID-19 or illness resulting from it being within 1 mile of the premises (Hiscox4, QBE3).

41.5. COVID-19 ‘occurred within the Vicinity of an Insured Location’ (RSA4), ‘Vicinity’ being defined as ‘an area surrounding or adjacent to an Insured Location in which events that occur within such area would be reasonably expected to have an impact on an Insured or the Insured’s Business’:

- (a) On 31 January 2020 with the first diagnosed COVID-19 cases in the UK. The Vicinity requirement was then automatically satisfied in RSA4 for all businesses, without prejudice to particular further policyholder-specific bases on which that conclusion can also be justified, given that:
  - (i) in the case of a contagious disease such as COVID-19, especially where it had already become a national epidemic in other countries, the occurrence anywhere in the UK (which had previously been monitored by reference to a national risk level—see paragraph 18 above) would be reasonably expected to have led to national response that might include closures or other restrictions; and
  - (ii) all businesses in the UK, including those of RSA’s insureds, would be reasonably expected to be impacted by nation-wide measures.
- (b) Alternatively, when COVID-19 occurred within a more localised area surrounding the insured premises (such as within a 1 mile and/or 25 mile radius). This is a question of fact to be determined in each individual case, save that occurrence within at least the same city, town, village or other development is always occurrence within the Vicinity.

42. All of the advice and actions referred to above in paragraph 18 were imposed upon all locations in England and Wales at the same time because of the anticipation and occurrence of a nationwide pandemic. They were not limited to particular areas where COVID-19 was present or feared (an alternative approach that was considered but so far rejected in the UK, as to which see further paragraph 18.25 above, and which has been adopted in other countries such as China and Italy) because all of the UK was (rightly, as it turned out) considered to be at risk.
43. The pandemic was a nationwide emergency arising out of a highly contagious disease with an actual and believed substantial risk of fatality when contracted. Accordingly, there was from at least 3 March 2020 (when a UK Government action plan was published, quarantining was in place, and there were 176 Reported Cases across the country), alternatively 12 March 2020 (when the UK Government elevated the risk level to high, following COVID-19 being designated notifiable in the UK and characterised as a pandemic by WHO, and a week after the first reported UK death), alternatively such other date as the Court shall determine:
- 43.1. an emergency likely to endanger life (Arch1, RSA2.1-2.2),
- 43.2. an emergency which could endanger human life (Ecclesiastical1.1-1.2),
- 43.3. danger (MSAmlin1, Zurich1-2),
- 43.4. an incident (Hiscox1-2, Hiscox4, MSAmlin2), and
- 43.5. a threat or risk of damage or injury (MSAmlin3) and/or health reasons or concerns (RSA4)
- everywhere in the UK which necessarily included in the vicinity of the UK premises (Hiscox2, MSAmlin1, MSAmlin3, RSA2.1-2.2, RSA4, Zurich1-2) and within 1 mile

(Hiscox1-2, Hiscox4, MSAmli2). Further and alternatively, there was such an emergency, danger, incident, threat, risk, health reason or concern within 1-mile of the premises (Hiscox1-2, Hiscox4, MSAmli2) or in the vicinity of the premises (Hiscox2, MSAmli1, MSAmli3, RSA2.1-2.2, RSA4, Zurich1-2) whenever it is proven that a person with COVID-19 had been present within 1-mile of the premises, or within the vicinity of the premises, respectively, the latter term ‘vicinity’ having the same meaning as defined term ‘Vicinity’ (RSA4), as to which paragraph 41 above is repeated.

**K. Public authority advice and regulations**

44. All of the advice, instructions and regulations referred to above in paragraph 18 above were actions of the UK Government and accordingly were:
- 44.1. actions of, or imposed by, or by order of, and/or advice of government (Arch1, Ecclesiastical1.1-1.2, Hiscox1-2, Hiscox4, MSAmli2) and governmental authority or agency (RSA4),
  - 44.2. actions or advice or restrictions of or by, or imposed by or by order of, a public authority (Hiscox1-4, MSAmli2), which was a competent public authority (RSA2.1-2.2, MSAmli3),
  - 44.3. actions of, by or imposed by a civil authority (Hiscox1-2, Hiscox4, MSAmli2), which was a competent civil authority (MSAmli1, Zurich1-2),
  - 44.4. actions of or imposed by a statutory authority (Hiscox1-2, Hiscox4, MSAmli2), and
  - 44.5. not of themselves orders or advice of a competent local authority for the purposes of (but only for the purposes of) the exclusion in Ecclesiastical1.1-1.2, where the words ‘competent local authority’ are used in the exclusion in the

context of a clause addressing action of ‘government police or a local authority’.

That contextual construction does not dictate the meaning of a similar or the same phrase when used in denial of access cover clauses in Arch1 (‘local authority’) and MSAm1in1, RSA4 and Zurich1-2 (‘competent local authority’).

45. Given the nationwide reach of the measures, all the actions or advice set out in paragraph 18 above were in the Vicinity of all premises in the UK within the meaning of (RSA4 ‘Prevention of Access - Non-Damage’ clause) where Vicinity is defined as ‘an area surrounding or adjacent to an Insured Location in which events that occur within such area would be reasonably expected to have an impact on an Insured or the Insured’s Business’, at the date on which they were taken.

**L. Interruption or interference**

46. The advice, instructions and/or announcements as to social-distancing, self-isolation, lockdown and restricted travel and activities, staying at home and home-working given on 16 March 2020 and on many occasions subsequently (as summarised in paragraph 18 above) amounted for all businesses on that date, alternatively on such subsequent date to be determined by the Court, in all cases for which access to or use of the premises by the owners/employees/customers was material to the trading of the business, to each of the following:

- 46.1. prevention of access to the premises (Arch1, Ecclesiastical1.1-1.2, MSAm1in1, MSAm1in3, RSA2.1-2.2, RSA4, Zurich1-2) and denial of access to the premises (Hiscox1-2, Hiscox4, MSAm1in2), given that owners, employees and/or customers could not access the premises;

- 46.2. prevention of use of the premises (Ecclesiastical1.1-1.2, MSAm1in3, RSA2.1-2.2, RSA4), and inability to use the insured premises (Hiscox1-4), given that owners, employees and/or customers could not use the premises;
- 46.3. hindrance in access to the premises (Ecclesiastical1.1-1.2, Hiscox1-2, Hiscox4, MSAm1in2-3, RSA2.1-2.2, RSA4), the access of owners, employees and/or customers being made more difficult;
- 46.4. hindrance of use of the premises (Ecclesiastical1.1-1.2, MSAm1in3, RSA2.1-2.2, RSA4), the use of owners, employees and/or customers being made more difficult;
- 46.5. closure (RSA1) and enforced closure (RSA4) of the premises, given that many owners, employees and/or customers could not access the premises or use them for their normal business use;
- 46.6. restrictions placed on the premises (RSA1), given that constraints had been placed on owners, employees and/or customers and the way they could use or access the premises and any business there;
- 46.7. interference to or with the business or the insured's usual activities (Ecclesiastical1.1-1.2, MSAm1in1-3, QBE1-3, RSA2-4, Zurich1-2), given that normal business operations and the owners', employees' and/or customers' use of and access to the premises and any business there had been impeded and/or inhibited; and/or
- 46.8. interruption to, with and of the business or the insured's (usual) activities (Argenta1, Ecclesiastical1.1-1.2, Hiscox1-4, MSAm1in1-3, QBE1-3, RSA2-4, Zurich1-2), given that normal business operations and the owners', employees'

and/or customers' use of and access to the premises and any business there ceased or were suspended and/or obstructed.

47. Further and alternatively, where a business in Categories 1, 2, 4, 6 and 7 (see paragraph 19 above in relation to Categories) was ordered on 20, 21, 23, 24 and/or 26 March to close the premises or cease the business, or only to provide a take-away/mail order/online business (and save where the business was not prior to the COVID-19 outbreak already a wholly take-away/mail order/online business), and did so, there was/were (and even where a Category 6 or 7 business was permitted to and did provide a very limited range of services as set out in regulations 5(4) and 5(6) of the 26 March Regulations) each of the following:<sup>11</sup>

- 47.1. prevention of access to the premises (Arch1, Ecclesiastical1.1-1.2, RSA2.1-2.2, RSA4, Zurich1-2) and denial of access to the premises (Hiscox1-2, Hiscox4, MSAm1in2), given that owners, employees and/or customers were ordered not to access the premises for its business;
- 47.2. prevention of use of the premises (Ecclesiastical1.1-1.2, RSA2.1-2.2, RSA4), and inability to use the insured premises (Hiscox1-2, Hiscox4), given that owners, employees and/or customers were ordered not to use the premises for its business;
- 47.3. hindrance in access to the premises (Ecclesiastical1.1-1.2, Hiscox1-2, Hiscox4, MSAm1in2, RSA2.1-2.2, RSA4), given that owners, employees and/or customers were ordered not to access the premises for its business, or that access was impeded and/or inhibited;

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<sup>11</sup> The following Wordings are not included by this paragraph because the FCA understands that they were not available to business in Categories 1, 2, 4, 6 and 7: Hiscox3, MSAm1in1, MSAm1in3. To the extent that any further Wordings are not available to businesses in Categories 1, 2, 4, 6 and 7, or that these three Wordings are available to such businesses, the Defendants are invited to correct that understanding, and the scope of this paragraph will need to be read or amended accordingly.



- 47.4. hindrance of use of the premises (Ecclesiastical1.1-1.2, RSA2.1-2.2, RSA4), given that owners, employees and/or customers were ordered not to use the premises for its business, or that use was impeded and/or inhibited;
- 47.5. closure (RSA1) and enforced closure (RSA4) of the premises, given that owners, employees and/or customers were ordered not to access the premises for its normal business;
- 47.6. restrictions placed on the premises (RSA1), given that owners, employees and/or customers were ordered not to use the premises for its business;
- 47.7. interference to or with the business or the insured's usual activities (Ecclesiastical1.1-1.2, MSAm1in2, QBE1-3, RSA2-4, Zurich1-2), given that owners, employees and/or customers were ordered not to use the premises for its business; and/or
- 47.8. interruption to, with and of the business or the insured's (usual) activities (Argenta1, Ecclesiastical1.1-1.2, Hiscox1-2, Hiscox4, MSAm1in2, QBE1-3, RSA2-4, Zurich1-2), given that owners, employees and/or customers were ordered not to use the premises for its business.
48. As to this, and the equivalence of social distancing and other rules to closure of a business, paragraphs 18.11 to 18.13 above are repeated.
49. Further, from 16 March 2020, given the Government requirements including to cease travel and self-isolate, alternatively from 24 March 2020, given the Government advice to close for commercial use as quickly as was safely possible, there was (if not earlier as set out above) for all Category 6 businesses:

49.1. interruption (Argenta1), given owners, employees and customers could not access the premises; and

49.2. closure or restrictions placed on the premises as a result of COVID-19 manifesting itself within 25 miles (RSA1), providing the disease had manifested within 25 miles (as to which see above paragraph 41.3), given that restrictions had been placed on owners, employees and customers and the way they could use or access the premises and any business there.

**M. Exclusions**

50. The following is the FCA's case on those exclusions that it understands from declination letters supplied by Defendants to be relied upon by the Defendants. To the extent the Defendants intend to rely upon any other exclusions as operating generally in these circumstances, they should raise them in the Defence, failing which they will be taken to accept that no other generally operative exclusions apply. None of this is intended to dispute insurers' rights to take particular issues of proof, and to apply particular limits, sub-limits and temporal limits (such as for the first period of loss, or interruption lasting longer than a certain period).

51. On its proper construction, the exclusion clause in Ecclesiastical11.1-1.2 – as interpreted in its particular context – does not apply because all of the advice and regulations referred to in paragraph 18 above were actions of the UK Government, and accordingly not orders or advice of a competent local authority within the meaning of the exclusion in that Wording. Paragraph 44.5 above is repeated.

52. On its proper construction the pollution and/or contamination exclusion in RSA3 does not apply to the disease clause. Either the occurrence of the disease arose directly from the pollution and/or contamination and therefore the exclusion is inapplicable given

the terms of sub-paragraph L(a)(bis), or on its proper construction the pollution or contamination exclusion is not applicable to the disease clause as otherwise that clause would have no or little operative scope, which cannot have been intended.

**N. Causation**

53. As a matter of the proper construction of the Wordings and/or the law, both for the purposes of considering whether causation is sufficiently direct, and for considering the appropriate counterfactual to any applicable ‘but for’ test:

53.1. there is only one proximate, effective, operative or dominant cause of the assumed losses, namely the (nationwide) COVID-19 disease including its local presence or manifestation, and the restrictions due to an emergency, danger or threat to life due to the harm potentially caused by the disease;

53.2. one cannot separate out and treat as distinct and independent causes

(a) the ‘local’ disease (i.e. local manifestation of the national disease outbreak), and the national disease or pandemic;

(b) the disease, and the public authority action;

(c) ‘local’ action or advice (i.e. the local manifestation of the national action or advice), and action or advice at the national level; or

(d) business closure orders; and other measures including movement restriction orders, advice on social distancing or to ‘stay at home’ etc.

54. As to (a), there was a single national pandemic. Further:

54.1. Where Wordings require a disease, emergency or public authority intervention to be within a particular locality to the premises, that prevents cover in cases of

*solely* remote events. It does not prevent, and is not intended to prevent, cover in cases of events that are both local and extend outside the vicinity, including where they cover a broad region or the entire country.

54.2. Had that been intended, it would have been set down expressly (for example by wording ‘solely to the extent that losses are caused by events within and not without that radius’), or by an exclusion for pandemics, which the Defendants deliberately did not include in the Wordings. Paragraph 33 above is repeated.

54.3. Moreover, many of the public authority action Wordings with a vicinity clause make express reference to or encompass cover for interference or interruption resulting from *Governmental* action, and therefore contemplate cover in the case of a wide-area/national pandemic such as would attract intervention from the national Government (Arch1, Ecclesiastical1.1-1.2, Hiscox1-2, Hiscox4, MSAm1in2, RSA4). The same contemplation is true of clauses that refer to a ‘25 mile’ radius which cover a trigger event anticipated to be anywhere within an area of almost 2,000 square miles (Argenta1, QBE1-2, MSAm1in1-2, RSA1, RSA3).

55. As to (b), the policy cover is premised on the existence of disease or an emergency of sufficient seriousness as to give rise to government or public authority action. It would be absurd to construe the Wordings as not permitting recovery of a particular loss that but for the disease would have occurred anyway because of public authority action (which responds to and results from the disease), or but for public authority action would have occurred anyway because of the disease (which the public authority action was anticipating or responding to).

56. As to (c) and (d), the public authority actions are part of an indivisible and interlinked strategy and package of national measures which it is impossible, and contrary to the

contracting parties' intentions, to divorce for the purposes of calculating the 'but for' counterfactual or for the purposes of proximate causation. The measures were all imposed by the same national authority (the Government) through direct briefings to the nation's population and through national legislation, with express reference to there being a developing strategy to deal with a single evolving pandemic. Further:

56.1. The Prime Minister addressed matters together in his 16 March 2020 statement on coronavirus, in which he addressed together advice (expressed as necessity): to self-isolate if a person or anyone in their household had symptoms of the virus; to everyone to stop non-essential contact with others and stop all unnecessary travel; to work from home wherever possible; to avoid pubs, clubs, theatres and other such social venues; and to avoid mass gatherings.

56.2. On 17 March 2020, the Chancellor of the Exchequer confirmed that the above advisory action on social distancing and to the public to stay away from businesses was equivalent to Government-ordered closure of those businesses. See paragraphs 18.11 to 18.13 above.

56.3. On 20 March 2020, the Prime Minister addressed in one speech the compulsory closure of restaurants (save for take-away services), nightclubs, theatres, cinemas, gyms and leisure centres because of the need physically to keep people apart and coupled with it the message that people should 'stay at home'.

56.4. The Prime Minister addressed matters together in his 23 March 2020 speech (in relation to what he described as a national emergency):

"To ensure compliance with the Government's instruction to stay at home, we will immediately:

- close all shops selling non-essential goods, including clothing and electronic stores and other premises including libraries, playgrounds and outdoor gyms, and places of worship;

- we will stop all gatherings of more than two people in public – excluding people you live with; and
- we'll stop all social events, including weddings, baptisms and other ceremonies, but excluding funerals.”

56.5. The orders for business closure and orders for restrictions on movement and gatherings are all contained in the same statutory instrument, viz (in England) the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 (the “**26 March Regulations**”) and (in Wales) The Health Protection (Coronavirus Restrictions) (Wales) Regulations 2020, and comprise one set of restrictions.

56.6. The Coronavirus Act 2020 recognised that the Northern Irish and Scottish devolved legislatures needed further powers to make regulations giving effect to business closure and restrictions on movement, dealing with them together in the Act.

56.7. Whilst some businesses were the subject of mandatory closure, this was not consistently the case and the Government chose in some cases to use advice to achieve the same objective. For example, an announcement was made on 18 March 2020 that schools would close (save for vulnerable children and children of critical workers) from after 20 March 2020. Power was given in section 37 and Schedule 16 of the Coronavirus Act 2020 to enforce closure of educational institutions and childcare premises but schools closed based on the Government’s advice of 18 March 2020.

56.8. Further, a national action applied to every locality including near to the premises, but by virtue of being national the actions cannot be separated into a local element and a non-local element for the purposes of the ‘but for’ counterfactual. It is wrong and contrary to the contracting parties’ intention to

posit for causation counterfactual purposes the question of what would have happened if the Government's measures had applied only outside the vicinity of the premises, rather than the correct question of what would have happened if the Government had not taken the action or given the advice at all and there had been no need for the Government to take such action or give such advice.

57. If and insofar as there is more than one concurrent cause, they are interdependent causes, alternatively are inextricably linked, alternatively are a set of causes, none of the elements of which are sufficient on their own and which should be considered together. Alternatively, even if there are independent causes, they do not prevent cover.
58. Further, if there is more than one concurrent cause in addition to the insured peril, event or circumstance, such concurrent cause(s) is uninsured and not excluded (although it/they could have been) and does not prevent cover. It would be contrary to the contracting parties' intentions to read the causation language in the Wordings as in effect providing an exclusion for all loss caused by concurrent uninsured causes even though not expressed to be exclusions.
59. All of the causal relations required by the Wordings are satisfied in the present case (as set out in each Schedule in relation to each Wording). The words and phrases 'resulting from', 'due to', 'caused by', 'whereby' and 'arising from' are not intended to and do not denote any different meanings from each other, and merely require some causal link between the relevant two elements in the causal chain, i.e. that one played a role in bringing about the outcome of the other. They do not require a strict 'but for' test in that they do not require a close enquiry into a technical counterfactual containing some of the elements of the COVID-19 pandemic and Government interventions.

60. Further or alternatively, the word ‘following’ deliberately connotes an event which is part of the factual background and represents a looser causal connection than ‘resulting from’ and similar.
61. In particular:

*Denial of access and public authority restriction clauses*

62. The interruption and/or interference with the business or insured’s activities ‘followed’ (MSAmlin1), took place ‘because of’ (MSAmlin3), was ‘as a result of’ (Ecclesiastical1.1, RSA4), was ‘in consequence of’ (Ecclesiastical1.2, Zurich1-2) or was ‘caused by’ (Hiscox1-4, MSAmlin2) the relevant authority action (Ecclesiastical1.1-1.2, MSAmlin1, MSAmlin3, RSA4, Zurich1-2), inability to use the premises (Hiscox1-4) and incident (Hiscox1-2, Hiscox4, MSAmlin2).
63. The prevention of access to the premises was ‘due to’ (Arch1), and the access to or use of the premises was prevented or hindered ‘by’ (Ecclesiastical1.1-1.2), the relevant authority action, and that action prevented or hindered the use of or access to the premises (RSA2.1-2.2, RSA4).
64. The relevant authority action was itself ‘due to’ (Arch1, Ecclesiastical1.1-1.2, RSA2.1-2.2), ‘followed’ (MSAmlin1, MSAmlin3, Zurich1-2), ‘resulted’ from (MSAmlin2) or was ‘for’ (RSA4) ‘an emergency likely to endanger life’ (Arch1, RSA2.1-2.2), ‘an emergency which could endanger human life’ (Ecclesiastical1.1-1.2), a ‘danger’ (MSAmlin1, Zurich1-2), an ‘incident’ (Hiscox1-2, Hiscox4, MSAmlin2), a ‘threat or risk of damage or injury’ (MSAmlin3), and/or ‘health reasons or concerns’ (RSA4), which were everywhere including in the vicinity of the premises (Hiscox2, MSAmlin1, MSAmlin3, RSA2.1-2.2, RSA4, Zurich1-2) and within 1 mile of them (Hiscox1-2, Hiscox4, MSAmlin2). Paragraph 42 above is repeated.



65. All of the public authority advice, instructions and regulations that post-dated COVID-19 being carried or contracted by a person within 1 mile or within the vicinity of the premises were ‘a result’ of (Hiscox1-2, Hiscox4, MSAmclin2) ‘an incident’ within 1 mile (Hiscox1-2, Hiscox4, MSAmclin2) or the vicinity (Hiscox2) of the premises, which resulted in a denial or hindrance in access to the premises, including because the measures were to deal with the developing and aggregate prevalence of COVID-19 across the UK including within 1 mile and the vicinity of the premises. As to proof of COVID-19 within 1 mile, paragraphs 28.2 and 41.3 above are repeated.
66. Further, the inability to use the premises was ‘due to’ restrictions imposed by a public authority ‘following’ an occurrence of COVID-19 (Hiscox1-3), and an occurrence within 1-mile of the premises (Hiscox4).

*Disease clauses*

67. The Wordings do not distinguish between local-only diseases (e.g. food poisoning) and broader diseases and could easily have done so (e.g. by covering ‘diseases occurring *only* at the premises’ or ‘diseases *only* within a [x] mile radius’, or by excluding pandemics). The proper construction is that the insurer is distinguishing between remote-*only* diseases that cause government action, which are not covered and diseases that include a local manifestation which have some sort of anchor to the happenings in the area of the insured premises. It was open to the insurer specifically to exclude a pandemic/epidemic (as some policies do) if cover was not intended to extend this far.
68. Accordingly all of the public authority action or advice (hence interruption of and/or interference with the business and the closure or restrictions placed on the premises) that post-dated COVID-19 being carried or contracted by a person within 25 miles of the premises:

68.1. ‘followed’ (MSAmlin1-2, RSA3), were ‘as a result of’ (Argenta1) or were ‘in consequence of’ (QBE2) COVID-19 within 25 miles of the premises, and

68.2. ‘arose from’ (QBE1), were ‘caused by’ (QBE1) or were ‘a result of’ (RSA1) COVID-19 manifesting itself (RSA1) or being manifested by any person (QBE1) within 25 miles of the premises,

in both cases including because the measures were to deal with the developing and aggregate prevalence of COVID-19 across the UK including within 25 miles of the premises. As to proof of the manifestation within 25 miles, paragraphs 28.2 and 41.3 above are repeated.

69. Paragraph 68 above applies *mutatis mutandis* in respect of COVID-19 being carried or contracted by a person (which was therefore an occurrence of COVID-19) within 1 mile of the business premises (Hiscox4, QBE3).

70. Further, the interruption or interference to the insured’s business was ‘a result of’ COVID-19 occurring within the vicinity of the insured location (RSA4), again because the measures were to deal with the developing and aggregate prevalence of COVID-19 across the UK including within the vicinity of the premises.

#### *Cause of the loss*

71. The assumed loss was as a ‘result of’ (MSAmlin1, RSA1), ‘resulted from’ (Arch1, Ecclesiastical1.1, MSAmlin1, MSAmlin3, QBE2-3, Zurich1-2), ‘directly resulted from’ (Ecclesiastical1.2), ‘resulted solely and directly from’ (Hiscox1-4, MSAmlin2) (and, if and insofar as is implicit or necessary, satisfied any unexpressed causal link required in Argenta1, QBE1, RSA2.1-2.2 and RSA3) :

- 71.1. the relevant interruption of or interference with the business or insured's activities (Argenta1, Ecclesiastical1.1-1.2, Hiscox1-4, MSAm1in1-3, QBE1-3, RSA2.1-2.2, RSA3, Zurich1-2), which was the only alternatively main proximate cause of the loss; and
- 71.2. the prevention of access to (Arch1), or closure or restrictions placed on (RSA1), the premises, which similarly was the only alternatively main proximate cause of the loss;
72. In particular, in relation to the Hiscox1-4 wordings, the assumed loss did result 'solely and directly' from an interruption to the insured's business activities caused by inability to use the premises due to restrictions imposed by a public authority following an occurrence/outbreak of notifiable or human infectious or contagious disease (with, it is noted in the case of Hiscox1-3, no vicinity limit, such that there can be no realistic counterfactual other than that set out as the Claimant's primary case). Where public authority orders and advice are only covered as an insured peril where they follow the outbreak of a disease, they cannot sensibly be said not to be covered because the interruption does not solely and directly result from the orders or advice as it also results from the disease. The disease will always, *by definition*, have occurred in addition to the orders and advice, and that reading of 'solely and directly' would leave the public authority orders and advice insured peril with no realistic scope in any situation. Such an absurd result, giving the public authority wording no force at all, cannot have been intended.
73. Further, any assumed loss was the 'resulting' loss in the event of the interruption of or interference with the business (RSA4).

74. If and to the extent that it is applicable, the 'but for' test cannot be applied to exclude two (or more) causes such that they cancel each other out and neither is the cause, as this produces a result (i.e. that nothing caused the event or loss because no one thing alone did so) that is absurd and defies common sense. Moreover, by its correct operation the 'but for' test addresses realistic counterfactuals, which requires the elimination of all interdependent and interlinked matters, not the construction of artificial counterfactuals that would not or could not in the real world have occurred.
75. In relation to any contractual bases of settlement, trends clauses and/or similar provisions:
- 75.1. For many such provisions, the contractual quantification machinery, and any trends language, are limited to claims under the primary cover clause and/or to physical/property damage only and are inapplicable to the non-damage clauses challenged in these proceedings: Ecclesiastical1.1, MSAm1in1-3, QBE1-3, RSA1, RSA2.1-2 and RSA3. Accordingly, the claim must be quantified without reference to such machinery.
- 75.2. Further, QBE1 (POFP040120) and Zurich1 (if written on an Increased Cost of Working basis) do not contain a trends clause at all.
- 75.3. For other such provisions, the trends clauses are limited to physical/property damage and are inapplicable to the non-damage clauses challenged in these proceedings: Hiscox1 all except 8671 (Recruitment BI and BI – OM (Jelf)) but only when the trends clause has been opted for by inclusion in the policyholder's Schedule); Hiscox2 – 15779, 9102, 7103 WD-CCP-UK-PVB(2); Hiscox3 - 8006 and 10272, and Hiscox4 (20155).

- 75.4. Additionally, the trends clauses in Arch1 (Retailers and Powerplace), Hiscox1 and Hiscox4 (20155) only provide upwards adjustment of the loss to allow for trends, and so for that additional reason cannot support any case that any suffered losses are irrecoverable on causation or related grounds.
- 75.5. Policies containing trends or similar clauses that are potentially applicable to non-damage cover (and to the extent that they are, see paragraphs 76 and following) are: Arch1 (Commercial Combined); Argenta1; Ecclesiastical1.2; Hiscox1 – 8671 Recruitment BI and 8617 BI – OM (Jelf); Hiscox2 – all except 15779, 9102, 7103 WD-CCP-UK-PVB(2); Hiscox3 – 8358, 14174 and 9519; Hiscox4 (all except 20155); RSA4; Zurich1 (if written on a Loss of Gross Profit or Loss of Gross Revenue basis);<sup>42</sup> Zurich2.
76. If and insofar as trends or similar clauses are applicable (which the FCA contends is limited to those in paragraph 75.5 above), their purpose is not to exclude the natural and probable (if not inevitable) result of the peril that has resulted in the loss to the insured. They contemplate something extraneous which can fairly be described as an ordinary vicissitude of commercial life, such as economic trends or regulatory actions independent of the COVID-19 outbreak.
77. The proper counterfactual (for the purposes of the causation test generally and to the extent applicable under trends clauses) for considering what would have happened but for the insured perils considered in this Claim is the situation in which there was no COVID-19 in the UK and no Government advice, orders, laws or other measures in relation to COVID-19, or alternatively in which such of these events as the Court adjudges to be interlinked (if not all) had not occurred.

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<sup>42</sup> ~~Zurich has informed the FCA that cover written on a Loss of Revenue basis also contains a trends clause, but has not supplied any instances of this. Pending examples being provided, the FCA's position is reserved.~~

78. The valuation of loss does not fall to be reduced on the basis that but for the business closure or particular Government measures all or the majority of the losses would have been suffered anyway as a result of the outbreak of COVID-19 in the UK, the lockdown, self-isolation, social distancing, or other national measures imposed by the Government. Nor, on their proper construction, do the proximate cause test or proximate cause wording in the Wordings (such as ‘directly’ or ‘solely and directly’) prevent cover on the same basis.
79. Alternatively, if the FCA is wrong and the proper counterfactual is not as set out above, then in cases of disease or action required to be within the Relevant Policy Area the correct counterfactual is to assume that there is no disease or action (as applicable) within that Area but that the disease or action continued outside it. Accordingly, there remains cover for losses that would not have been suffered had the Relevant Policy Area been disease/action-free, including on the counterfactual (which in some cases may increase the indemnifiable amount) that there was an ‘island’ of normal disease-free trade in a ‘sea’ of disease/public action.

**O. Cover**

80. Accordingly:
- 80.1. All the Wordings on their proper construction cover losses resulting from COVID-19 as set out further above.
- 80.2. Where such cover is triggered, the causal relations are all satisfied, as is the test of proximate cause, and any applicable ‘but for’ test, whether in any applicable trends clauses or otherwise, does not prevent or reduce recovery by reason of a counterfactual in which some of the Government actions or advice still took place, or the COVID-19 pandemic still took place (at all or outside the vicinity

of the premises). In the alternative, an insured is entitled to benefit from the upwards business effects of any applicable trends clause.

80.3. The reasons given for denial, summarised in section E above, do not justify denial.

80.4. There are no general coverage arguments or exclusions that prevent cover for COVID-19 losses in any of the Wordings.

80.5. None of the above is intended to dispute insurers' rights to take particular issues of proof, and to apply particular limits, sub-limits and temporal limits (such as for the first period of loss, or interruption lasting longer than a certain period).

**P. Declarations**

AND the Claimant seeks the following declarations:

*Disease issues*

- 1) COVID-19 is a human infectious and contagious disease, and became notifiable on 5 March 2020 in England and Wales, within the different wordings to this effect in Wordings (Argenta1, Hiscox1-4, MSAmclin1-2, QBE1-3, RSA1, RSA3-4).
- 2) COVID-19 is deemed under RSA4 to have been a notifiable disease since 31 December 2019, alternatively 31 January 2020, alternatively such later date as the Court may specify to have constituted the disease's initial outbreak.
- 3) COVID-19 'occurred' on 5 March 2020 (Hiscox1-3).
- 4) COVID-19 occurred within the Vicinity of all premises within RSA4 on 31 January 2020, alternatively when COVID-19 occurred within a more localised area surrounding the insured premises (such as within a 1 mile or 25 mile radius).

- 5) COVID-19 was sustained, manifested, and occurred within the different wordings to this effect in the Wordings (Argenta1, MSAmclin1-2, QBE1-3, RSA1, RSA3) wherever a person or persons had contracted COVID-19, whether or not it was verified by medical testing or a medical professional and/or formally confirmed or reported to the PHE and whether or not it was symptomatic.
- 6) COVID-19 was sustained, or manifested, or occurred within the different wordings to this effect in the Wordings within a given radius of the premises, and there was an incident within that given radius (on the FCA's alternative case as to that term) (Hiscox1-2, Hiscox4, MSAmclin2), when such a person or persons who had contracted COVID-19 was/were within that radius of the premises (Argenta1, MSAmclin1-2, QBE1-3, Hiscox4, RSA1 and 3).
- 7) As to the presence of COVID-19, on the balance of probabilities:
  - a. The true number of individuals infected with COVID-19 on relevant dates in March 2020 in a regional or UTLA or LTLA Zone is at least as great as the number of Reported Cases for those dates for that Zone.
  - b. Hence, based on Reported Cases, COVID-19 was sufficiently widespread that it was present within every LTLA in England by at least 31 March 2020, every LTLA in England other than Rutland by at least 23 March 2020, and every LTLA other than 19 LTLAs by at least 16 March 2020.<sup>13</sup>
  - c. The true number of individuals infected with COVID-19 on relevant dates in March 2020 in a regional, UTLA or LTLA Zone can be estimated ~~is at least as great~~ as the number of cases derived by applying an appropriate ~~the~~

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<sup>13</sup> Adur, Burnley, City of London, East Cambridgeshire, Forest of Dean, Lincoln, North East Lincolnshire, North Devon, Oadby and Wigston, Pendle, Rochford, Rossendale, Rother, Rutland, Selby, Stafford, Tamworth, Tendring and West Lancashire.



Undercounting Ratio for the relevant regional Zone to the Reported Cases in the regional Zone (or any UTLA or LTLA Zone within the regional Zone as appropriate) and an appropriate Undercounting Ratio can properly be inferred from the Imperial Analysis, the Cambridge Analysis or another relevant publicly available analysis from a suitably qualified institution.

- d. Subject, in any given case, to either a policyholder or an insurer being entitled to assert and show that the application of the methodologies set out below would be unreliable in relation to any particular Relevant Policy Area or that some weighting other than an average is appropriate, a ~~A~~ case of COVID-19 shall be treated as having been ~~was~~ present in the Relevant Policy Area as at a particular date based on any one of the following methodologies (individually or in combination):

- i. If the COVID-19 related deaths in a local authority area reported by the Office for National Statistics, when averaged across that area, have occurred within the Relevant Policy Area.
- ii. If Reported Cases in a regional, UTLA or LTLA Zone, when averaged across that Zone, have occurred within the Relevant Policy Area.
- iii. If Reported Cases in a regional, UTLA or LTLA Zone, when uplifted to take account of an appropriate ~~the~~ Undercounting Ratio applicable to the regional Zone within which the UTLA or LTLA Zone sits, and then averaged across that Zone, have occurred within the Relevant Policy Area.
- iv. If there is a hospital within the Relevant Policy Area and the NHS hospital death data shows a COVID-19 death at that hospital.

- v. If the Government regional hospital COVID-19 admissions data, when averaged out across the hospitals in the region, shows that admissions have occurred at a hospital within the Relevant Policy Area.
- 8) There was an emergency likely to or which could endanger life (Arch1, Ecclesiastical1.1-1.2, RSA2.1-2.2), danger (MSAmlin1, Zurich1-2), incident (Hiscox1-2, Hiscox4, MSAmlin2), threat or risk of damage or injury (MSAmlin3) and health reasons or concerns (RSA4) in the vicinity of all premises in the UK (Hiscox2, MSAmlin1, MSAmlin3, RSA2.1-2.2, RSA4, Zurich1-2) and within 1-mile of all premises in the UK (Hiscox1-2, Hiscox4, MSAmlin2) from 3 March 2020, alternatively 12 March 2020.

*Public authority action*

- 9) The advice, instructions and regulations set out in paragraph 18 of the Particulars of Claim were all actions of government, governmental authority or agency, public authority, competent public authority, civil authority, competent civil authority and/or statutory authority within the different wording to this effect in Wordings (Arch1, Ecclesiastical1.1-1.2, Hiscox1-4, MSAmlin1-3, RSA2.1-2.2, RSA4, Zurich1-2).
- 10) The actions and advice set out in paragraph 18 were in the Vicinity of all premises in the UK (RSA4).
- 11) The advice, instructions and regulations as to social-distancing, self-isolation, lockdown and restricted travel and activities, ‘staying-at-home’ and home-working given on 16 March 2020 and on many occasions subsequently (as set out in paragraph 18 above) amounted for all businesses on that date, alternatively on such subsequent date as is to be determined by the Court, to each of the following:

- a. prevention of access to the premises (Arch1, Ecclesiastical1.1-1.2, MSAm1in1, MSAm1in3, RSA2.1-2.2, RSA4, Zurich1-2) and denial of access to the premises (Hiscox1-2, Hiscox4, MSAm1in2);
- b. prevention of use of the premises (Ecclesiastical1.1-1.2, MSAm1in3, RSA2.1-2.2, RSA4), and inability to use the insured premises (Hiscox1-4);
- c. hindrance in access to the premises (Ecclesiastical1.1-1.2, Hiscox1-2, Hiscox4, MSAm1in2-3, RSA2.1-2.2, RSA4);
- d. hindrance of use of the premises (Ecclesiastical1.1-1.2, MSAm1in3, RSA2.1-2.2, RSA4);
- e. closure (RSA1) and enforced closure (RSA4) of the premises;
- f. restrictions placed on the premises (RSA1);
- g. interference to or with the business or the insured's usual activities (Ecclesiastical1.1-1.2, MSAm1in1-3, QBE1-3, RSA2-4, Zurich1-2); and/or
- h. interruption to, with and of the business or the insured's (usual) activities (Argenta1, Ecclesiastical1.1-1.2, Hiscox1-4, MSAm1in1-3, QBE1-3, RSA2-4, Zurich1-2).

12) Further or alternatively, where a business in Categories 1, 2, 4, 6 and 7 was ordered on 20, 21, 23, 24 and/or 26 March to close the premises or cease the business, or only to provide a take-away/mail order/online business (and save where the business was not prior to the COVID-19 outbreak already a wholly take-away/mail order/online business), and did so, there was/were in all cases for which access to or use of the premises by the owners/employees/customers was material to the trading of the business (and even where a Category 6 or 7 business was permitted to and did provide

a very limited range of services as set out in regulations 5(4) and 5(6) of the 26 March Regulations) each of the following:

- a. prevention of access to the premises (Arch1, Ecclesiastical1.1-1.2, MSAm1in1, MSAm1in3, RSA2.1-2.2, RSA4, Zurich1-2) and denial of access to the premises (Hiscox1-2, Hiscox4, MSAm1in2);
- b. prevention of use of the premises (Ecclesiastical1.1-1.2, MSAm1in3, RSA2.1-2.2, RSA4), and inability to use the insured premises (Hiscox1-4);
- c. hindrance in access to the premises (Ecclesiastical1.1-1.2, Hiscox1-2, Hiscox4, MSAm1in2-3, RSA2.1-2.2, RSA4);
- d. hindrance of use of the premises (Ecclesiastical1.1-1.2, MSAm1in3, RSA2.1-2.2, RSA4);
- e. closure (RSA1) and enforced closure (RSA4) of the premises;
- f. restrictions placed on the premises (RSA1);
- g. interference to or with the business or the insured's usual activities (Ecclesiastical1.1-1.2, MSAm1in1-3, QBE1-3, RSA2-4, Zurich1-2); and
- h. interruption to, with and of the business or the insured's (usual) activities (Argenta1, Ecclesiastical1.1-1.2, Hiscox1-4, MSAm1in1-3, QBE1-3, RSA2-4, Zurich1-2).

13) Further, from 16 March 2020, given the Government requirements including to cease travel and self-isolate, alternatively from 24 March 2020, there was (if not earlier) for all Category 6 businesses:

- a. interruption (Argenta1); and

- b. closure or restrictions placed on the premises as a result of COVID-19 manifesting itself within 25 miles (RSA1), providing the disease had manifested within 25 miles.

#### *Exclusions*

14) The following exclusions are inapplicable to claims under the Wording clauses tested in this claim:

- a. The pollution and/or contamination exclusion in RSA3; and
- b. The competent local authority exclusion in Ecclesiastical1.1-1.2.

#### *Causation and trends clauses*

15) The COVID-19 and public authority occurrences that trigger cover in the Wordings are all proximate causes of the resulting loss and all the causal relation wordings ('resulting from', 'as a result of', 'directly resulting from', 'resulting solely and directly from', 'caused by', 'arising from', 'in consequence of', 'whereby', 'following', 'due to' etc) in the Wordings are satisfied in all cases.

16) The applicable causation tests are satisfied for all Wordings where the business interruption losses would not have been suffered had the COVID-19 pandemic and associated public authority actions not occurred.

17) The trends clauses contained in the business interruption sections of the following policies are not applicable to claims under the item(s) of additional cover or extension(s) of cover in those policies respectively, as identified in the Schedules: Ecclesiastical1.1; Hiscox1 all except 8671 (Recruitment BI and BI – OM (Jelf)); Hiscox2 – 15779, 9102, 7103 WD-CCP-UK-PVB(2); Hiscox3 - 8006 and 10272; Hiscox4 (20155); MSAm1lin1-3; QBE1-3; RSA1; RSA2.1-2 and RSA3.

- 18) Losses do not fall to be reduced under the trends clauses or otherwise by reason that but for the business closure or particular Government measures all or the majority of the losses would have been suffered anyway as a result of the broader COVID-19 pandemic, the lockdown, self-isolation, social distancing, or other national measures imposed by the Government. Alternatively, if this is wrong, in cases of disease or action required to be within the Relevant Policy Area the correct counterfactual is to assume that there is no disease or action (as applicable) within that Area but that the disease or action continued outside it, and there remains cover for losses that would not have been suffered had the Relevant Policy Area been disease/action-free, including on the counterfactual (which in some cases may increase the indemnifiable amount) that there was an ‘island’ of normal disease-free trade in a ‘sea’ of disease/public action.
- 19) The further declarations in relation to specific Wordings that are set out in the Schedules to these Particulars of Claim.

**COLIN EDELMAN QC, Devereux Chambers**

**LEIGH-ANN MULCAHY QC, Fountain Court Chambers**

**RICHARD COLEMAN QC, Fountain Court Chambers**

**RICHARD HARRISON, Devereux Chambers**

**ADAM KRAMER, 3 Verulam Buildings**

**DEBORAH HOROWITZ, Fountain Court Chambers**

**MAX EVANS, Fountain Court Chambers**

**COLIN EDELMAN QC, Devereux Chambers**

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**ADAM KRAMER, 3 Verulam Buildings**

**DEBORAH HOROWITZ, Fountain Court Chambers**

**MAX EVANS, Fountain Court Chambers**

The Claimant believes that the facts stated in this Amended Particulars of Claim are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

I am duly authorised by the Claimant to sign these Amended Particulars of Claim.

Signed:  \_\_\_\_\_

Full name: Greig Anderson

Position or office held: Partner, Herbert Smith Freehills LLP

**DATED this 3<sup>rd</sup> day of July 2020**

I am duly authorised by the Claimant to sign these Particulars of Claim.

Signed: \_\_\_\_\_

Full name: Greig Anderson

Position or office held: Partner, Herbert Smith Freehills LLP

**DATED this 10<sup>th</sup> day of June 2020**

## **SCHEDULE 1 - ARCH**

### **1. Arch type 1 of 1: “Arch1”**

This Wording is pleaded to at:

- General sections A to H
- Section J: There was an emergency likely to endanger life from at least 3 March 2020, alternatively 12 March 2020 as set out in paragraph 43
- Section K: the advice and regulations referred to above in paragraph 18 were actions or advice of a government as set out in paragraph 44.1
- Section L: there was prevention of access to the premises from 16 March 2020 as set out in paragraph 46.1, and from 20 March 2020 where closed as set out in paragraph 47.1
- Section N: Loss resulted from the prevention of access as set out in paragraph 71, the prevention of access was due to the actions or advice as set out in paragraph 63, the action or advice was due to the emergency as set out in paragraph 64, and the trends clause does not apply as set out in paragraph 75 and even if it did apply would not prevent recovery as set out in paragraphs 76 to 79

### **Particular declarations sought:**

- 1) There was action or advice of a government due to an emergency which was likely to endanger life (the COVID-19 outbreak) from 3 March 2020 given the government advice and lockdown restrictions from that date, alternatively (and only where the business was ordered on that date to close) from 20 March 2020;



- 2) There was a prevention of access to the premises due to the action or advice identified in declaration 1 from the date of that action or advice.
- 3) Any losses as insured were resulting from the prevention of access if they would not have occurred had there been no COVID-19 outbreak or interventions by the government.

<b>Policies (lead wording asterisked)</b>	*OGI Commercial Combined OGI Retailers Powerplace (Offices & Surgeries)
<b>Governing law clause of lead wording</b>	The appropriate law as set out below will apply unless You and Us agree otherwise:  1. The law applying to that part of the United Kingdom, Channel Islands or the Isle of Man in which You normally live or (if applicable) the first named Policyholder lives; or  2. In the case of a business, the law applying to that part of the United Kingdom, Channel Islands or the Isle of Man where it has its principal place of business; or  3. Should neither of the above be applicable, the law of England and Wales will apply. (p.6)
<b>Disease clause</b>	N/A
<b>Denial of access clause</b>	<b>Revenue Protection Insurance</b> <b>Business Interruption Section</b> <b>Clauses</b>  We will also indemnify You in respect of [reduction in Turnover and increase in cost of working] [loss] [loss of Income] as insured under this Section resulting from  <b>[(7)][(8)] Government or Local Authority Action</b>  Prevention of access to The Premises due to the actions or advice of a government or local authority due to an emergency which is likely to endanger life or property.  We will not indemnify You in respect of  [(1)][(a)] any incident lasting less than 12 hours  [(2)][(b)] any period other than the actual period when the access to The Premises was prevented

	<p>[(3)][(c)] a Notifiable Human Infectious or Contagious Disease as defined in the current relevant legislation occurring at The Premises</p> <p>The maximum We will pay under this Clause is £25,000, or the Business Interruption Sum Insured or limit shown in the Schedule, whichever is the lower, in respect of the total of all losses occurring during the Period of Insurance.</p> <p><u>OGI Commercial Combined</u></p> <p>The provisions of the Automatic Reinstatement Clause do not apply in respect of this Clause.</p>
<b>Definitions</b>	<p><b>Damage</b> (<u>OGI Commercial Combined</u>)</p> <p>Accidental loss or destruction of or damage to property used by You at The Premises for the purpose of The Business</p> <p><b>Damage</b> (<u>OGI Retailers, Powerplace (Offices &amp; Surgeries)</u>)</p> <p>Accidental loss, destruction or damage</p> <p><b>Notifiable Human Infectious or Contagious Disease</b></p> <p>Acute Encephalitis, Acute Poliomyelitis, Anthrax, Chickenpox, Cholera, Diphtheria, Dysentery, Legionellosis, Legionnaires Disease, Leprosy, Leptospirosis, Malaria, Measles, Meningococcal Infection, Mumps, Ophthalmia Neonatorum, Paratyphoid Fever, Plague, Rabies, Rubella, Scarlet Fever, Smallpox, Tetanus, Tuberculosis, Typhoid Fever, Viral Hepatitis, Whooping Cough or Yellow Fever</p>
<b>Exclusions</b>	See denial of access clause (above)
<b>Trends clause</b>	<p><u>OGI Commercial Combined</u></p> <p>Rate of Gross Profit and Standard Turnover may be adjusted to reflect any trends or circumstances which</p> <p>(i) affect The Business before or after the Damage</p> <p>(ii) would have affected The Business had the Damage not occurred.</p> <p>The adjusted figures will represent, as near as possible, the results which would have been achieved during the same period had the Damage not occurred</p> <p><u>OGI Retailers, Powerplace (Offices &amp; Surgeries)</u></p> <p>The figures adjusted will represent as near as possible, the figures which would have been obtained at the date of the Damage had the Damage not occurred</p>

<p><b>Example reasons for declining cover</b></p>	<p>This extension to the policy provides coverage when access to your premises is prevented, i.e. your premises are closed, by order of the government or local authority. The UK Government ordered operators of the following businesses to close from 21 March 2020: cafes, pubs, bar, restaurants, nightclubs, theatres, cinemas, gyms. The UK Government ordered other businesses to close from the end of the day on 23 March...</p> <p>Although your business will most likely have been affected by the government's social distancing advice, issued alongside the closure orders, it is not among the businesses which have been ordered to close. Access to the premises has not been prevented and, for that reason, the Government or Local Authority Action clause does not respond.</p>
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## **SCHEDULE 2 - ARGENTA**

### **1. Argenta type 1 of 1: “Argenta1”**

This Wording is pleaded to at:

- General sections A to H
- Section I: COVID-19 was a human infectious or human contagious disease an outbreak of which the competent local authority has stipulated shall be notified to them from 5 March 2020 as set out in paragraphs 36 and 37
- Section J: There was an occurrence of an illness sustained by a person resulting from COVID-19 within a radius of 25 miles of the premises when a person or persons who had contracted COVID-19 was/were within that radius of the premises as set out in paragraph 41.1 and 41.3
- Section L: there was interruption from and from 16 March 2020 as set out in paragraph 46.8, and 20 March 2020 where closed as set out in paragraph 47.8, and from 24 March 2020 as set out in paragraph 49.1
- Section N: The loss was causally linked to the interruption as set out in paragraph 71, and the interruption was as a result of the occurrence as set out in paragraph 68.1
- The trends clause does not apply as set out in paragraph 75 and even if it did apply would not prevent recovery as set out in paragraphs 76 to 79

#### **Particular declarations sought:**

- 1) There was an occurrence of an illness sustained by a person, resulting from any human infectious or human contagious disease an outbreak of which the competent local

authority has stipulated shall be notified to them, within a radius of 25 miles of the premises when a person or persons who had contracted COVID-19 was/were within that radius of the premises.

- 2) As to proof of presence within 25 miles, general declaration (7) above is repeated
- 3) There was interruption from 20 March 2020 where closed as set out in paragraph 47.8, and from 16 March 2020 as set out in paragraph 46.8, and from 24 March 2020 as set out in paragraph 49.1
- 4) Any interruption losses were as a result of the interference if they would not have occurred had there been no COVID-19 outbreak or interventions by the government.

<b>Policies (lead wording asterisked)</b>	*Guest House and B&B policy v8 12.19, v7 05.19, v6 02.19, v5 12.18. Holiday Home and Self Catering Accommodation policy v7 12.19, v6 05.19, v5 02.19, v4 12.18.
<b>Governing law clause of lead wording</b>	The laws of England and Wales shall be the law under which all disputes and/or conflicts under this insurance shall be governed and English courts shall have exclusive jurisdiction over any matter relating to this insurance (p.92)
<b>Disease clause</b>	The <b>COMPANY</b> will also indemnify the <b>INSURED</b> as provided in The Insurance of this Section for such interruption as a result of ... 4. <b>Defective Sanitation NOTIFIABLE HUMAN DISEASE Murder or Suicide</b> (a) ... (d) any occurrence of a <b>NOTIFIABLE HUMAN DISEASE</b> within a radius of 25 miles of the <b>PREMISES</b>
<b>Denial of access clause</b>	N/A
<b>Definitions</b>	<b>DAMAGE</b> Accidental loss damage or destruction <b>NOTIFIABLE HUMAN DISEASE</b> illness sustained by any person resulting from

	<p>(a) ...</p> <p>(b) any human infectious or human contagious disease an outbreak of which the competent local authority has stipulated shall be notified to them excluding Acquired Immune Deficiency Syndrome (AIDS) or an AIDS related condition.</p>
<b>Exclusions</b>	<p><b>SECTION EXCLUSIONS</b></p> <p>These apply in addition to the other Exclusions in this Section and the General Exclusions</p> <p>The <b>COMPANY</b> will not be liable for</p> <p>...</p> <p>(i) for any amount in excess of £25,000...</p> <p>(iii) for any loss arising from those <b>PREMISES</b> that are not directly affected by the occurrence discovery or accident</p> <p>...</p> <p><b>GENERAL EXCLUSIONS</b></p> <p>These apply to all Sections of the Policy and all Endorsements and Extensions unless otherwise stated</p> <p>The <b>COMPANY</b> will not be liable for</p> <p>...</p> <p><b>10. Micro-Organism Exclusion Clause</b></p> <p>This insurance does not cover any loss, damage, claim, cost, expenses or other sum directly or indirectly arising out of or relating to:</p> <p>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.</p> <p>This exclusion applies regardless whether there is (i) any physical loss or damage to insured property; (ii) any insured peril or cause, whether or not contributing concurrently or in any sequence; (iii) any loss of use; occupancy; or functionality; or (iv) any action required, including but not limited to repair, replacement, removal, cleanup, abatement, disposal, relocation, or steps taken to address medical or legal concerns</p>
<b>Trends clause</b>	<p><u>Guest House and B&amp;B policy v8 1219, v7 05.19, v6 02.19, v5 12.18</u></p> <p><b>BASIS OF SETTLEMENT</b></p> <p>The <b>COMPANY</b> will pay as indemnity the amount of the loss sustained by the <b>INSURED</b> as follows</p> <p>A) In respect of the reduction in <b>GROSS INCOME</b></p> <p>the amount by which the <b>GROSS INCOME</b> during the <b>INDEMNITY PERIOD</b> falls short of the <b>STANDARD GROSS INCOME</b> due to the <b>DAMAGE</b></p> <p>...</p> <p><b>STANDARD GROSS INCOME</b></p>

the **GROSS INCOME** during that period in the twelve months immediately before the date of the **DAMAGE** which corresponds with the **INDEMNITY PERIOD** to which such adjustments will be made as necessary to take account of the trend of the **BUSINESS** and of the variations in or other circumstances affecting the **BUSINESS** either before or after the **DAMAGE** or which would have affected the **BUSINESS** had the **DAMAGE** not occurred so that the figures thus adjusted will represent as nearly as may be practicable the results which but for the **DAMAGE** would have been obtained during the relative period after the **DAMAGE**

Holiday Home and Self Catering Accommodation policy v7 12.19, v6 05.19, v5 02.19, v4 12.18.

## **BUSINESS INTERRUPTION INSURANCE SECTION**

### **BASIS OF SETTLEMENT**

The **COMPANY** will pay as indemnity the amount of the loss sustained by the **INSURED** as follows

#### **A) In respect of the reduction in ACCOMMODATION CHARGES**

the amount by which the **ACCOMMODATION CHARGES** during the **INDEMNITY PERIOD** falls short of the **STANDARD ACCOMMODATION CHARGES** in consequence of the **DAMAGE**

### **ACCOMMODATION CHARGES**

the money paid or payable to the **INSURED** in the course of the **BUSINESS** less the net cost of consumable goods.

### **STANDARD ACCOMMODATION CHARGES**

the **ACCOMMODATION CHARGES** during that period in the twelve months immediately before the date of the **DAMAGE** which corresponds with the **INDEMNITY PERIOD** to which such adjustments will be made as necessary to take account of the trend of the **BUSINESS** and of the variations in or other circumstances affecting the **BUSINESS** either before or after the **DAMAGE** or which would have affected the **BUSINESS** had the **DAMAGE** not occurred so that the figures thus adjusted will represent as nearly as may be practicable the results which but for the **DAMAGE** would have been obtained during the relative period after the **DAMAGE**

**Example reasons  
for declining cover**

Guest House and B&B policy

The extension restricts cover to losses resulting from an occurrence in a defined locality. It does this by stating that interruption must be “a result of ... any occurrence of a Notifiable Human Disease within a radius of 25 miles of the Premises”.

These terms are used to explain that the specific occurrence of the Notifiable Human Disease must be local and must be the cause of your loss. The use of these terms is intentional and differentiates between the cover given in respect of a local event and any broader event or effect, such as a Government enforced nationwide closure of non-essential businesses, travel restrictions and “stay at home” orders.

As you will be aware, as a result of the Covid-19 outbreak, initial measures taken by the Government to try and prevent the spread of the virus were to ask schools and non-essential businesses, such as pubs, restaurants, non-food shops etc, to close, for people to work from home, where possible, and for people to stay at home and not go out, unless for very specific reasons.

We note that you have been instructed to close your premises following the announcement from the Government relating to social distancing/gatherings and travel. To establish whether there is a valid loss under your policy we need to consider whether any financial loss, as covered by the policy, has been sustained as a result of this closure, i.e. what loss would you have suffered had your premises not been ordered to close, and is your loss therefore greater as a result of the closure?

It appears to be the case that whether or not your premises had to shut due to the closure notice, the business would have suffered the loss that is now occurring in any event.

We say this because all the customers that would have previously visited the premises have been told to avoid such activity, and that regrettably had your premises not been forced to close you would find yourself in the same position, with no custom.

Holiday Home and Self Catering Accommodation policy

... the insurance policy you have in force provides a limited extension to cover, to reflect losses arising as a consequence of any occurrence of a notifiable human disease within a radius of 25 miles of the premises. Obviously there has been a widespread and general reduction in trade as a consequence of the outbreak of Coronavirus throughout the country, and the Government measures put in place to try and prevent the spread of the virus. There is no cover available under the policy for those losses which have been caused by the nationwide spread of Coronavirus and the Government action taken to prevent its spread. What you will need to establish, in order to qualify for any benefit under the cover available, is what additional losses occurred as a consequence of the local outbreak only? I am not clear at this stage whether, and if so to what extent, you have suffered any loss as a result of the localised case rather than losses incurred as a result of the nationwide outbreak and Government imposed restrictions and emergency measures put in place to try and prevent the



	spread of the virus. Could you please advise whether you believe you are in a position to evidence any loss occurring from the localised case only, and if so let me know how...
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### **SCHEDULE 3 - ECCLESIASTICAL**

#### **1. Ecclesiastical types 1.1 and 1.2: “Ecclesiastical1.1” and “Ecclesiastical1.2”**

This Wording is pleaded to at:

- General sections A to H
- Section J: There was an emergency which could endanger life from at least 3 March 2020, alternatively 12 March 2020 as set out in paragraph 43
- Section K: the advice and regulations referred to above in paragraph 18 were action of government as set out in paragraph 44.1; they were not of themselves orders or advice of a competent local authority as set out in paragraph 44.5 and 51
- Section L: there was interruption of or interference with the business, and access to or use of the premises was prevented or hindered, from 16 March 2020 as set out in paragraph 46, and from 20 March 2020 where closed as set out in paragraph 47
- Section M: there was no order or advice of a competent local authority within the relevant exclusion as set out in paragraph 51.
- Section N: Loss resulted from (in the case of Ecclesiastical1.1) and directly resulted from (in the case of Ecclesiastical1.2) the interruption or interference as set out in paragraph 71, the interruption or interference was as a result of (in the case of Ecclesiastical1.1) and in consequence of (in the case of Ecclesiastical1.2) the action as set out in paragraph 62, the action was due to the emergency as set out in paragraph 64, the access to or use of the premises was prevented or hindered by the action as set out in paragraph 63, and the trends clause does not apply as set out in paragraph 75 and even if it did apply would not prevent recovery as set out in paragraphs 76 to 79

Particular declarations sought:

- 1) There was action of government due to an emergency which could endanger human life (the COVID-19 outbreak) from 3 March 2020 given the government advice and lockdown restrictions from that date, alternatively (and only where the business was ordered on that date to close) from 20 March 2020;
- 2) The access or use of the premises was prevented or hindered by the action identified in declaration 1, and there was interruption of or interference with the business, from the date of that action or advice;
- 3) The competent local authority exclusion is not applicable;
- 4) The trends clause is not applicable to claims under the item(s) of additional cover or extension(s) of cover in Ecclesiastical1.1; and
- 5) Any losses as insured were resulting from or directly resulting from the interruption or interference, which was a result of or in consequence of the action identified in declaration 1, which was due to the emergency identified in declaration 1, if the losses would not have occurred had there been no COVID-19 outbreak or interventions by the government.

<b>Policies (lead wording asterisked)</b>	<u>Ecclesiastical1.1</u> PD3258 (ME871) Heritage Business and Leisure Education (ME794) Education (ME868) ME866 Charity and Community ME867 Faith and Community ME869 Care PD3259 (ME872) Heritage Arts and Culture *ME857 Parish Plus
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	<p>ME858 Parishguard</p> <p>PD2513 Pound Gates Nursery</p> <p><u>Ecclesiastical1.2</u></p> <p>*ME886 Nurseries</p> <p>MGM602 Marsh School and College</p>
<b>Governing law clause of lead wording</b>	<p>This policy (other than the Legal expenses section) shall be governed by and construed in accordance with the law of England and Wales unless the <b><i>Insured's</i></b> habitual residence (in the case of an individual) or central administration and/or place of establishment is located in Scotland in which case the law of Scotland shall apply (p.14, ME857 Parish Plus; p.13, ME886 Nurseries)</p>
<b>Disease clause</b>	N/A
<b>Denial of access clause: Type 1.1</b>	<p>[The insurance [cover] [provided] by this section] [This section] is extended to cover loss resulting from interruption of or interference with [the <b><i>business</i></b> carried on by <b><i>you</i></b> at the <b><i>premises</i></b>] [your usual activities] as a result of the following</p> <p>...</p> <p><b>Prevention of access [– Non-damage]</b></p> <p>Access to or use of the <b><i>premises</i></b> being prevented or hindered by...</p> <p>[(a)][(b)] any action of [government police or a local authority][Government Police or Local Authority] due to an emergency which could endanger human life or neighbouring property...</p> <p>Excluding</p> <p>[(i)/(ii)] [...] any restriction of use of less than [4] [four] hours</p> <p>[(ii)/(iii)] any period when access to the <b><i>premises</i></b> was not prevented or hindered</p> <p>[(iii)/(iv)] closure or restriction in the use of the <b><i>premises</i></b> due to the order or advice of the competent local authority as a result of an occurrence of an infectious disease (or the discovery of an organism resulting in or likely to result in the occurrence of an infectious disease) food poisoning defective drains or other sanitary arrangements</p> <p>[(iv)/(v)] ...</p> <p><u>Education (ME794), Education (ME868), ME866 Charity and Community, ME867 Faith and Community, ME857 Parish Plus</u></p> <p>Limit [in respect of (a) and (b)] £10,000 any one period of insurance</p>

	<p><u>PD2513 Pound Gates Nursery</u></p> <p>Limit £20,000 any one period of insurance</p> <p><u>ME871 Heritage Business and Leisure, ME872 Heritage Arts and Culture</u></p> <p>Limit £100,000 in the aggregate for all claims in any one period of insurance for (a)</p> <p><u>ME869 Care</u></p> <p><b>Our</b> liability for any one occurrence shall not exceed the sum insured by the items or any limit of liability shown in the schedule</p> <p><u>ME858 Parishguard</u></p> <p>The maximum <b>we</b> will pay for any one event under this section of the policy is the limit of indemnity shown in the schedule.</p>
<p><b>Denial of access clause: Type 1.2</b></p>	<p>The insurance by this section is extended to cover loss as insured hereunder directly resulting from interruption of or interference with the <b>business</b> carried on by <b>you</b> at the <b>premises</b> in consequence of the following...</p> <p><b>1 Prevention of access</b></p> <p>Access to or use of the <b>premises</b> being prevented or hindered by</p> <p>(a) ...</p> <p>(b) any action of Government Police or Local Authority due to an emergency which could endanger human life or neighbouring property</p> <p>Excluding</p> <p>(i) any restriction of use of less than four hours</p> <p>(ii) any period when access to the <b>premises</b> was not prevented or hindered</p> <p>(iii) closure or restriction in the use of the <b>premises</b> due to the order or advice of the competent local authority as a result of an occurrence of an infectious disease (or the discovery of an organism resulting in or likely to result in the occurrence of an infectious disease) food poisoning defective drains or other sanitary arrangements or vermin or pests</p> <p><u>ME886 Nurseries</u></p> <p>Provided that <b>our</b> liability in respect of any one occurrence shall not exceed the sum insured by the items or any limit of liability shown in the schedule</p> <p><u>MGM602 Marsh School and College policy</u></p> <p>Provided that <b>our</b> liability in respect of any one occurrence shall not exceed £25,000 in respect of (c) and the sum insured by the items or any limit of liability shown in the schedule in respect of (a) or (b)</p>

Definitions	<p><u>ME869 Care, ME858 Parishguard</u></p> <p><b>Damage</b> means destruction or damage caused by any of the insured events</p> <p><u>ME857 Parish Plus</u></p> <p><b>Damage</b> means destruction or damage</p> <p><u>MGM602 Marsh School and College</u></p> <p><b>Damage</b></p> <p>unless stated otherwise in the schedule destruction or damage by any cause not specifically excluded under the Property damage section</p> <p><u>ME886 Nurseries</u></p> <p><b>Damage</b></p> <p>means as defined under ‘Cover’ of this section</p> <p>...</p> <p><b>Cover</b></p> <p>If any building or other property used by <i>you</i> at the <i>premises</i> specified in the schedule for the purpose of the <i>business</i> is destroyed or damaged during the period of insurance by any of the <i>insured events</i> (destruction or damage so caused being termed <i>damage</i>)</p> <p><u>Remaining policies</u></p> <p><b>Damage</b> means unless stated otherwise in the schedule destruction or damage by any cause not specifically excluded under the Property damage section</p>
Exclusions	See denial of access clauses (above).
Trends clause	<p><u>All save ME886 Nurseries, ME857 Parish Plus, ME858 Parishguard</u></p> <p><b>Adjusted</b></p> <p>means adjusted as necessary to provide for the trend of the <i>business</i> and any other circumstance[s] affecting the <i>business</i> either before or after the <i>damage</i> or which would have affected the <i>business</i> had the <i>damage</i> not occurred so that the adjusted figures represent as near as possible the results which would have been obtained during the relative period after the <i>damage</i> had the <i>damage</i> not occurred</p> <p><u>ME886 Nurseries</u></p> <p>[Annual Revenue] [Standard Revenue]</p> <p>...to which such adjustments shall be made as may be necessary to provide for the trend of the <i>business</i> and for variations in or other circumstances affecting the <i>business</i> either before or after the <i>damage</i> or which would have affected the <i>business</i> had the <i>damage</i> not occurred so that the</p>

	<p>figures thus adjusted shall represent as nearly as may be reasonably practicable the results which but for the <b>damage</b> would have been obtained during the relative period after the <b>damage</b></p> <p><u>ME869 Care, ME857 Parish Plus, ME858 Parishguard</u></p> <p><b>1. Loss of income</b></p> <p><b>We</b> will pay the difference between the <b>income you</b> would have received during the <b>indemnity period</b> if there had been no <b>damage</b> and the <b>income you</b> actually received during that period.</p> <p><b>We</b> will take the following into account in calculating the payment:</p> <p>(a) Any savings during the <b>indemnity period</b> from expenses payable out of <b>income</b> which stop or are reduced as a result of the <b>damage</b>;</p> <p>(b) Any <b>income you</b> earn from conducting <b>your</b> activities elsewhere during the <b>indemnity period</b>.</p>
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<p><b>Example reasons for declining cover</b></p>	<p>The cover available to you under the policy includes an Extension to the Business Interruption section for losses due to the prevention of access to insured premises. However, despite this, the losses in this case are due to an excluded cause, that being the decision of Government to take certain measures to seek to control the spread of the pandemic. This action is not an event which is insured under your policy.</p> <p>Whilst, therefore, there is cover for prevention of access there is an express exclusion as follows:</p> <p>“...closure or restriction in the use of the premises due to the order or advice of the competent local authority as a result of an occurrence of an infectious disease”</p> <p>Therefore, our non-damage prevention of access extension excludes business interruption losses due to prevention of access caused by the occurrence of an infectious disease, where the closure is on the order or advice of the competent local authority. This includes action taken by central government. Unfortunately, for this reason your claim is not covered under the policy</p> <p>We do provide businesses with cover for established infectious diseases whose impact is assessable (known as Specified Disease Cover). These diseases are set out in the policy and only those listed are covered: COVID-19 is not included on the list of diseases covered by this insurance. This is because, in common with most of the market, our insurance policies are not designed and priced to cover pandemics. A key principle of insurance is that the losses of the few are paid by the many. In a pandemic situation the losses are many and the market is not designed to cover such scenarios...</p> <p><u>See also:</u></p> <p>You suggest “competent local authority” should be limited to a narrow, or institutional, meaning: a body with a range of functions but geographically limited jurisdiction (for example, a local council). It actually means the authority competent to secure a restriction or closure at a local level, regardless of jurisdiction and without geographical constraints. It is not limited to local government but applies equally to central government and others [...] who may exercise the powers which actually prevent or hinder access to the premises...</p>
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## **SCHEDULE 4 - HISCOX**

### **1. Hiscox type 1 of 4: “Hiscox1”**

This Wording is pleaded to at:

- General sections A to H.
- Section I: There was an occurrence of a human infectious or human contagious disease an outbreak of which must be notified to the local authority from 5 March 2020 as set out in paragraphs 36 to 38.
- Section J: There was an incident within a one mile radius of the insured premises from 3 March 2020, alternatively 12 March 2020 as set out in paragraph 43, alternatively when a person or persons who had contracted COVID-19 was/were within that radius of the premises as set out in paragraph 43.
- Section K: the advice and regulations referred to above in paragraph 18 were imposed by, and restrictions imposed by, government, a public authority, civil authority and statutory authority as set out in paragraph 44.
- Section L: there was (i) interruption to business activities, (ii) inability to use the premises, and (iii) denial of access or hindrance in access to the premises, from 16 March 2020 as set out in paragraph 46, alternatively (and only where the business was ordered to close) from 20 March 2020 as set out in paragraph 47.
- Section N: The losses resulted solely and directly from the interruption to the business or activities as set out in paragraph 71.1 and 72, the interruption was caused by the inability to use the premises as set out in paragraph 62 and the incident as set out in paragraph 62, the inability to use the premises was due to the restrictions as set out in paragraph 66, the restrictions were following the

occurrence of COVID-19 as set out in paragraph 66, the denial of access or hindrance in access resulted from the incident as set out in paragraph 65, and the trends clause does not apply as set out in paragraph 75 and even if it did apply would not prevent recovery as set out in paragraphs 76 to 79.

Particular declarations sought:

- 1) There were restrictions imposed by a public authority following the occurrence of a human infectious or human contagious disease, an outbreak of which must be notified to the local authority (the COVID-19 outbreak) from 3 March 2020 given the government advice and lockdown restrictions from that date, alternatively (and only where the business was ordered on that date to close) from 20 March 2020;
- 2) There was inability to use the premises due to the restrictions identified in declaration 1, and interruption to activities, from the date of those restrictions;
- 3) There was an incident within a one mile radius which resulted in a denial of access or hindrance in access to the premises imposed by a civil authority and statutory authority and by order of the government and a public authority from 16 March 2020, alternatively 12 March 2020, alternatively (and only where the business was ordered on that date to close) from 20 March 2020;
- 4) As to proof of presence within one mile, general declaration (7) above is repeated;
- 5) The trends clause is not applicable to claims under the item(s) of additional cover or extension(s) of cover in Hiscox1 (all except 8671 Recruitment BI and BI – OM (Jelf));  
and
- 6) Any losses as insured resulted solely and directly from the interruption, the interruption was caused by the inability to use the premises and the incident, the inability to use the

premises were due to the restrictions, the restrictions were following the occurrence of COVID-19, and the denial of access or hindrance in access resulted from the incident, if they would not have occurred had there been no COVID-19 outbreak or interventions by the government.

<b>Policies (lead wording asterisked)</b>	<p>Professions BI - 16089 WD-PROF-UK-PYI(3)</p> <p>*Retail BI - 16105 WD-RET-UK-PYI</p> <p>Venues BI - 16110 WD-VEN-UK-PYI</p> <p>Technology BI - 16101 WD-TEC-UK-PYI</p> <p>Not for Profit BI - 16097 WD-NFP-UK-PYI</p> <p>Recruitment BI - 8671 WD-HSP-UK-JMBI, BI - OM (Jelf) - 8671 WD-HSP-UK-JMBI (3) (which are identical)</p> <p>Recruitment BI - 16216 WD-REC-UK-PYI</p> <p>Trades BI - 16107 WD-TRAD-UK-PYI</p>
<b>Governing law clause of lead wording</b>	<p>Unless some other law is agreed in writing, this <b>policy</b> will be governed by the laws of England. (15661 WD-PIP-UK-GTCA(2), p4)</p>
<b>Disease clause</b>	<p><b>We</b> will insure <b>you</b> for <b>your</b> financial losses and other items specified in the schedule, resulting solely and directly from an interruption to <b>your activities</b> caused by:</p> <p>...</p> <p><b>Public authority</b></p> <p>[11.][12.][13.] <b>your</b> inability to use the <b>insured premises</b> due to restrictions imposed by a public authority during the <b>period of insurance</b> following...</p> <p>b. an occurrence of any human infectious or human contagious disease, an outbreak of which must be notified to the local authority</p>
<b>Denial of access clause</b>	<p><b>We</b> will insure <b>you</b> for <b>your</b> financial losses and other items specified in the schedule, resulting solely and directly from an interruption to <b>your activities</b> caused by:</p> <p><b>Non-damage denial of access</b></p> <p>3. an incident occurring during the <b>period of insurance</b> within a one mile radius of the <b>insured premises</b> which results in a denial of access or hindrance in access to the <b>insured premises</b>, imposed by any civil or statutory authority or by order of the government or any public authority, for more than 24 consecutive hours;</p>

<b>Definitions</b>	<p><b>Insured damage</b><sup>14</sup></p> <p><b>Damage</b>[, other than <b>failure</b>,]<sup>15</sup> to <b>property</b> occurring during the <b>period of insurance</b> provided that:</p> <ol style="list-style-type: none"> <li>1. the <b>damage</b> is not otherwise excluded by the buildings, contents or other property section of this <b>policy</b>; and</li> <li>2. payment has been made or liability admitted by the insurer under any insurance covering such <b>damage</b>.</li> </ol>
<b>Exclusions</b>	N/A
<b>Trends clause</b>	<p><u>All except Recruitment BI - 8671 WD-HSP-UK-JMBI and BI - OM (Jelf) - 8671 WD-HSP-UK-JMBI(3)</u></p> <p>Provided that <b>you</b> advise <b>us</b> of <b>your</b> estimated annual <b>income</b>, or estimated annual <b>[fees][gross profit]</b> if applicable, at the beginning of each <b>period of insurance</b>, the <b>amount insured</b> will automatically be increased to reflect any special circumstances or <b>[business]</b> trends affecting <b>your activities</b>, either before or after the loss. The amount that <b>we</b> will pay will reflect as near as possible the result that would have been achieved if the <b>insured damage</b> had not occurred.</p> <p><b>Your</b> schedule will show if business trends cover applies and the additional percentage amount.</p> <p><u>Recruitment BI - 8671 WD-HSP-UK-JMBI and BI - OM (Jelf) - 8671 WD-HSP-UK-JMBI(3) only</u></p> <p>For <b>your</b> loss of <b>income</b> or loss of <b>fees</b>, the <b>amount insured</b> will be automatically increased by 33% to reflect any special circumstances or business trends affecting <b>your activities</b>, either before or after the loss. The amount that <b>we</b> will pay will reflect as near as possible the result that would have been achieved if the <b>damage</b>, restriction, failure or <b>cyber attack</b> had not occurred.</p>

<sup>14</sup> Where this term is not defined in the relevant BI wording, the definition is typically found in the Property Definitions section of the wording to which the relevant BI wording is appended.

<sup>15</sup> This wording is omitted for the definition of Insured damage as used in the Recruitment BI - 8671 WD-HSP-UK-JMBI and BI - OM (Jelf) - 8671 WD-HSP-UK-JMBI(3) wordings.

<p><b>Example reasons for declining cover</b></p>	<p><u>Declinature letter 1:</u></p> <p><b><u>Non-Damage Denial of Access Clause</u></b></p> <p>[...]</p> <p>Hiscox would cover a claim under this section where it can be shown that:-</p> <ul style="list-style-type: none"> <li>a. Your activities have been interrupted;</li> <li>b. The interruption was the result of an “incident”: <ul style="list-style-type: none"> <li>i. that “occurred” during the policy term within a one mile radius of the Insured Property;</li> <li>ii. that resulted in a “denial or hindrance in access” to the Insured Property “imposed by” any public authority.</li> </ul> </li> <li>c. The financial losses have been caused “solely and directly” by an interruption of this kind i.e. there are not other causes responsible for the losses.</li> </ul> <p><b>Why does this clause not apply to your circumstances?</b></p> <p>Having carefully considered all of the requirements outlined above for a claim under the Non-Damage Denial of Access Clause and the circumstances of your claim, my view is that this Clause does not respond to the circumstances of your claim for the following reasons:</p> <ul style="list-style-type: none"> <li>i. I understand that your business has continued to trade. An important requirement for cover is that the business activities are interrupted – i.e. they have had to stop - as a result of the relevant denial or hindrance in access. This requirement of cover is therefore not met.</li> <li>ii. A public authority has not denied you access or hindered your access to the Insured Property. Whilst the Government has ordered the general closure of many businesses across the UK to reduce the spread of Coronavirus, your business and the type of service it offers was not included within the list of businesses that are subject to a legally enforceable order to close. This means that you can still access the Insured Property. For a full list of those businesses that were ordered to close by the Government please see <a href="#">[link]</a>.</li> <li>iii. Please also see the following link to this Government guidance: <a href="#">[link]</a>. On this page, the Government states: “With the exception of some non-essential shops and public venues, we are not asking any other businesses to close – indeed it is important for business to carry on”.</li> <li>iv. Even if your business had been included within the list of those that the Government has ordered to close, this clause would not offer cover for your claim because it is concerned with a specific ‘incident’ which occurs within a 1-mile radius of the Insured Property that creates a physical denial or hindrance in access to the Insured Property. For example, the cover would apply if there was a gas leak within a 1-mile radius which caused the Police or a public authority to cordon off the roads and pathways which meant that the Insured Property could not be accessed and your business could not operate.</li> <li>v. Further an interruption that meets each of the above requirements must also be the ‘sole and direct’ cause of your loss. From what I understand</li> </ul>
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about your business activities and the circumstances of your claim, it seems that your losses have arisen from different causes impacting on your business which are not as a result of a specific denial or hindrance of access to the Insured Premises. These other causes appear to include the separate government restrictions on the movement of people; the dramatic fall in economic activity; and the loss of confidence generally which have impacted many, many businesses. Therefore, even if the requirements identified above could be met (your business had been subject to a legally enforceable order by Government/public authority not to access the Insured Property and this was imposed due to a local incident) your financial losses have arisen from more than one cause. The fact of such other causes also means that the policy does not respond to your claim because to be covered, losses must arise 'solely and directly' from the matters listed in the clause.

For these reasons, I consider that this part of the policy does not respond to your claim.

#### **Public Authority Restriction Clause**

...

Unlike the Non-Damage Denial of Access Clause, the cover offered by this Clause focuses on your "use" of the Insured Property rather than "access" to the Insured Property. Hiscox would cover a claim under this section where it can be shown that:

- a. Your activities have been interrupted;
- b. That interruption was the result of:
  - i. An "inability to use the premises";
  - ii. As a result of a restriction "imposed by" a public authority; and
  - iii. The relevant restriction was imposed following "an occurrence of a contagious human disease, an outbreak of which must be notified to the local authority";
- c. The financial losses have been caused "solely and directly" by an interruption of this kind i.e. there are not other causes responsible for the losses.

#### **Why does this clause not apply to your circumstances?**

Having carefully considered all of the requirements outlined above for a claim under the Public Authority Restriction Clause and the circumstances of your claim, I am of the view that this Clause does not respond to the circumstances of your claim for the following reasons:

- i. As explained above, I understand that your business has continued to trade. An important requirement for cover is that the business activities are interrupted – i.e. they have had to stop - as a result of the relevant restriction in use. This requirement of cover is therefore not met.
- ii. For the Public Authority Restriction Clause to respond, it is a requirement that the relevant restriction causes you to be unable to use the Insured Property. I understand that the Insured Property is capable of being used because it is not subject to a public authority restriction (see the relevant web page on the Government's website quoted above).

iii. As I explained above, the relevant public authority restriction in use must be one that has been “imposed”, which means that it must have the force of law. Mere requests, guidance or advice, however authoritative its source, are insufficient. Whilst, the Government has ordered the general closure of many businesses across the UK to reduce the spread of Coronavirus, businesses like yours were not included within the list of businesses that are subject to a legally enforceable order to close.

iv. The “occurrence” of a contagious disease that results in a restriction being imposed, must be one that is specific to you or the Insured Property/its locality. The Public Authority Restriction Clause is only triggered following the specific issues identified in the clause, (a murder, an occurrence of a contagious disease that must be notified to the local authority, food poisoning, problems with the drains or vermin) all of which must happen either in the vicinity of or at the insured premises. In particular, because of the local nature of the incidents specified in the clause, the cover does not extend to circumstances where the restriction has been imposed in response to a national or international pandemic.

v. Further an interruption that meets each of the above requirements must also be the ‘sole and direct’ cause of your loss. From what I understand about your business activities and the circumstances of your claim, it seems that your losses have arisen from different causes impacting on your business which are not as a result of a specific denial or hindrance of access to the Insured Premises. These other causes appear to include the separate government restrictions on the movement of people; the dramatic fall in economic activity; and the loss of confidence generally which have impacted many, many businesses. Therefore, even if the requirements identified above could be met (your business had been subject to a legally enforceable order by Government/public authority not to use the Insured Property and this was imposed due to a local incident) your financial losses have arisen from more than one cause. The fact of such other causes also means that the policy does not respond to your claim because to be covered, losses must arise ‘solely and directly’ from the matters listed in the clause.

For these reasons, I consider that this part of the policy does not respond to your claim.

#### **How is loss calculated under the Policy?**

For the sake of completeness, I have also considered as part of my assessment of your complaint those sections of the policy that explain how any covered losses arising from the claim would be calculated (but for the reasons set out above we do not consider that any covered losses have arisen). Such calculations would take into account savings that have been made or were available (such as furloughing of staff and other Government support). [...]

In essence, the Business Trends Clause looks to put you in the position you would have been in had the insured restriction (where you are unable to access and/or use the Insured Property) not happened. Even if you could demonstrate that the requirements for cover referred to above were met, the amount you would have earned, would have been affected by the general Government actions aimed at addressing the pandemic. The restrictions placed on the movement of people and the impact Covid-19

	<p>has had on economic activity and confidence generally would all have impacted your ability to trade. These are relevant considerations in assessing any covered loss as they are relevant special circumstances and/or business trends that are to be taken into account in assessing any payment under the policy.</p> <p>For the reasons explained above, I remain of the view that your claim is one that is not covered by the terms of the Policy....”</p> <p><u>Declinature letter 2:</u></p> <p><b><u>The requirements of Clause 3 - Non-Damage Denial of Access</u></b></p> <p>3 So far as is relevant to your claim under Clause 3, cover is only provided under this section of the Policy where:</p> <ul style="list-style-type: none"> <li>a. The activities of the insured have been interrupted;</li> <li>b. That interruption was the result of: <ul style="list-style-type: none"> <li>i. An incident that occurred within a one mile radius of the insured premises;</li> </ul> </li> <li>and</li> <li>ii. That incident resulted in a denial or hindrance of access being imposed by any civil or statutory authority for more than 24 hours;</li> <li>c. Financial losses have been caused “solely and directly” by an interruption of this kind.</li> </ul> <p>4 A number of points arise from these requirements.</p> <p><b>Interruption</b></p> <p>5 Firstly, an insured must be able to show that its activities have been interrupted, rather than rendered less productive/profitable or adversely affected in some other way that falls short of “interruption”.</p> <p><b>Incident occurring locally</b></p> <p>6 Secondly, an insured must show that access to its premises was prevented or at least hindered by action taken by a public authority that was caused by a local incident that took place within a one mile radius of the insured premises. That the Policy envisages an action by an authority in response to a local matter is made clear by both the one mile radius requirement and the use of the word “incident”, which even without the additional qualification of a one mile radius would only be consistent with an event of limited geographical scope and duration.</p> <p><b>Imposed by force of law</b></p> <p>7 Thirdly, the relevant public authority restriction must be one that has been “imposed” on the insured, i.e. has force of law. Mere requests, guidance or advice, however forcefully given and however authoritative its source, is insufficient.</p> <p><b>The cover provided by Clause 3</b></p> <p>8 It appears you may accept that at no time prior to the government action embodied in The Health Protection (Coronavirus, Restrictions)</p>
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	<p>Regulations (Northern Ireland) 2020 (which came into operation on 28 March 2020) could it be said that there was an interruption to your business as a result of anything imposed by force of law. However, you say that this national legislation was the result of an incident within a one mile radius of your premises in [Northern Ireland].</p> <p>9 Hiscox does not accept that your contention is correct. Rather, it is clear that [the business] cannot claim under Clause 3 of the Policy. The action taken, across the UK not just in Northern Ireland, was not the result of a local incident within a one mile radius of the insured premises that required a public authority to prevent or hinder access for a limited period of time (the paradigm case where cover would be provided under this section).</p> <p>10 You have suggested that the Policy wording does not expressly say that the relevant incident in the Clause 3 needs to be limited to a one-mile radius. Hiscox does not accept that such an express stipulation was necessary or causes any lack of clarity: the requirement for the relevant incident to be purely local to the insured premises is self evident from the clear wording used. Further and in any event, the action taken by the government was quite clearly in response to, and to combat, a grave international emergency of an ongoing nature that cannot be accurately described as an “incident occurring...within a one mile” of [the business] premises in [Northern Ireland].</p> <p><b>The requirements of Clause 13(b) - Public Authority Restriction</b></p> <p>11 So far as is relevant to your claim under this clause of the Policy, cover is only provided where:</p> <ul style="list-style-type: none"> <li>a. The activities of the insured have been interrupted;</li> <li>b. That interruption was the result of: <ul style="list-style-type: none"> <li>i. An “inability to use the insured premises”;</li> <li>ii. As a result of a restriction “imposed by” a public authority; and</li> <li>iii. The relevant restriction was imposed following “an occurrence of any human infectious or human contagious disease, an outbreak of which must be notified to the local authority”;</li> </ul> </li> <li>c. The financial losses have been caused “solely and directly” by an interruption of this kind.</li> </ul> <p>12 Again, a number of points arise from these requirements:</p> <p><b>Interruption</b></p> <p>13 Firstly, again, an insured must be able to show that its activities have been ‘interrupted’.</p> <p><b>Unable to use</b></p> <p>14 Secondly, it is essential that the public authority relevant restriction renders an insured unable to use its premises. This is to be distinguished from an event that prevents or hinders access to the insured premises (on which we comment above).</p> <p><b>Imposed</b></p> <p>15 Thirdly, again, the relevant public authority restriction must be one that has been “imposed” on the insured. Mere requests, guidance or advice,</p>
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however forcefully given and however authoritative its source, is insufficient.

### **Locality**

16 Finally, and directly relevant to the points you have raised, cover is only provided where financial loss has been caused “solely and directly” by an interruption in the insured’s business because it is unable to use the insured premises as a result of a restriction imposed by a public authority following “an occurrence of any human infectious or human contagious disease, an outbreak of which must be notified to the local authority”.

17 Two points arise from these aspects of the wording, which in our view make clear that [the business] are not entitled to an indemnity. The first arises from the interpretation of the scope of the cover provided by Clause 13(b) as a result of the words: “restriction ... following ... an occurrence of a human infectious or human contagious disease”. The second arises from the fact that the wording makes clear that any loss must have been caused “solely and directly” by the restriction rendering an insured unable to use its premises. That no cover will be available is also apparent from a consideration of the Business Trends clause (see below).

### **The cover provided by Clause 13(b)**

18 As a preliminary point, on the basis of what you have set out so far and our limited knowledge of [the business]’s business (described in the schedule as [xxx]), it is not clear to us that [the business] is unable to use its premises by reason of a restriction imposed by the recent legislation. As we understand it, while [the business] served food on site, customers could also buy cakes from [the business], as [other businesses] that do not serve food on site have done and continue to do. Our understanding is that food retailers of that kind are permitted to remain open (see item 24 of Part 3 of The Health Protection (Coronavirus, Restrictions) Regulations (Northern Ireland) 2020. Further, Regulation 3(3) expressly permits cafes or restaurants that sold food for consumption off site to carry on selling food for consumption off site.

19 Further, even if [the business] was able to show it was unable to use its premises, it cannot show that this is the result of a restriction of the kind to which Clause 13(b) responds. As we understand your position, you maintain that the international pandemic which prompted the restrictions imposed on businesses like yours embodied in The Health Protection (Coronavirus, Restrictions) Regulations (Northern Ireland) 2020, constitutes an “occurrence of a notifiable human disease” within the meaning of the Policy, because subclause 13(b) does not contain any express language imposing a location restriction.

20 We have considered this argument, but again do not accept it is correct. Your contention depends upon a literal reading of subclause 13(b) without any regard for the business context of the Policy, the rest of the Policy wording (including in particular the balance of the clause of which subclause 13(b) forms part), or the language of subclause 13(b) itself.

In particular:

a. Policies of insurance have in the past been issued by insurers in respect of the general negative financial impact of an epidemic/pandemic.

	<p>However, such policies are unusual and this Policy is not one of them. Rather than purporting to protect an insured against the wide-ranging economic impact of an international pandemic it covers against a variety of events specifically affecting the insured/its premises/the vicinity of the premises.</p> <p>b. As to the Policy as a whole:</p> <p>i. The range of risks covered by the business interruption section of the Policy (Clauses 1 to 16) share a common thread, namely that they are specific to the insured/insured premises/the locality of the insured premises. For example:</p> <ol style="list-style-type: none"> <li>1. Clause 1 - the damaged property must belong to the insured (or at least it must have an insurable interest in it);</li> <li>2. Clause 2 - there must be insured damage in the vicinity of the premises;</li> <li>3. Clause 3 - the incident must have been within a one-mile radius;</li> <li>4. Clause 4 - the suspected device must be within on in the vicinity of the premises;</li> <li>5. Clause 5 - concerns the impact of damage in the vicinity of the premises; and</li> <li>6. Clause 6 to 9 - the insured damage must be caused to one of the insured's suppliers or customers;</li> <li>7. Clause 10 and 11- address the failure of utilities to the insured premises;</li> <li>8. Clause 12 - the online marker must be one used by the insured;</li> </ol> <p>c. Moreover, Clause 13 (a) and (e) are, as you appear to accept, expressly local in nature and similarly, 13(c) and (d) are, similar to 13(b), necessarily local in nature;</p> <p>d. Read in the context of the above, it is incorrect to suggest that Clause 13(b) has the wide meaning you suggest. The fact that it is not intended to apply to restrictions imposed following, and to address, a pandemic is also apparent from the use of the word "occurrence" which makes express the narrow nature of the instance of the notifiable disease that the wording envisages.</p> <p>21 You have suggested that Hiscox is simply giving its opinion rather than applying the language of the Policy. We do not accept this. Rather, Hiscox's approach interprets and applies the language in its commercial context and in the context of the rest of the Policy, giving effect to the scope of the cover.</p> <p>22 A reading of the relevant wording as a whole and in context makes clear that the circumstances envisaged by Clause 13(b) are a very localised and relatively isolated "occurrence" of a notifiable disease, which prompts notification to the local authority's public health officer or a similar agency, which then orders the insured to shut the specific premises to prevent disease spreading. That can be contrasted with the current position, which is a restriction imposed by way of primary and secondary legislation as part of national measures for fighting an international pandemic. The present situation is dramatically removed from what the Policy envisages. In this regard, we would observe that the scale of government action taken to</p>
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	<p>mitigate the financial impact of the present crisis are a tacit recognition of the reality that the financial impact of Covid-19 cannot sensibly be expected to be covered by private business interruption insurance policies.</p> <p>23 We are content that our construction and position is not only consistent with our underwriting intention but also consistent with the Policy wording.</p> <p><b>“Solely and Directly” and the Business Trends clause</b></p> <p>24 While Hiscox is comfortable with its position on the interpretation of Clauses 3 and 13(b), even if your interpretation were justified and it is shown that [the business] is unable to use its premises, in order to be entitled to cover an insured would also need to show that the losses for which it seeks an indemnity were caused “solely and directly” by the relevant public authority action/restriction and further to demonstrate that its losses meet the requirements of the Business Trends clause. These points mean we do not see how [the business] have or will continue to suffer any loss of a kind that falls to be indemnified in any event.</p> <p><b>Solely and Directly</b></p> <p>25 The use of the words “solely and directly” in the stem that both Clauses 3 and 13(b) follow is important. It means that an insured is not entitled to cover in respect of financial losses that may have been concurrently caused by factors that are not insured. Therefore, the policy will not respond if an insured’s financial losses have been caused by some factor(s) in addition to the relevant restriction imposed by a public authority that has prevented access or rendered the insured unable to use the insured premises.</p> <p>26 In the present circumstances, such other concurrent causes obviously exist and any losses suffered by [the business] will therefore not have been caused solely and directly by the insured peril, i.e. a restriction rendering [the business] unable to use their premises. Two of these concurrent causes are particularly clear.</p> <p>a. Firstly, as leading figures in the hospitality sector were forcefully observing at the time, even before the government imposed closure on restaurants and cafes (such as [the business]), the pre-existing social distancing guidance and knock-on changes in the public’s behaviour caused dramatic losses, threatening the sector’s existence. We understand that [the business] elected to close its business on 18 March 2020 prior to the Government restrictions and measures on restaurants and cafes were implemented because of the wider risks caused by Covid-19.</p> <p>b. Secondly, since 23 March 2020, the public has been required to stay at home other than for essential purposes, even being prevented from travelling to work if that can be done at home. Therefore, even if [the business] were presently still able to use their premises, no one would be able to attend them even if they wanted to. This means the losses fall outside the scope of the insuring clause.</p> <p><b>Business Trends</b></p> <p>27 These other concurrent causes of the present situation also mean that even if [the business] were able to bring themselves within the scope of the</p>
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	<p>insuring clauses of the Policy the Business Trends clause would operate so as to mean no indemnity would, at least in all probability, fall to be paid.</p> <p>28 The Business Trends clause provides as follows:</p> <p>“...The amount we will pay will reflect as near as possible the result that would have been achieved if the insured damage had not occurred.”</p> <p>29 As this wording makes clear, even where cover is engaged, an insured is only entitled to an indemnity in respect of losses it would not have suffered but for the relevant restriction. Therefore, an insured cannot recover for any losses that would have been sustained even if the specific insured peril had not occurred. Applying this clause and, again, assuming in [the business]’s favour that it is a business that is not able to open, even if [the business]’s insured premises were now permitted to open it would still be trading in the economic environment desolated by the wider impact of Covid-19 where no customers can lawfully visit anything other than a narrow class of premises. Therefore, we do not see how it could be said that no loss would have been suffered but for the restriction on the use of the premises. The reality is that, unfortunately, such losses would have been suffered in any event because of Covid- 19 and the measures that have been taken and would therefore not fall to be covered.</p>
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## 2. Hiscox type 2 of 4: “**Hiscox2**”

This Wording is pleaded to at:

- General sections A to H.
- Section I: There was an occurrence of a human infectious or human contagious disease an outbreak of which must be notified to the local authority from 5 March 2020 as set out in paragraphs 36 to 38.
- Section J: There was an incident within the vicinity of (and a one mile radius of) the insured premises/venue from 3 March 2020, alternatively 12 March 2020 as set out in paragraphs 41 and 43, alternatively when COVID-19 occurred within a more localised area surrounding the insured premises as set out in paragraph 41.5(b) and when a person or persons who had contracted COVID-19 was/were within that radius of the premises as set out in paragraph 43;

- Section K: the advice and regulations referred to above in paragraph 18 were imposed by, and restrictions imposed by, government, a public authority, civil authority and statutory authority as set out in paragraph 44.
- Section L: There was (i) interruption to business activities, (ii) inability to use the premises, and (iii) denial of or hindrance in access to the premises, from 16 March 2020 as set out in paragraph 46, alternatively (and only where the business was ordered to close) from 20 March 2020 as set out in paragraph 47.
- Section N: The losses resulted solely and directly from the interruption to the business or activities as set out in paragraph 71.1 and 72, the interruption was caused by the inability to use the premises as set out in paragraph 62 and the incident as set out in paragraph 62, the inability to use the premises was due to the restrictions as set out in paragraph 66, the restrictions were following the occurrence of COVID-19 as set out in paragraph 66, the denial of access or hindrance in access resulted from the incident as set out in paragraph 65, and the trends clause does not apply as set out in paragraph 75 and even if it did apply would not prevent recovery as set out in paragraphs 76 to 79.

Particular declarations sought:

- 1) There were restrictions imposed by a public authority following the occurrence of a human infectious or human contagious disease, an outbreak of which must be notified to the local authority (the COVID-19 outbreak) from 16 March 2020 given the government advice and lockdown restrictions from that date, alternatively (and only where the business was ordered on that date to close) from 20 March 2020;
- 2) There was inability to use the premises due to the restrictions identified in declaration 1, and interruption to activities, from the date of those restrictions;

- 3) There was an incident within the vicinity of the premises which resulted in a denial of access or hindrance in access to the premises imposed by a statutory authority from 16 March 2020, alternatively (and only where the business was ordered on that date to close) from 20 March 2020;
- 4) There was an incident within a one mile radius which resulted in a denial of access or hindrance in access to the premises imposed by a civil authority and statutory authority and by order of the government and a public authority from 16 March 2020, alternatively (and only where the business was ordered on that date to close) from 20 March 2020;
- 5) As to proof of presence within one mile, general declaration (7) above is repeated;
- 6) The trends clause is not applicable to claims under the item(s) of additional cover or extension(s) of cover in Hiscox2 – 15779, 9102, 7103 WD-CCP-UK-PVB(2); and
- 7) Any losses as insured resulted solely and directly from the interruption, the interruption was caused by the inability to use the premises and the incident, the inability to use the premises were due to the restrictions, the restrictions were following the occurrence of COVID-19, and the denial of access or hindrance in access resulted from the incident, if they would not have occurred had there been no COVID-19 outbreak or interventions by the government.

<b>Policies (lead wording asterisked)</b>	<p>*Salon BI - 18680 WD-HSP-UK-QHB-PYI</p> <p>Sports and Leisure BI - 16258 WD-HSP-UK-GEOG-PYI(3)</p> <p>Showtime BI - 11492 WD-HSP-UK-HSH-PYI</p> <p>Professions BI - 6001 WD-PIP-UK-PYF(9)</p> <p>15779 WD-HSP-UK-BG-PHAR-PYI<del>(+)</del>(3)</p> <p>Office BI - 15410 WD-HSP-UK-MFL-PYF <del>(+)</del>(3)</p> <p>16725 WD-HSP-UK-GEO-PYZ(4) (1)</p> <p>Venues BI - 7103 WD-CCP-UK-PVB(2)</p> <p>Venues BI - 7103 WD-VEN-UK-PYZ (3)</p> <p>Charity BI - 9248 WD-CHR-UK-PYL(2)</p> <p>Booksellers BI - 12578 WD-HSP-UK-BSBI(2)</p> <p>Clinic and Surgery BI -16777 WD-HSP-UK-HFC-PYI<del>(+)</del>(2)</p> <p>Office BI - 11335 WD-HSP-UK-MPO-PYI(3)</p> <p>Office BI (Package) - 7620 WD-PIP-UK-POP(3)</p> <p>Property BI - 10199 WD-HSP-UK-INFBI(2)</p> <p>BI -11905 WD-HSP-UK-TBO-BI<del>(+)</del>(2)</p> <p>Opticians BI - 9280 WD-HSP-UK-OPT-PYI(2)</p> <p>Golf - BI - 9102 WD-HSP-UK-GPS-PYI(4)</p> <p>Masonic halls BI - 10883 WD-HSP-UK-MASBI<del>(+)</del>(2)</p> <p>CSA - BI - 13500 WD-HSP-UK-CSA-PYI<del>(+)</del>(2)</p> <p>Sport leisure BI - 11431 WD-HSP-PSS-PYI(10)</p> <p>BI - OM - 13754 WD-HSP-UK-EAPYF(1)</p> <p>Electrical contractors BI - 10117 WD-HSP-UK-JCS-PYI(9)</p>
<b>Governing law clause of lead wording</b>	<p>Unless some other law is agreed in writing, this <b>policy</b> will be governed by the laws of England. (p.4, 18685 WD-HSP-UK-QHB-GTC(1))</p>
<b>Disease clause</b>	<p><b>We</b> will [also] insure <b>you</b> for <b>your</b> financial losses and any other items specified [under this section] in the schedule, resulting solely and directly from an interruption to [<b>your business</b>][<b>your activities</b>] caused by [the following]:</p> <p>...</p> <p><b>Public authority</b></p> <p>[4.] [5.] [6.] [7.] <b>your</b> inability to use the [<b>office</b>][<b>salon</b>][<b>venue</b>][<b>business premises</b>][<b>insured location</b>][<b>hall</b>] due to restrictions imposed by a public authority [during the period of insurance] following:</p> <p>a...</p> <p>b. an occurrence of [a][any] <b>notifiable human disease</b></p>



<p><b>Denial of access clause</b></p>	<p><u>Sports and Leisure BI – 16258 WD-HSP-UK-GEOG-PYI(3), Sport leisure BI – 11431 WD-HSP-PSS-PYI(10)</u></p> <p><b>We</b> will insure <b>you</b> for <b>your</b> financial losses and other items specified in the schedule, resulting solely and directly from an interruption to <b>[your business][your activities]</b> caused by:</p> <p>...</p> <p><b>Non damage denial of access</b></p> <p>3. an incident during the <b>period of insurance</b> within the vicinity of the <b>business premises</b> which results in a denial of or hindrance in access to the <b>business premises</b> imposed by the police or other statutory authority.</p> <p><u>16725 WD-HSP-UK-GEO-PYZ(4) (1), Venues BI - 7103 WD-CCP-UK-PVB(2), Venues BI - 7103 WD-VEN-UK-PYZ (3)</u></p> <p><b>We</b> will insure <b>you</b> for <b>your</b> financial losses and other items specified in the schedule, resulting solely and directly from an interruption to <b>your business</b> caused by:</p> <p>...</p> <p><b>Non damage denial of access</b></p> <p>3. ...an incident [occurring during the <b>period of insurance</b>] within a one mile radius of [the <b>insured premises</b>] <b>[your venue]</b> which results in a denial of access or hindrance in access to [the <b>insured premises</b>] <b>[your venue]</b> [during the <b>period of insurance</b>], imposed by any civil or statutory authority or by order of the government or any public authority, for more than 24 hours;</p>
<p><b>Definitions</b></p>	<p><b>notifiable human disease</b></p> <p>Any human infectious or human contagious disease, an outbreak of which must be notified to the local authority.</p> <p><b>insured damage</b></p> <p><b>Damage</b>[, other than <b>failure</b>,] [occurring during the <b>period of insurance</b>] to <b>property</b> provided that:</p> <p>a. the <b>damage</b> is not otherwise excluded by the [[B][b]uildings], [or] C[c]ontents [or] [other Property] [Technical and portable equipment] section of this <b>policy</b>; and</p> <p>b. payment has been made or liability admitted by the insurer under any insurance covering such <b>damage</b>.</p> <p><u>Showtime BI - 11492 WD-HSP-UK-HSH-PYI, Professions BI - 6001 WD-PIP-UK-PYF(9), Office BI - 15410 WD-HSP-UK-MFL-PYF <del>(4)</del>(3), 16725 WD-HSP-UK-GEO-PYZ(4) (1), Venues BI - 7103 WD-VEN-UK-PYZ (3), Charity BI - 9248 WD-CHR-UK-PYL(2), Clinic and Surgery BI -16777 WD-HSP-UK-HFC-PYI<del>(4)</del>(2), CSA - BI - 13500 WD-HSP-UK-CSA-PYI<del>(4)</del>(2), BI - OM - 13754 WD-HSP-UK-EAPYF(1)</u></p>

	<p><b>insured failure</b></p> <p><b>Failure</b> of <b>equipment, computers</b>, oil or water storage tanks and other insured items [occurring during the <b>period of insurance</b>] provided that:</p> <p>a. the <b>failure</b> is not otherwise excluded by the Equipment breakdown section of this <b>policy</b>; and</p> <p>b. payment has been made or liability admitted by <b>us</b> under the Equipment breakdown section of this <b>policy</b>.</p> <p>[occurring within the period of insurance]</p>
<b>Exclusions</b>	N/A
<b>Trends clause</b>	<p><u>Showtime BI - 11492 WD-HSP-UK-HSH-PYI, Professions BI - 6001 WD-PIP-UK-PYF(9), Office BI - 15410 WD-HSP-UK-MFL-PYF (+)(3), 16725 WD-HSP-UK-GEO-PYZ(4) (1), Venues BI - 7103 WD-VEN-UK-PYZ (3), Charity BI - 9248 WD-CHR-UK-PYL(2), Clinic and Surgery BI -16777 WD-HSP-UK-HFC-PYI(+)(2), CSA - BI - 13500 WD-HSP-UK-CSA-PYI(+)(2), BI - OM - 13754 WD-HSP-UK-EAPYF(1)</u></p> <p>The amount <b>we</b> pay for loss of <b>income</b> or loss of <b>gross profit</b> will be amended to reflect any special circumstances or business trends affecting <b>[your business] [your activities]</b>, either before or after the loss, in order that the amount paid reflects as near as possible the result that would have been achieved if the <b>insured damage, insured failure</b> or restriction had not occurred.</p> <p><u>Salon BI - 18680 WD-HSP-UK-QHB-PYI, Sports and Leisure BI – 16258 WD-HSP-UK-GEOG-PYI(3), Office BI (Package) - 7620 WD-PIP-UK-POP(3), Opticians BI - 9280 WD-HSP-UK-OPT-PYI(2), Property BI - 10199 WD-HSP-UK-INFBI(2), Office BI - 11335 WD-HSP-UK-MPO-PYI(3), BI -11905 WD-HSP-UK-TBO-BI(+)(2), Masonic halls BI - 10883 WD-HSP-UK-MASBI(+)(2), Booksellers BI - 12578 WD-HSP-UK-BSBI(2), Sport leisure BI - 11431 WD-HSP-PSS-PYI(10)</u></p> <p>The amount <b>we</b> pay for loss of <b>income</b> [or loss of <b>gross profit</b>] will be amended to reflect any special circumstances or business trends affecting <b>[your business][your activities]</b>, either before or after the loss, in order that the amount paid reflects as near as possible the result that would have been achieved if the <b>insured damage</b> or restriction had not occurred.</p> <p><u>Electrical contractors BI - 10117 WD-HSP-UK-JCS-PYI(9)</u></p> <p>the amount <b>we</b> pay for loss of <b>gross profit</b> will be amended to reflect any special circumstances or business trends affecting <b>your business</b>, either before or after the loss, in order that the amount paid reflects as near as possible the result that would have been achieved if the <b>damage</b> or restriction had not occurred.</p> <p><u>Venues BI - 7103 WD-CCP-UK-PVB(2)</u></p>

	<p>The amount <b>we</b> pay for loss of <b>income</b> or loss of <b>gross profit</b> will be amended to reflect any special circumstances or business trends affecting <b>your business</b>, either before or after the loss, in order that the amount paid reflects as near as possible the result that would have been achieved if the <b>insured damage</b> had not occurred</p> <p><u>15779 WD-HSP-UK-BG-PHAR-PYI(4)(3), Golf - BI - 9102 WD-HSP-UK-GPS-PYI(4)</u></p> <p>The amount <b>we</b> pay for loss of <b>income</b> or loss of <b>gross profit</b> will be amended to reflect any special circumstances or business trends affecting <b>your business</b>, either before or after the loss, in order that the amount paid reflects as near as possible the result that would have been achieved if the <b>damage</b> had not occurred.</p>
<b>Example reasons for declining cover</b>	[See reasons given for Hiscox1, above]

### 3. Hiscox type 3 of 4: “**Hiscox3**”

This Wording is pleaded to at:

- General sections A to H.
- Section I: There was an occurrence of a human infectious or human contagious disease an outbreak of which must be notified to the local authority from 5 March 2020 as set out in paragraphs 36 to 38.
- Section K: The advice and regulations referred to above in paragraph 18 were restrictions imposed by a public authority as set out in paragraph 44.
- Section L: There was interruption to business/activities and inability to use the premises, from 16 March 2020 as set out in paragraph 46.
- Section N: The losses resulted solely and directly from the interruption to the business or activities as set out in paragraph 71.1 and 72, the interruption was caused by the inability to use the premises as set out in paragraph 62, the inability

to use the premises was due to the restrictions as set out in paragraph 66, the restrictions were following the occurrence of COVID-19 as set out in paragraph 66, and the trends clause does not apply as set out in paragraph 75 and even if it did apply would not prevent recovery as set out in paragraphs 76 to 79.

Particular declarations sought:

- 1) There were restrictions imposed by a public authority following the occurrence of a human infectious or human contagious disease, an outbreak of which must be notified to the local authority (the COVID-19 outbreak) from 16 March 2020 given the government advice and lockdown restrictions from that date, alternatively (and only where the business was ordered on that date to close) from 20 March 2020;
- 2) There was inability to use the premises due to the restrictions identified in declaration 1, and interruption to activities, from the date of those restrictions;
- 3) The trends clause is not applicable to claims under the item(s) of additional cover or extension(s) of cover in Hiscox3 - 8006 and 10272; and
- 4) Any losses as insured resulted solely and directly from the interruption, the interruption was caused by the inability to use the premises, the inability to use the premises were due to the restrictions, the restrictions were following the occurrence of COVID-19, if they would not have occurred had there been no COVID-19 outbreak or interventions by the government.

<b>Policies (lead wording asterisked)</b>	<p>*Gunsmiths BI - 8006 WD-HSP-GUN-PYI(3)</p> <p>Cleaners BI - 8358 WD-UK-PIP-GCC-PYI(3)</p> <p>Cricket Club BI - 14174 WD-HSP-UK-<u>AL</u>CC-PBI(3)</p> <p>Media and entertainment BI - 9519 WD-HSP-UK-AEM-PBI(2)(3)</p> <p>Covernotes BI - 10272 WD-HSP-UK-MUS-PYI(2)</p>
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<b>Governing law clause of lead wording</b>	Unless some other law is agreed in writing, this <b>policy</b> will be governed by the laws of England (p5, 7997 WD-HSP-UK-GUN-GTC(2))
<b>Disease clause</b>	<p><b>We</b> will [also] insure <b>you</b> for <b>your</b> [financial losses and any other items specified] [under this section] [loss of income] [loss of <b>gross profit</b> [and <b>additional expenses</b>] up to the limit stated] in the schedule [as applicable] resulting solely and directly from an interruption to [<b>your business</b>][<b>your activities</b>] caused by [the following]:</p> <p>Public authority</p> <p>[6.] [d.] <b>your</b> inability to use the [<b>business premises</b>][<b>insured premises</b>] due to restrictions imposed by a public authority [during the <b>period of insurance</b>] following:</p> <p>i...</p> <p>ii an occurrence of any human infectious or human contagious disease[,] an outbreak of which must be notified to the local authority;</p>
<b>Denial of access clause</b>	N/A
<b>Definitions</b>	<p><b>Insured damage</b></p> <p><b>Damage</b> to property provided that:</p> <p>a. the <b>damage</b> is not otherwise excluded by the [B][b]uildings [or] [C][c]ontents [or Tools and equipment][or technical and portable equipment] section of this policy; and</p> <p>b. payment has been made or liability admitted by the insurer under any insurance covering such <b>damage</b>.</p>
<b>Exclusions</b>	N/A
<b>Trends clause</b>	<p><u>Gunsmiths BI - 8006 WD-HSP-GUN-PYI(3), Covernotes BI - 10272 WD-HSP-UK-MUS-PYI(2)</u></p> <p>The amount <b>we</b> pay for loss of <b>gross profit</b> will be amended to reflect any special circumstances or business trends affecting <b>your business</b>, either before or after the loss, in order that the amount paid reflects as near as possible the result that would have been achieved if the <b>damage</b> had not occurred</p> <p><u>Cleaners BI - 8358 WD-UK-PIP-GCC-PYI(3), Cricket Club BI - 14174 WD-HSP-UK-ALCC-PBI(3), Media and entertainment BI - 9519 WD-HSP-UK-AEM-PBI(2)(3)</u></p> <p>The amount <b>we</b> pay for loss of <b>income</b> or loss of <b>gross profit</b> will be amended to reflect any special circumstances or business trends affecting <b>your business</b>, either before or after the loss, in order that the amount paid reflects as near as possible the result that would have been achieved if the <b>insured damage</b> or restriction had not occurred</p>

<b>Example reasons for declining cover</b>	[See reasons given for Hiscox1, above]
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4. Hiscox type 4 of 4: “**Hiscox4**”

This Wording is pleaded to at:

- General sections A to H.
- Section I: There was an occurrence of a human infectious or human contagious disease an outbreak of which must be notified to the local authority from 5 March 2020 as set out in paragraphs 36 to 38.
- Section J: There was an incident within a one mile radius of the insured premises from 3 March 2020, alternatively 12 March 2020 as set out in paragraph 43, alternatively when a person or persons who had contracted COVID-19 was/were within that radius of the premises as set out in paragraph 43.
- Section K: the advice and regulations referred to above in paragraph 18 were restrictions imposed by a public authority, and a denial of access imposed by a civil or statutory authority and by order of the government and a public authority, as set out in paragraph 44.
- Section L: there was (i) interruption to business activities, (ii) inability to use the premises, and (iii) denial of access or hindrance in access to the premises, from 16 March 2020 as set out in paragraph 46, alternatively (and only where the business was ordered to close) from 20 March 2020 as set out in paragraph 47.
- Section N: The losses resulted solely and directly from the interruption to the business as set out in paragraph 71.1 and 72, the interruption was caused by the inability to use the premises as set out in paragraph 62 and the incident as set out

in paragraph 62, the inability to use the premises was due to the restrictions as set out in paragraph 66, the restrictions were following the occurrence of COVID-19 as set out in paragraph 66, the denial of access or hindrance in access resulted from the incident as set out in paragraph 65, and the trends clause does not apply as set out in paragraph 75 and even if it did apply would not prevent recovery as set out in paragraphs 76 to 79.

Particular declarations sought:

- 1) There were restrictions imposed by a public authority following the occurrence of a human infectious or human contagious disease, an outbreak of which must be notified to the local authority (the COVID-19 outbreak) from 16 March 2020 given the government advice and lockdown restrictions from that date, alternatively (and only where the business was ordered on that date to close) from 20 March 2020;
- 2) There was inability to use the premises due to the restrictions identified in declaration 1, and interruption to activities, from the date of those restrictions;
- 3) There was an incident within a one mile radius which resulted in a denial of access or hindrance in access to the premises imposed by a civil authority and statutory authority and by order of the government and a public authority from 16 March 2020, alternatively (and only where the business was ordered on that date to close) from 20 March 2020;
- 4) As to proof of presence within one mile, general declaration (7) above is repeated;
- 5) The trends clause is not applicable to claims under the item(s) of additional cover or extension(s) of cover in Hiscox4 (20155); and

- 6) Any losses as insured resulted solely and directly from the interruption, the interruption was caused by the inability to use the premises and the incident, the inability to use the premises were due to the restrictions, the restrictions were following the occurrence of COVID-19, and the denial of access or hindrance in access resulted from the incident, if they would not have occurred had there been no COVID-19 outbreak or interventions by the government.

<b>Policies (lead wording asterisked)</b>	<p>* Retail BI-15299 WD-SR-UK-PYI(1)</p> <p>Retail BI-15447 WD-HSP-UK-LFR-PYI(1)</p> <p>Bowling Clubs 15480 WD-HSP-UK-LFB-PYI(1)</p> <p>20155 WD-HSPX-UK-TIOFAD-PYI(1)</p>
<b>Governing law clause of lead wording</b>	<p>Unless some other law is agreed in writing, this <b>policy</b> will be governed by the laws of England (p.4 6253 WD-PIP-UK-GTC(7))</p>
<b>Disease clause</b>	<p><u>Retail BI-15299, Retail BI-15447, Bowling Clubs 15480</u></p> <p><b>We</b> will insure <b>you</b> for <b>your</b> financial losses and any other items specified in the schedule, resulting solely and directly from an interruption to <b>your business</b> caused by:</p> <p>Public authority</p> <p>[7.][9.] <b>your</b> inability to use the <b>business premises</b> due to restrictions imposed by a public authority during the <b>period of insurance</b> following:</p> <p>a. ...</p> <p>b. an occurrence of a <b>notifiable human disease</b> within one mile of the <b>business premises</b>;</p> <p><u>20155 WD-HSPX-UK-TIOFAD-PYI(1)</u></p> <p><b>We</b> will insure <b>you</b> for <b>your</b> financial losses and any other items specified in the schedule, resulting solely and directly from an interruption to <b>your business</b> caused by</p> <p>9. <b>your</b> inability to use the <b>insured premises</b> due to restrictions imposed by a public authority during the <b>period of insurance</b> following:</p> <p>a...</p> <p>b an occurrence of any human infectious or human contagious disease, an outbreak of which must be notified to the local authority, within one mile of the <b>insured premises</b></p>



<b>Denial of access clause</b>	<p><u>Bowling Clubs 15480</u></p> <p><b>We</b> will insure <b>you</b> for <b>your</b> financial losses and any other items specified in the schedule, resulting solely and directly from an interruption to <b>your business</b> caused by:</p> <p>Non damage denial of access</p> <p>3. an incident within a one mile radius of your <b>business premises</b> occurring during the <b>period of insurance</b> which results in a denial of access or hindrance in access to <b>your business premises</b>, imposed by any civil or statutory authority or by order of the government or any public authority, for more than 24 hours.</p>
<b>Definitions</b>	<p><u>Retail BI-15299, Retail BI-15447, Bowling Clubs 15480</u></p> <p><b>Insured damage</b></p> <p><b>Damage</b>, other than <b>failure</b>, to <b>property</b> provided that:</p> <p>a. the <b>damage</b> is not otherwise excluded by the buildings or contents or other property section of this <b>policy</b>; and</p> <p>b. payment has been made or liability admitted by the insurer under any insurance covering such <b>damage</b>.</p> <p><b>Notifiable human disease</b></p> <p>Any human infectious or human contagious disease, an outbreak of which must be notified to the local authority.</p>
<b>Exclusions</b>	<p>N/A</p>
<b>Trends clause</b>	<p><u>Retail BI-15299, Retail BI-15447</u></p> <p>The amount <b>we</b> pay for loss of <b>gross profit</b> will be amended to reflect any special circumstances or business trends affecting <b>your business</b>, either before or after the loss, in order that the amount paid reflects as near as possible the result that would have been achieved if the <b>insured damage</b>, <b>insured failure</b>, <b>cyber-attack</b> or restriction had not occurred.</p> <p><u>Bowling Clubs 15480</u></p> <p>The amount <b>we</b> pay for loss of <b>income</b> or loss of <b>gross profit</b> will be amended to reflect any special circumstances or business trends affecting <b>your business</b>, either before or after the loss, in order that the amount paid reflects as near as possible the result that would have been achieved if the <b>insured damage</b>, <b>insured failure</b>, <b>loss of licence</b> or restriction had not occurred</p> <p><u>20155</u></p> <p>Provided that <b>you</b> advise <b>us</b> of <b>your</b> estimated annual <b>gross profit</b>, at the beginning of each <b>period of insurance</b>, the <b>amount insured</b> will automatically be increased to reflect any special circumstances or trends affecting <b>your business</b>, either before or after the loss. The amount that</p>

	<p><b>we</b> will pay will reflect as near as possible the result that would have been achieved if the <b>insured damage</b> or <b>insured failure</b> had not occurred.</p> <p>Your schedule will show if Business trends cover applies and the additional percentage amount.</p>
<b>Example reasons for declining cover</b>	[See reasons given for Hiscox1, above]

## **SCHEDULE 5 - MS AMLIN**

### **1. MS Amlin type 1 of 3: “MSAmlin1”**

This Wording is pleaded to at:

- General sections A to H.
- Section I: There was a human infectious or human contagious disease an outbreak of which the competent local authority has stipulated will be notified to them from 5 March 2020 as set out in paragraphs 36 and 37.
- Section J: There was an illness sustained by a person resulting from COVID-19 within a radius of twenty five miles of the insured premises when a person or persons with COVID-19 was within 25 miles of the premises as set out in paragraphs 41.1 and 41.3. And there was a danger in the vicinity of the premises from 3 March 2020, alternatively 12 March 2020 as set out in paragraph 43, alternatively whenever it is proven that a person with COVID-19 had been present within 1-mile of the premises, or within the vicinity of the premises as set out in paragraph 43.
- Section K: the advice and regulations referred to above in paragraph 18 were action by a competent civil authority, as set out in paragraph 44.
- Section L: there was interruption of and interference with the business and access to the premises was prevented from 16 March 2020 as set out in paragraph 46.
- Section N: The losses resulted from the interruption of or interference with the business as set out in paragraph 71.1, the interruption or interference was following the disease as set out in paragraph 68.1 and public authority action as set out in paragraph 62, the action was following the danger as set out in paragraph 64, and

the trends clause does not apply as set out in paragraph 75 and even if it did apply would not prevent recovery as set out in paragraphs 76 to 79.

Particular declarations sought:

- 1) There was interruption of or interference with the business following illness sustained by a person resulting from a human infectious or contagious disease, an outbreak of which the competent local authority has stipulated will be notified to them (the COVID-19 outbreak), within a radius of 25 miles when a person or persons with COVID-19 was within 25 miles of the premises;
- 2) There was interruption of or interference with the business following action by competent civil authority following a danger in the vicinity of the premises where access will be prevented from 16 March 2020, alternatively whenever it is proven that a person with COVID-19 had been present within 1-mile of the premises, or within the vicinity of the premises;
- 3) As to proof of presence within 25 miles, general declaration (7) above is repeated;
- 4) The trends clause is not applicable to claims under the item(s) of additional cover or extension(s) of cover; and
- 5) Any losses as insured resulted from the interruption or interference, the interruption or interference followed the COVID-19 and public authority action, and the action followed the danger, if they would not have occurred had there been no COVID-19 outbreak or interventions by the government.

<b>Policies (lead wording asterisked)</b>	*ADA628-20190601 Commercial Combined (Instant Underwriting)
<b>Governing law clause of lead wording</b>	In the absence of any agreement to the contrary, the laws of England and Wales will apply and this policy will be subject to the exclusive jurisdiction

	<p>of the courts of England unless, at the beginning of the <b>period of insurance</b>, you are either:</p> <p>a) a resident of; or</p> <p>b) a business with its registered office or principal place of business is situated in;</p> <p>Scotland, Northern Ireland, the Channel Islands or the Isle of Man, in which case (in the absence of agreement to the contrary) the law of that country, crown protectorate or dependency will apply and this policy will be subject to the exclusive jurisdiction of the courts of that country, crown protectorate or dependency (p.7)</p>
<b>Disease clause</b>	<p><b>Section 6 – Business interruption – Optional</b></p> <p><b>Additional cover – provided as standard</b></p> <p><b>We will pay you for:</b></p> <p>...</p> <p><b>6. Notifiable disease, vermin, defective sanitary arrangements, murder and suicide</b></p> <p><b>Consequential loss</b> as a result of interruption of or interference with the <b>business</b> carried on by <b>you</b> at the <b>premises</b> following:</p> <p>a) ... iii. any <b>notifiable disease</b> within a radius of twenty five miles of the <b>premises</b>;</p> <p>The maximum <b>we</b> will pay for any one loss will not exceed <b>£100,000</b>.</p> <p><b>Conditions</b></p> <p>...</p> <p>3. We will only be liable for the loss arising at those <b>premises</b> which are directly affected by the loss, discovery or accident.</p>
<b>Denial of access clause</b>	<p><b>We will pay you for:</b></p> <p><b>1. Action of competent authorities</b></p> <p>loss resulting from interruption or interference with the <b>business</b> following action by the police or other competent local, civil or military authority following a danger or disturbance in the vicinity of the <b>premises</b> where access will be prevented provided always that there will be no liability under this additional cover for loss resulting from interruption of the business during the first 24 hours of the <b>indemnity period</b>.</p> <p><b>We will not pay more than £50,000</b> under this additional cover for a period not exceeding 12 weeks.</p>
<b>Definitions</b>	<p><b>Consequential loss</b></p> <p>Loss resulting from interruption of or interference with the <b>business</b> carried on by <b>you</b> at the <b>premises</b> in consequence of <b>damage</b> to property used by <b>you</b> at the <b>premises</b> for the purpose of the <b>business</b>.</p> <p><b>Damage</b></p>

	<p>Loss or destruction of or damage to the property insured as stated in the schedule and used by <b>you</b> in connection with the <b>business</b>.</p> <p><b>Notifiable disease</b></p> <p>Illness sustained by any person resulting from:</p> <p>a)...</p> <p>b) any human infectious or contagious disease (excluding Acquired Immune Deficiency Syndrome (AIDS)) an outbreak of which the competent local authority has stipulated will be notified to them.</p>
<b>Exclusions</b>	<p><b>General Exclusions</b></p> <p>This policy does not cover the following.</p> <p>...</p> <p>9. This policy does not cover any liability caused by or arising out of <b>pollution</b> apart from that specified under Section 1 – Material damage, Section 6 - Business interruption, Section 4 – Specified all risks and Section 8 - Public/products liability.</p> <p>...</p> <p><b>Section 6 – Business Interruption – Optional</b></p> <p><b>Exclusions</b></p> <p><b>1. Pollution and contamination</b></p> <p><b>We</b> will not be liable for loss resulting from <b>pollution</b>. However, <b>we</b> will cover <b>consequential loss</b> caused by:</p> <p>a) <b>pollution</b> which itself results from any cover insured (other than cover 10); or</p> <p>b) any cover insured (other than cover 10) which itself results from <b>pollution</b></p> <p>provided it is not otherwise excluded.</p> <p>...</p> <p><b>General Definitions</b></p> <p>...</p> <p><b>Pollution</b></p> <p>Any pollution or contamination by naturally occurring or man-made substances, forces or organisms or any combination of them, whether permanent or transitory and however occurring. This definition excludes pollution or contamination by asbestos.</p>
<b>Trends clause</b>	<p><b>Standard turnover</b></p> <p>The <b>turnover</b> during that period in the 12 months immediately before the date of the <b>damage</b> which corresponds with the <b>indemnity period</b> to which adjustments will be made as necessary to provide for the trend of the <b>business</b> and for variations in or other circumstances affecting the <b>business</b> had the <b>damage</b> not occurred, so that the figures adjusted represent as nearly as may be reasonably practicable the results which but</p>

	for the <b>damage</b> would have been obtained during the relative period after the <b>damage</b> .
<b>Example reasons for declining cover</b>	<p>What we need to establish is that there was such an occurrence of COVID-19 at your premises or an occurrence of COVID-19 within 25 miles of your premises; and that your losses are caused by that particular occurrence of COVID-19...</p> <p>If there have been cases of COVID-19 within 25 miles of your premises, for a claim to succeed, it will be necessary to establish a direct link between these cases and the impact to your business. Cover is not available for any losses resulting from the presence of SARS-Cov-2 or COVID-19 in the wider population or the country generally. Moreover, if you have suffered losses because of a general decrease in business which cannot be attributed to any specific localised incident of SARS-Cov-2 or COVID-19 then this policy will not offer cover.</p> <p>It also follows that losses due to any restrictions imposed on the movement of the wider public by the UK Government after the 23rd March will not be covered in any event. In common with most policies of this nature, cover is not provided for losses due to any such wide-scale Government action</p>

## 2. MS Amlin type 2 of 3: “MSAmlin2”

This Wording is pleaded to at:

- General sections A to H.
- Section I: There was a human infectious or human contagious disease an outbreak of which the competent local authority has stipulated will be notified to them from 5 March 2020 as set out in paragraphs 36 and 37.
- Section J: There was an illness sustained by a person resulting from COVID-19 within a radius of twenty five miles of the insured premises when a person or persons with COVID-19 was within 25 miles of the premises as set out in paragraphs 41.1 and 41.3. And there was an incident within one mile of the premises from 3 March 2020, alternatively 12 March 2020 as set out in paragraph 43,

alternatively whenever it is proven that a person with COVID-19 had been present within 1-mile of the premises as set out in paragraph 43.

- Section K: the advice and regulations referred to above in paragraph 18 were imposed by a civil authority and statutory authority and by order of the government and any public authority, as set out in paragraph 44.
- Section L: there was interruption to the business and denial of access or hindrance in access to the premises from 16 March 2020 as set out in paragraph 46, alternatively (and only where the business was ordered to close) from 20 March 2020 as set out in paragraph 47.
- Section N: The losses were following the illness within 25 miles as set out in paragraph 68, the losses resulted solely and directly from the interruption with the business as set out in paragraph 71, the interruption was caused by the incident as set out in paragraphs 62, the incident resulted in a denial of access or hindrance in access as set out in paragraph 65, and the trends clause does not apply as set out in paragraph 75 and even if it did apply would not prevent recovery as set out in paragraphs 76 to 79.

Particular declarations sought:

- 1) There was illness sustained by a person, resulting from any human infectious or human contagious disease an outbreak of which the competent local authority has stipulated shall be notified to them, within a radius of 25 miles of the premises when a person or persons who had contracted COVID-19 was/were within that radius of the premises.
- 2) There was interruption to the business following/caused by an incident within a one mile radius of the premises which results in denial of access or hindrance in access to the premises imposed by a civil authority and statutory authority and by order of the



government and any public authority from 16 March 2020, alternatively whenever it is proven that a person with COVID-19 had been present within 1-mile of the premises, or within the vicinity of the premises;

- 3) As to proof of presence within 25 miles, general declaration (7) above is repeated;
- 4) The trends clause is not applicable to claims under the item(s) of additional cover or extension(s) of cover; and
- 5) Any losses as insured followed the illness and resulted solely and directly from the interruption, the interruption was caused by the incident, the incident resulted in the denial of access or hindrance in access, if they would not have occurred had there been no COVID-19 outbreak or interventions by the government.

<b>Policies (lead wording asterisked)</b>	*ADA672-20190601 Retail (Instant Underwriting) ADA626-20190601 Leisure (Instant Underwriting) ADA627-20191024 Office and Surgery (Instant Underwriting)
<b>Governing law clause of lead wording</b>	In the absence of any agreement to the contrary, the laws of England and Wales will apply and this policy will be subject to the exclusive jurisdiction of the courts of England unless, at the beginning of the <b>period of insurance</b> , you are either:  a) a resident of; or  b) a business with its registered office or principal place of business is situated in;  Scotland, Northern Ireland, the Channel Islands or the Isle of Man, in which case (in the absence of agreement to the contrary) the law of that country, crown protectorate or dependency will apply and this policy will be subject to the exclusive jurisdiction of the courts of that country, crown protectorate or dependency. (p7)
<b>Disease clause</b>	<b>We will pay you for:</b>  <b>6. Notifiable disease, vermin, defective sanitary arrangements, murder and suicide</b>  <b>consequential loss</b> following:  a) ... iii. any <b>notifiable disease</b> within a radius of twenty five miles of the <b>premises</b> ;  ...

	<p>We will only [be liable for] [pay for] the loss arising at those premises which are directly affected by the loss, discovery or accident.</p> <p><u>ADA627-20191024 Office and surgery (Instant Underwriting)</u></p> <p>The maximum <b>we</b> will pay for any one loss is as specified in your <b>schedule</b> for a <b>maximum indemnity period</b> of 3 months</p>
<b>Denial of access clause</b>	<p><b>We will pay you for:</b></p> <p><b>8. Prevention of access – non damage</b></p> <p><b>your</b> financial losses and other items specified in the schedule, resulting solely and directly from an interruption to <b>your business</b> caused by an incident within a one mile radius of <b>your premises</b> which results in a denial of access or hindrance in access to <b>your premises</b> during the <b>period of insurance</b>, imposed by any civil or statutory authority or by order of the government or any public authority, for more than 24 hours.</p> <p><u>ADA626-20190601 Leisure (Instant Underwriting) and ADA672-20190601 Retail (Instant Underwriting)</u></p> <p><b>We</b> will not pay under this clause more than 5% of the sum Insured or <b>£250,000</b> whichever is the lesser for any one loss</p> <p><u>ADA627-20191024 Office and surgery (Instant Underwriting)</u></p> <p>The maximum <b>we</b> will pay for any one loss is as specified in <b>your</b> schedule</p>
<b>Definitions</b>	<p><b>Consequential loss</b></p> <p>Loss resulting from interruption of or interference with the <b>business</b> carried on by <b>you</b> at the <b>premises</b> following <b>damage</b> to property used by <b>you</b> at the <b>premises</b> for the purpose of the <b>business</b>.</p> <p><b>Damage</b></p> <p>Loss or destruction of or damage to the property insured as stated in the schedule and used by <b>you</b> in connection with the <b>business</b>.</p> <p><b>Notifiable disease</b></p> <p>Illness sustained by any person resulting from:</p> <p>a) ...</p> <p>b) any human infectious or contagious disease (excluding Acquired Immune Deficiency Syndrome (AIDS)) an outbreak of which the competent local authority has stipulated will be notified to them.</p>
<b>Exclusions</b>	<p><b>Section A – Automatic Cover</b></p> <p><b>Subsection 2 – Business interruption</b></p> <p><b>What is not covered</b></p> <p>All exclusions stated under Sub-section 1 - Contents and stock (other than <b>consequential loss</b>) also apply to this sub-section.</p>

	<p>...</p> <p><b>Section A – Automatic Cover</b></p> <p><b>Subsection 1 – Contents and stock</b></p> <p><b>What is not covered</b></p> <p><b>We</b> will not cover <b>you</b> for:</p> <p><b>8) Pollution and contamination</b></p> <p>damage caused by pollution.</p> <p>However, <b>we</b> will cover <b>you</b> for <b>damage</b>, not otherwise excluded, to the <b>property insured</b> caused by:</p> <p>a) <b>pollution</b> which results from an insured event;</p> <p>b) an insured event which results from <b>pollution</b>.</p> <p>...</p> <p><b>General Definitions</b></p> <p>...</p> <p><b>Pollution</b></p> <p>Any pollution or contamination by naturally occurring or man-made substances, forces or organisms or any combination of them, whether permanent or transitory and however occurring. This definition excludes pollution or contamination by asbestos.</p>
<b>Trends clause</b>	<p><u>ADA626-20190601 Leisure (Instant Underwriting), ADA672-20190601 Retail (Instant Underwriting)</u></p> <p><b>Standard turnover</b></p> <p>The <b>turnover</b> during that period in the 12 months immediately before the date of the <b>damage</b> which corresponds with the <b>indemnity period</b> to which adjustments will be made as necessary to provide for the trend of the <b>business</b> and for variations in or other circumstances affecting the <b>business</b> had the <b>damage</b> not occurred, so that the figures adjusted represent as nearly as may be reasonably practicable the results which but for the <b>damage</b> would have been obtained during the relative period after the <b>damage</b></p> <p><u>ADA627-20191024 Office and surgery (Instant Underwriting)</u></p> <p><b>Income</b></p> <p>The money paid or payable to <b>you</b> in relation to the <b>business</b> at the <b>premises</b> for services provided.</p> <p>...</p>

	<p><b>We</b> will adjust the figures as necessary to provide for trends or special circumstances affecting the <b>business</b> before or after the <b>damage</b> or which would have affected the <b>business</b> had the <b>damage</b> not occurred.</p> <p><b>Claims - basis of settlement A – Loss of income</b></p> <p>The insurance by this item is limited to loss of <b>income</b> due to:</p> <p>a) reduction in <b>income</b>; and</p> <p>b) increase in cost of working,</p> <p>and the amount payable will be:</p> <p>1. for reduction in <b>income</b>, the shortfall in actual <b>income</b> during the <b>indemnity period</b> compared to the <b>income</b> <b>we</b> assess <b>you</b> would have earned at the <b>premises</b> during the <b>indemnity period</b> had the <b>damage</b> not occurred;</p> <p>... less any sum saved during the <b>indemnity period</b> for the charges and expenses of the <b>business</b> payable out of <b>income</b> as may cease or be reduced because of the <b>damage</b>.</p> <p>...</p> <p>For the purposes of 1. above:</p> <p>a) <b>our</b> assessment of the <b>income</b> <b>you</b> would have earned but for the <b>damage</b> will be the actual <b>income</b> earned at the <b>premises</b> during the 12 months immediately before the <b>damage</b> that corresponds with the <b>indemnity period</b> and adjusted for trends of <b>your business</b> and any other factors wither [sic] before or after the <b>damage</b> that would have affected the <b>business</b> results;</p>
<p><b>Example reasons for declining cover</b></p>	<p>What we need to establish is that there was such an occurrence of COVID-19 at your premises or an occurrence of COVID-19 within 25 miles of your premises; and that your losses are caused by that particular occurrence of COVID-19...</p> <p>If there have been cases of COVID-19 within 25 miles of your premises, for a claim to succeed, it will be necessary to establish a direct link between these cases and the impact to your business. Cover is not available for any losses resulting from the presence of SARS-Cov-2 or COVID-19 in the wider population or the country generally. Moreover, if you have suffered losses because of a general decrease in business which cannot be attributed to any specific localised incident of SARS-Cov-2 or COVID-19 then this policy will not offer cover.</p> <p>It also follows that losses due to any restrictions imposed on the movement of the wider public by the UK Government after the 23rd March will not be covered in any event. In common with most policies of this nature, cover is not provided for losses due to any such wide-scale Government action.</p>

### 3. MS Amlin type 3 of 3: “MSAmlin3”

This Wording is pleaded to at:

- General sections A to H.
- Section J: There was a threat or risk of damage or injury in the vicinity of the premises from 3 March 2020, alternatively 12 March 2020 as set out in paragraph 43, alternatively whenever it is proven that a person with COVID-19 had been present within the vicinity of the premises as set out in paragraph 43.
- Section K: the advice and regulations referred to above in paragraph 18 were action by a competent public authority as set out in paragraph 44.
- Section L: there was interruption of or interference with the business and prevention and hindrance of use of the premises or access to them from 16 March 2020 as set out in paragraph 46.
- Section N: The losses resulted from the interruption of or interference to the business as set out in paragraph 71, the interruption or interference was because of the public authority action as set out in paragraph 62, the public authority action was following the threat or risk as set out in paragraph 64, and the trends clause does not apply as set out in paragraph 75 and even if it did apply would not prevent recovery as set out in paragraphs 76 to 79.

#### Particular declarations sought:

- 1) There was illness sustained by a person, resulting from any human infectious or human contagious disease an outbreak of which the competent local authority has stipulated shall be notified to them, within a radius of 25 miles of the premises when a person or persons who had contracted COVID-19 was/were within that radius of the premises.

- 2) There was interruption to the business following caused by an incident within a one mile radius of the premises which results in denial of access or hindrance in access to the premises imposed by a civil authority and statutory authority and by order of the government and any public authority from 16 March 2020, alternatively whenever it is proven that a person with COVID-19 had been present within 1-mile of the premises, or within the vicinity of the premises;
- 3) As to proof of presence within 25 miles, general declaration (7) above is repeated;
- 4) The trends clause is not applicable to claims under the item(s) of additional cover or extension(s) of cover; and
- 5) Any losses as insured followed the illness and resulted solely and directly from the interruption, the interruption was caused by the incident, the incident resulted in the denial of access or hindrance in access, if they would not have occurred had there been no COVID-19 outbreak or interventions by the government.

<b>Policies (lead wording asterisked)</b>	*ADA555-20191101 Forge Commercial Combined (with Eastlake & Beachell)
<b>Governing law clause of lead wording</b>	<p>In the absence of any agreement to the contrary, the laws of England and Wales will apply and this policy will be subject to the exclusive jurisdiction of the courts of England unless, at the beginning of the <b>period of insurance, you</b> are either:</p> <p>a) a resident of; or</p> <p>b) a business with its registered office or principal place of business is situated in;</p> <p>Scotland, Northern Ireland, the Channel Islands or the Isle of Man (in the absence of agreement to the contrary) the law of that country, crown protectorate or dependency will apply and this policy will be subject to the exclusive jurisdiction of the courts of that country, crown protectorate or dependency (p8)</p>
<b>Disease clause</b>	N/A

<b>Denial of access clause</b>	<p><b>1) Prevention of access</b></p> <p>Loss resulting from interruption of or interference with <b>your business</b> because of</p> <p>a) ...</p> <p>b) action by a competent public authority following threat or risk of <b>damage</b> or injury in the vicinity of the <b>premises</b> which will prevent of [sic] hinder use of the <b>premises</b> or access to them whether <b>your property</b> will be damaged or not is included but excluding</p> <p>i) the first 6 hours of any interruption or interference; or</p> <p>ii) any interruption or interference with <b>your business</b> because of outbreaks of either foot &amp; mouth disease or avian flu.</p>
<b>Definitions</b>	<p><b>Damage</b></p> <p>Loss, destruction or damage.</p>
<b>Exclusions</b>	See denial of access clause (above)
<b>Trends clause</b>	<p><b>[Annual gross rentals] [Annual gross turnover] [Rate of gross profit] [Standard gross rentals] [Standard turnover]</b></p> <p>to which such adjustments will be made as may be necessary to provide for the trend of the <b>business</b> and for the variations in, or special circumstances affecting, the <b>business</b>, either before or after <b>damage</b>, or which would have affected the <b>business</b> had <b>damage</b> not occurred, so that the figures thus adjusted will represent, as nearly as may reasonably be practicable, the results which, but for the <b>damage</b>, would have been obtained during the relevant period after <b>damage</b>.</p>
<b>Example reasons for declining cover</b>	... [We] view this as requiring a localised incident (i.e. a threat within the vicinity of the premises) which prevents or hinders access. In order to adjust the loss properly, we will be required to consider the loss that would have been suffered but for the relevant insured event.

## **SCHEDULE 6 - QBE**

### **1. QBE type 1 of 3: “QBE1”**

This Wording is pleaded to at:

- General sections A to H.
- Section I: There was a human infectious or human contagious disease an outbreak of which the local authority has stipulated shall be notified to them from 5 March 2020 as set out in paragraphs 36 and 37.
- Section J: COVID-19 was manifested by any person whilst at the premises or within twenty five miles of it when a person or persons with COVID-19 was within 25 miles of the premises as set out in paragraphs 41.2 and 41.3.
- Section L: there was interruption of and interference with the business from 16 March 2020 as set out in paragraph 46, alternatively (and only where the business was ordered to close) from 20 March 2020 as set out in paragraph 47.
- Section N: The interruption or interference was arising from and caused by the disease as set out in paragraph 68.2, and the trends clause does not apply as set out in paragraph 75 and even if it did apply would not prevent recovery as set out in paragraphs 76 to 79.

### **Particular declarations sought:**

- 1) There was an human infectious or human contagious disease an outbreak of which the local authority has stipulated shall be notified to them within a twenty five mile radius of the premises when a person or persons who had contracted COVID-19 was/were within that radius of the premises.



- 2) There was interruption of or interference with the business from 16 March 2020 given the government advice and lockdown restrictions from that date, alternatively (and only where the business was ordered on that date to close) from 20 March 2020;
- 3) As to proof of presence within 25 miles, general declaration (7) above is repeated;
- 4) The trends clause is not applicable to claims under the item(s) of additional cover or extension(s) of cover; and
- 5) The interruption or interference arose from and was caused by the disease, if they would not have occurred had there been no COVID-19 outbreak or interventions by the government.

<b>Policies (lead wording asterisked)</b>	<p>*PBCC040120 Business Combined</p> <p>PBCC170619 Business Combined</p> <p>POFF180120 Office</p> <p>POFP040120 Office</p>
<b>Governing law clause of lead wording</b>	<p>This policy is governed by the law that applies in the part of the United Kingdom, Channel Islands or Isle of Man where your business is registered. Otherwise the law of England and Wales applies. All Acts of Parliament mentioned in this policy include equivalent laws in Scotland, Northern Ireland, the Isle of Man and the Channel Islands as appropriate (p.81)</p>
<b>Disease clause</b>	<p>[We will indemnify <b>you</b> for]:</p> <p><b>[7.3.9] [8.2.5] [11.1.10] Murder, suicide or disease</b></p> <p>[We shall indemnify <b>you</b> in respect of]</p> <p>interruption of or interference with the [business] <b>[business]</b> [as insured by this <b>section</b>] [arising from][caused by]:</p> <p>a) any human infectious or human contagious disease (excluding Acquired Immune Deficiency Syndrome (AIDS) or an AIDS related condition) an outbreak of which the local authority has stipulated shall be notified to them manifested by any person whilst in the <b>premises</b> or within a twenty five (25) mile radius of it;</p> <p>...</p> <p>The insurance by this clause shall only apply for the period beginning with the occurrence of the loss and ending not later than three (3) months thereafter during which the results of the <b>business</b> shall be affected in consequence of the <b>damage</b>.</p>

<b>Denial of access clause</b>	N/A
<b>Definitions</b>	<p><u>PBCC040120 and PBCC170619</u></p> <p><b>Damage/Damaged</b></p> <p>Damaged means:</p> <p>...1 loss of, destruction of or damage to tangible property;</p> <p>...2 in respect of the 'Public liability' <b>section</b> and the 'Products liability' <b>section</b> loss of use of tangible property that has been lost destroyed or damaged.</p> <p><u>POFF180120 Office</u></p> <p><b>Damage</b></p> <p>Damage means:</p> <p>17.10.1 In respect of <b>Section E</b> – Business interruption</p> <p>a) loss of destruction of or damage caused by an insured peril as set in the Coverage-insured perils clauses of <b>Section A</b> Contents and <b>Section C</b> – Buildings</p> <p>b) glass breakage;</p> <p>17.10.2 in respect of <b>section I</b> loss of use of tangible property that has been lost destroyed or damaged.</p> <p>17.10.3 In respect of all other <b>sections</b>, loss of destruction of or damage to tangible property;</p> <p><u>POFP040120 Office</u></p> <p><b>Damage / damaged</b></p> <p>20.17.1 In respect of Business interruption <b>section</b>:</p> <p>a) loss of destruction of or damage to tangible property caused by any cause not otherwise excluded by Property – Contents <b>section</b> and Property – Buildings <b>section</b>;</p> <p>b) glass breakage;</p> <p>20.17.2 in respect of Public and products liability <b>section</b>, loss of use of tangible property that has been lost destroyed or damaged.</p> <p>20.17.3 In respect of all other <b>sections</b>, loss of destruction of or damage to tangible property.</p>
<b>Exclusions</b>	<p><u>(PBCC170619 and PBCC040120 only)</u></p> <p><b>Pollution exclusion</b></p> <p><b>12 Property related exclusions</b></p>

	<p>Where expressly stated, the exclusions under shall not exclude any subsequent <b>damage</b> resulting from any ensuing cause which is not otherwise excluded.</p> <p>In addition to the 'General exclusions', the 'Property'; 'All risks – Specified business equipment'; 'Computer Breakdown'; 'Business interruption'; 'Terrorism'; 'Money'; 'Fidelity guarantee'; and 'Goods in transit' sections of this policy exclude:</p> <p>...</p> <p><b>12.14 Pollution</b></p> <p><b>damage</b>, or loss or interruption or interference caused by <b>pollution</b> or contamination but this exclusion shall not apply to <b>damage</b>, or loss or interruption or interference caused by:</p> <p>a) <b>pollution</b> or contamination which itself results from a defined peril;</p> <p>b) a defined peril which itself results from <b>pollution</b> or contamination;</p> <p>and for the purpose of this exclusion, defined peril means fire, lightning, explosion, earthquake, aircraft or other aerial device or satellite or missile or articles dropped therefrom, riot, civil commotion, strikers, locked-out workers, persons taking part in labour disturbances, malicious persons other than thieves, <b>storm, flood, inundation of water</b>, escape of water or oil from any tank or pipe, sprinkler leakage, theft or impact by any vehicle or animal provided that such defined perils are not excluded under the 'Property' <b>section</b>.</p> <p><b>23.77 Pollutant</b></p> <p>Pollutant means any solid, liquid, gaseous or thermal irritant or contaminant including smoke, vapour, soot, dust, fumes, acids, alkalis, chemicals or waste. Waste is deemed to include materials to be recycled, reconditioned or reclaimed.</p> <p><b>23.78 Pollution</b></p> <p>Pollution means:</p> <p>23.78.1 the actual alleged or threatened discharge seepage migration dispersal release or escape of pollutants at any time;</p> <p>23.78.2 any cost expense claim or suit arising out of any request demand or order as a result of actual alleged or threatened discharge seepage migration dispersal release or escape of pollutants at any time that you or any other insured party test for monitor clean up remove contain treat detoxify or neutralise or in any way respond to or assess the effects of pollutants.</p>
<b>Trends clause</b>	<p><u>PBCC170619 / PBCC040120</u></p> <p>23.117 Trend adjusted means adjustments will be made to figures as may be necessary to provide for the trend of the <b>business</b> and for variations in or circumstances affecting the <b>business</b> either before or after the <b>damage</b> or which would have affected the <b>business</b> had the <b>damage</b> not occurred,</p>

	<p>so that the figures thus adjusted will represent as nearly as may be reasonably practicable the results which but for the <b>damage</b> would have been obtained during the relative period after the <b>damage</b>.</p> <p><u>POFF180120</u></p> <p>8.1.2 In adjusting the amount paid all variations or special circumstances before and after the <b>damage</b> affecting the <b>business</b> shall be taken into account in order that the amount paid shall represent as nearly as practicable the results which would have been expected if the <b>damage</b> had not occurred.</p> <p><u>POFP040120</u></p> <p>[The definitions of Standard gross fees and Standard gross revenue use the phrase ‘trend adjusted’, but that term is not defined]</p>
<b>Example reasons for declining cover</b>	<p>... It is important to note that this Extension will only provide cover where loss is in consequence of the occurrence of Covid-19 at the relevant locations, and not where losses are in consequence of, for example, wide-scale government measures. The effect of (for example) government-mandated blanket shutdowns, or the effect of the Covid-19 outbreak on the regional, national or global economy, will not trigger cover. Cover will only be available where a specific outbreak of Covid-19 at the premises, or within the specified radius, has had a direct effect on the business.</p> <p>Where a case of Covid-19 has occurred at the insured premises, it is likely that cover under the Extension would be engaged to the extent that that occurrence has required the premises to close for a short period, subject to the terms and conditions of the policy. Where it is shown that there has been an occurrence of Covid-19 within the radius of the relevant premises as specified in the policy, interruption loss at the premises will only be recoverable to the extent that that loss is in consequence of that particular occurrence, and not some other cause.</p>

## 2. QBE type 2 of 3: “QBE2”

This Wording is pleaded to at:

- General sections A to H.
- Section I: There was illness sustained by a person resulting from a human infectious or human contagious disease an outbreak of which the competent local authority

has stipulated shall be notified to them from 5 March 2020 as set out in paragraphs 36 and 37.

- Section J: COVID-19 occurred within a radius of 25 miles of the premises when a person or persons with COVID-19 was within 25 miles of the premises as set out in paragraphs 41.1 and 41.3.
- Section L: there was interruption of and interference with the business from 16 March 2020 as set out in paragraph 46, alternatively (and only where the business was ordered to close) from 20 March 2020 as set out in paragraph 47.
- Section N: The loss was resulting from the interruption or interference as set out in paragraph 71, the interruption or interference was in consequence of the occurrence of the disease as set out in paragraph 68, and the trends clause does not apply as set out in paragraph 75 and even if it did apply would not prevent recovery as set out in paragraphs 76 to 79.

Particular declarations sought:

- 1) There was occurrence of an illness sustained by a person resulting from a human infectious or human contagious disease an outbreak of which the competent local authority has stipulated shall be notified to them within a radius of 25 miles of the premises when a person or persons who had contracted COVID-19 was/were within that radius of the premises.
- 2) There was interruption of or interference with the business from 16 March 2020 given the government advice and lockdown restrictions from that date, alternatively (and only where the business was ordered on that date to close) from 20 March 2020;
- 3) As to proof of occurrence within 25 miles, general declaration (7) above is repeated;

- 4) The trends clause is not applicable to claims under the item(s) of additional cover or extension(s) of cover; and
- 5) The loss resulted from the interruption of or interference with the business, and interruption or interference was in consequence of occurrence of the disease, if they would not have occurred had there been no COVID-19 outbreak or interventions by the government.

<b>Policies (lead wording asterisked)</b>	*PNML010119 NDML Nightclub and Late Night Venue Policy PLSP010119 Leisure Combined Insurance (inc P.A.)
<b>Governing law clause of lead wording</b>	This policy will be governed by and interpreted in accordance with the laws of England and subject to the exclusive jurisdiction of the High Court, London (p.84)
<b>Disease clause</b>	<p><b>3 Insured section B - Business interruption</b></p> <p>3.2 Additional business interruption costs and expenses</p> <p>3.2.4 Infectious disease, murder or suicide, food or drink or poisoning</p> <p>Loss resulting from interruption of or interference with the <b>business</b> in consequence of any of the following events:</p> <p>a) ...</p> <p>c) any occurrence of a <b>notifiable disease</b> within a radius of 25 [(twenty five)] miles of the <b>premises</b>;</p> <p>provided that the</p> <p>g) ...</p> <p>h) <b>insurer</b> shall only be liable for loss arising at those <b>premises</b> which are directly subject to the incident;</p> <p>i) <b>insurer's</b> maximum liability under this cover extension clause in respect of any one incident shall not exceed GBP100,000 or 15% of the total <b>sum insured</b> (or <b>limit of liability</b>) for this <b>insured section B</b>, whichever is the lesser, any one claim and GBP250,000 any one <b>period of insurance</b>.</p>
<b>Denial of access clause</b>	N/A
<b>Definitions</b>	<p>Notifiable disease means illness sustained by any person resulting from:</p> <p>....1 ...</p> <p>...2 any human infectious or human contagious disease, an outbreak of which the competent local authority has stipulated shall be notified to them excluding Acquired Immune Deficiency Syndrome (AIDS), an AIDS related condition or avian influenza</p>

<b>Exclusions</b>	<p>4 Insured section A and B exclusions</p> <p>The <b>insurer</b> is not liable under <b>insured sections A</b> and <b>B</b>, for the amount of the <b>excess</b> as stated in the <b>schedule</b> as applicable to each respective <b>insured section</b>.</p> <p>In addition and subject to the amendment that clauses 4.1 - 4.10 shall not exclude any subsequent <b>damage</b> resulting from any ensuing cause which is not otherwise excluded, <b>insured sections A</b> and <b>B</b> exclude and do not cover <b>damage</b> or loss caused by or interruption or interference caused by <b>damage</b> resulting from:</p> <p>...</p> <p><b>4.19 Pollution</b></p> <p>pollution or contamination except [damage][<b>damage</b>] to [property insured][<b>property insured</b>] by:</p> <p>4.19.1 pollution or contamination which itself results from a defined peril;</p> <p>4.19.2 a defined peril which itself results from pollution or contamination;</p> <p>(and for the purpose of this exclusion defined peril means fire lightning explosion earthquake aircraft, other aerial device or satellite or articles dropped therefrom, riot civil commotion strikers locked out workers person taking part in labour disturbances malicious persons other than thieves storm flood escape of water or oil from any tank or pipe sprinkler leakage theft or impact by any vehicle or animal);</p>
<b>Trends clause</b>	<p>Trend adjusted means adjustments will be made to figures as may be necessary to provide for the trend of the <b>business</b> and for variations in or circumstances affecting the <b>business</b> either before or after the <b>damage</b> or which would have affected the <b>business</b> had the <b>damage</b> not occurred, so that the figures thus adjusted will represent as nearly as may be reasonable practicable the results which but for the <b>damage</b> would have been obtained during the relative period after the <b>damage</b>.</p>
<b>Example reasons for declining cover</b>	<p>... It is important to note that this Extension will only provide cover where loss is in consequence of the occurrence of Covid-19 at the relevant locations, and not where losses are in consequence of, for example, wide-scale government measures. The effect of (for example) government-mandated blanket shutdowns, or the effect of the Covid-19 outbreak on the regional, national or global economy, will not trigger cover. Cover will only be available where a specific outbreak of Covid-19 at the premises, or within the specified radius, has had a direct effect on the business.</p> <p>Where a case of Covid-19 has occurred at the insured premises, it is likely that cover under the Extension would be engaged to the extent that that occurrence has required the premises to close for a short period, subject to the terms and conditions of the policy. Where it is shown that there has been an occurrence of Covid-19 within the radius of the relevant premises as specified in the policy, interruption loss at the premises will only be recoverable to the extent that that loss is in consequence of that particular occurrence, and not some other cause.</p>

### 3. QBE type 3 of 3: “QBE3”

This Wording is pleaded to at:

- General sections A to H.
- Section I: There was an occurrence of an illness sustained by a person resulting from any diseases that may be notifiable under the Health Protection (Notification) Regulations 2010 from 5 March 2020 as set out in paragraphs 36 and 37.
- Section J: COVID-19 occurred within a radius of 1 mile of the premises when a person or persons with COVID-19 was within 1 mile of the premises as set out in paragraphs 41.1 and 41.4.
- Section L: there was interruption of and interference with the business from 16 March 2020 as set out in paragraph 46, alternatively (and only where the business was ordered to close) from 20 March 2020 as set out in paragraph 47.
- Section N: The loss was resulting from the interruption or interference as set out in paragraph 71, the interruption or interference was in consequence of the occurrence of the disease as set out in paragraph 69, and the trends clause does not apply as set out in paragraph 75 and even if it did apply would not prevent recovery as set out in paragraphs 76 to 79.

#### Particular declarations sought:

- 1) There was occurrence of an illness sustained by a person from any diseases that may be notifiable under the Health Protection (Notification) Regulations 2010 within a radius of 1 mile of the premises when a person or persons who had contracted COVID-19 was/were within that radius of the premises.



- 2) There was interruption of or interference with the business from 16 March 2020 given the government advice and lockdown restrictions from that date, alternatively (and only where the business was ordered on that date to close) from 20 March 2020;
- 3) As to proof of occurrence within 1 mile, general declaration (7) above is repeated;
- 4) The trends clause is not applicable to claims under the item(s) of additional cover or extension(s) of cover; and
- 5) The loss resulted from the interruption of or interference with the business, and interruption or interference was in consequence of occurrence of the disease, if they would not have occurred had there been no COVID-19 outbreak or interventions by the government.

<b>Policies (lead wording asterisked)</b>	*PCCP010420 Commercial Combined Insurance Policy
<b>Governing law clause of lead wording</b>	<p>Unless agreed otherwise, the law applying to this <b>policy</b> is the law of that part of the <b>United Kingdom</b> where the head office of the <b>insured</b> is located on the date cover commences.</p> <p>If the head office of the <b>insured</b> is located elsewhere, then unless agreed otherwise, the law applying to this <b>policy</b> is the law of England and Wales.</p> <p>Any legal proceedings between the <b>insured</b> and the <b>insurer</b> in connection with this <b>policy</b> will take place in the same courts as described above and they are subject to the exclusive jurisdiction of that court. (p4)</p>
<b>Disease clause</b>	<p><b>Section 3 – Business Interruption</b></p> <p>...</p> <p><b>3.4 Extensions applicable to this section</b></p> <p>The <b>insurer</b> shall indemnify the <b>insured</b> for the following, if shown as insured in the <b>schedule</b>:</p> <p><b>3.4.8 Notifiable disease, murder or suicide, food or drink poisoning</b></p> <p>Loss resulting from interruption of or interference with the business as covered by this section in consequence of any of the following events:</p> <p>a) ...</p> <p>c) an occurrence of a notifiable disease within a radius of one (1) mile of the premises;</p> <p>...</p>

	<p>Provided that:</p> <p>i) the <b>insurer</b> shall only be liable for loss arising at those <b>premises</b> which are directly subject to the incident...</p> <p>‘Notifiable disease’ means illness sustained by any person resulting from any diseases that may be notifiable under the Health Protection (Notification) Regulations 2010</p>
<b>Denial of access clause</b>	N/A
<b>Definitions</b>	<p><b>25 General Definitions and Interpretation</b></p> <p>...</p> <p><b>25.23 Contamination</b></p> <p>The unwanted presence of a substance, constituent, contaminant or impurity</p> <p>...</p> <p><b>25.127 Pollutant</b></p> <p>25.127.1 Any solid, liquid, gaseous or thermal irritant or contaminant including smoke, vapour, soot, dust, fumes, acids, alkalis, chemicals or waste. Waste is deemed to include materials to be recycled, reconditioned or reclaimed;</p> <p>25.127.2 For Directors’ and Officers’ Liability section, legionella bacteria are deemed not to be pollutants.</p> <p><b>25.128 Pollution</b></p> <p>25.128.1 Discharge, seepage, migration, dispersal, release or escape of pollutants;</p>
<b>Exclusions</b>	<p><b>12 Property Related Exclusions (Applying to Section 2 to 11)</b></p> <p><b>Sections 2 to 11</b> (Property to Contract Works inclusive) exclude any <b>bodily injury, damage, claim, loss, liability, defence</b> costs or any other sums whatsoever arising out of or in respect of the following exclusions, except to the extent that it is stated expressly that an exclusion will not apply.</p> <p>...</p> <p><b>12.11 Micro-organism risks</b></p> <p>Mould, mildew, fungus, spores, viral or bacterial pathogen or other microorganism of any type, nature, or description, including but not limited to any such substance whose presence poses an actual or potential threat to human health.</p> <p>This exclusion applies regardless whether there is any:</p> <p>a) <b>damage to property insured</b> whether or not contributing concurrently or in any sequence;</p> <p>b) loss of use, occupancy, or functionality; or</p>

	<p>c) action required, including but not limited to repair, replacement, removal, clean-up, abatement, disposal, relocation, or steps taken to address medical or legal concerns.</p> <p>This exclusion does not apply to the insurance provided by the Notifiable disease, murder or suicide, food or drink poisoning clause under the Business Interruption <b>section</b>.</p> <p>...</p> <p><b>12.14 Pollution or Contamination</b></p> <p><b>Pollution</b> or <b>contamination</b>, including the cost of removing nullifying or cleaning-up seeping, polluting or contaminating substances.</p> <p>This exclusion does not apply to the cover provided by the Property and Business Interruption <b>sections</b> in respect of:</p> <p>a) <b>pollution</b> or <b>contamination</b> which itself results from a defined peril;</p> <p>b) <b>damage</b>, or loss or interruption or interference caused by:</p> <p>i) <b>pollution</b> or <b>contamination</b> which itself results from a defined peril;</p> <p>ii) a defined peril which itself results from pollution or contamination;</p> <p>and for the purpose of this exclusion, 'defined peril' means fire, lightning, explosion, earthquake, aircraft or other aerial device or satellite or missile or articles dropped therefrom, riot, civil commotion, strikers, locked-out workers, persons taking part in labour disturbances, malicious persons other than thieves, <b>flood</b>, <b>storm</b>, escape of water from any tank or pipe sprinkler leakage, theft or impact by any vehicle or animal provided that cover for such defined perils is otherwise included under the Property <b>section</b>.</p>
Trends clause	<p><b>25 General Definitions and Interpretation</b></p> <p>...</p> <p><b>25.180 Trend adjusted</b></p> <p>Adjustments made to figures as may be necessary to provide for the trend of the <b>business</b> and for variations in or circumstances affecting the <b>business</b> either before or after the <b>damage</b> or which would have affected the <b>business</b> had the <b>damage</b> not occurred, so that the figures thus adjusted will represent as nearly as may be reasonably practicable the results which but for the <b>damage</b> would have been obtained during the relative period after the <b>damage</b>.</p>

<p><b>Example reasons for declining cover</b></p>	<p>... The Extension may respond where:</p> <ul style="list-style-type: none"> <li>(a) Loss results from the occurrence of a notifiable disease at the premises; or</li> <li>(b) Loss results from the occurrence of a notifiable disease within the specified vicinity of the premises.</li> </ul> <p>Covid-19 was added to the UK government list of notifiable diseases on 5 March 2020. This Extension will therefore respond in respect of losses suffered after that date as a consequence of the occurrence of Covid-19 at the relevant locations. Cover will not be back-dated to apply to any losses suffered before Covid-19 became notifiable in the UK.</p> <p>It is important to note that this Extension will only provide cover where loss is in consequence of the occurrence of Covid-19 at the relevant locations, and not where losses are in consequence of, for example, wide-scale government measures. The effect of (for example) government-mandated blanket shutdowns, or the effect of the Covid-19 outbreak on the regional, national or global economy, will not trigger cover. Cover will only be available where a specific outbreak of Covid-19 at the premises, or within the specified vicinity, has had a direct effect on the business.</p> <p>Where a case of Covid-19 has occurred at the insured premises, it is likely that cover under the Extension would be engaged to the extent that that occurrence has required the premises to close for a short period, subject to the terms and conditions of the policy. Where it is shown that there has been an occurrence of Covid-19 within the radius of the relevant premises as specified in the policy, interruption loss at the premises will only be recoverable to the extent that that loss is in consequence of that particular occurrence, and not some other cause...</p>
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## **SCHEDULE 7 - RSA**

### **1. RSA type 1 of 4: “RSA1”**

This Wording is pleaded to at:

- General sections A to H.
- Section I: There was a notifiable human disease from 5 March 2020 as set out in paragraphs 36 and 37.
- Section J: COVID-19 was manifested at the premises or within a radius of 25 miles when a person or persons with COVID-19 was within 25 miles of the premises as set out in paragraphs 41.2 and 41.3.
- Section L: There were closure and restrictions placed on the premises from 16 March 2020 as set out in paragraph 46, alternatively (and only where the business was ordered to close) from 20 March 2020 as set out in paragraph 47, and from 16 alternatively 24 March 2020 as set out in paragraph 49.
- Section N: The loss resulted from the closure and restrictions as set out in paragraph 71, the closure and restrictions were a result of the disease as set out in paragraph 68, and the trends clause does not apply as set out in paragraph 75 and even if it did apply would not prevent recovery as set out in paragraphs 76 to 79.

### **Particular declarations sought:**

- 1) There was a notifiable disease manifesting itself at the premises within a radius of 25 miles of the premises when a person or persons who had contracted COVID-19 was/were within that radius of the premises.

- 2) There was closure and restrictions placed on the premises from 16 March 2020 given the government advice and lockdown restrictions from that date, alternatively (and only where the business was ordered on that date to close) from 20 March 2020, and from 16 alternatively 24 March 2020;
- 3) As to proof of presence within 25 miles, general declaration (7) above is repeated;
- 4) The trends clause is not applicable to claims under the item(s) of additional cover or extension(s) of cover; and
- 5) The loss resulted from the closure or restrictions, and the closure and restrictions were a result of the disease, if they would not have occurred had there been no COVID-19 outbreak or interventions by the government.

<b>Policies (lead wording asterisked)</b>	* S00475G Cottagesure
<b>Governing law clause of lead wording</b>	In the United Kingdom the law allows both parties, both You and Us, to choose the law applicable to this contract. This Policy will be subject to the relevant law of the United Kingdom, the Isle of Man, or the Channel Islands depending upon your address as shown in the Schedule. If there is any dispute as to which law applies it will be English Law (p.5)
<b>Disease clause</b>	<p><b>Extensions to Cover</b></p> <p><b>THIS INSURANCE ALSO COVERS</b></p> <p>...</p> <p><b>2 Disease, Murder, Suicide, Vermin and Pests</b></p> <p>Loss as a result of</p> <p>A) closure or restrictions placed on the <b>Premises</b> as a result of a notifiable human disease manifesting itself at the <b>Premises</b> or within a radius of 25 miles of the <b>Premises</b></p> <p><b>Sub-limits</b></p> <p>1 Any amount in excess of £250,000 after the application of all other terms and conditions of this Insurance.</p> <p>2 Any amount of the loss that continues more than twelve months after the occurrence of the loss.</p>
<b>Denial of access clause</b>	N/A

<b>Definitions</b>	<p><b>Damage</b></p> <p>Accidental loss, destruction or damage.</p> <p><b>Indemnity Period</b></p> <p>The maximum period from the date of the <b>Damage</b> for which <b>We</b> will pay any <b>loss of Gross Revenue</b> shown in the <b>Schedule</b>.</p> <p>...</p> <p><b>Loss of Gross Revenue</b></p> <p>The actual amount of the reduction in the <b>Gross Revenue</b> receivable by <b>You</b> during the <b>Indemnity Period</b> solely as a result of <b>Damage</b> to <b>Buildings</b>.</p>
<b>Exclusions</b>	<p>THIS INSURANCE ALSO DOES NOT COVER</p> <p><b>3 Pollution and Contamination</b></p> <p>Loss as a result of <b>Damage</b> caused by pollution or contamination but this shall not exclude loss resulting from <b>Damage</b> (not otherwise excluded) caused by</p> <p>A) pollution or contamination which itself results from any <b>Event</b> insured (other than Event 12)</p> <p>B) any <b>Event</b> insured (other than <b>Event</b> 12) which itself results from pollution or contamination.</p>
<b>Trends clause</b>	<p>Gross Revenue – how We settle claims</p> <p>If <b>Damage</b> by any <b>Event</b> covered under this Insurance occurs</p> <p>1        at the <b>Premises to Property</b> Insured by <b>You</b> for the purposes of the <b>Business</b></p> <p>2        ...</p> <p>and causes interruption of or interference with <b>Your Business</b> at the <b>Premises</b></p> <p><b>We</b> will pay <b>You</b> the amount of loss resulting from the interruption or interference caused by the <b>Damage</b> in accordance with the following</p> <p>1        in respect of <b>Gross Revenue</b></p> <p>          the amount by which the <b>Gross Revenue</b> received during the <b>Indemnity Period</b> falls short of the Standard <b>Gross Revenue</b> as a result of the <b>Damage</b></p> <p>2        in respect of Increased Cost of Working</p> <p>          the additional expenditure reasonably incurred in avoiding or minimising the <b>loss of Gross Revenue</b> which but for the expenditure would have taken place during the <b>Indemnity Period</b> but no more than the total of</p> <p>A)       the amount of the reduction in <b>Gross Revenue</b> thereby avoided plus</p>

	B) 5% of the <b>Gross Revenue</b> sum insured or £250,000 whichever is the less
<b>Example reasons for declining cover</b>	<p>... if a specific case of Covid-19 occurred at or within 25 miles of your insured property, and this specific case directly led to its closure or restriction - for example, if it was closed for cleaning required by Public Health England or Public Health Scotland - an indemnity claim could be payable for losses of revenue. Claims could also be payable if, as a direct result of a local outbreak, you could evidence cancellations by customers, and subsequent loss of revenue.</p> <p>The policy does not cover losses arising from a general reduction in the number of bookings or increased cancellations as a result of the Coronavirus pandemic, including as a result of social distancing measures, self-isolation requirements or restrictions on travel.</p> <p>The relevant period for claims would be from when Covid-19 became notifiable in your country within the UK, up to and including 23rd March, when wider Government restrictions were imposed. All losses of revenue arising after 23rd March are a result of the wider Government requirement that all non-essential businesses close until further notice, which is not covered under the policy.</p> <p>Your business may be classed as essential if you are providing accommodation for key workers or for individuals whose own home is temporarily uninhabitable (e.g. because of flood damage). If this is the case and your property has to be vacated because of a case of Covid-19 then you may be covered under your Cottagesure policy.</p> <p><b>Making a claim</b></p> <p>If you were forced to close your property prior to 23rd March, or the essential business position applies, and you wish to put forward a claim under the terms of your policy as outlined above, please contact Gallagher who will advise you how to do this...</p>

## 2. RSA types 2.1 and 2.2 of 4: “RSA2.1” and “RSA2.2”

This Wording is pleaded to at:

- General sections A to H.
- Section J: There was an emergency likely to endanger life in the vicinity of the premises from 3 March 2020, alternatively 12 March 2020 as set out in paragraph 43, alternatively whenever it is proven that a person with COVID-19 had been present within the vicinity of the premises as set out in paragraph 43.



- Section K: the advice and regulations referred to above in paragraph 18 were actions and advice of a competent Public Authority as set out in paragraph 44.
- Section L: there was interruption and interference with the business and prevention or hindrance of the use or access to the premises from 16 March 2020 as set out in paragraph 46, alternatively (and only where the business was ordered to close) from 20 March 2020 as set out in paragraph 47.
- Section N: The loss was sufficiently causally connected with the interruption or interference as set out in paragraph 71, the interruption and interference was sufficiently causally connected with the public authority action as set out in paragraph 71, and the trends clause does not apply as set out in paragraph and even if it did apply would not prevent recovery as set out in paragraphs 76 to 79.

Particular declarations sought:

- 1) There was interruption and interference and action and advice of a competent Public Authority due to an emergency likely to endanger life in the vicinity of the premises which prevents or hinders the use or access to the premises from 16 March 2020, alternatively 12 March 2020 and/or whenever it is proven that a person with COVID-19 had been present within the vicinity of the premises
- 2) As to proof of presence within the vicinity, general declaration (7) above is repeated;
- 3) The trends clause is not applicable to claims under the item(s) of additional cover or extension(s) of cover; and
- 4) Any losses as insured were sufficiently causally connected with the interruption or interference, and the interruption and interference was sufficiently causally connected

with the public authority action, if they would not have occurred had there been no COVID-19 outbreak or interventions by the government.

<b>Policies (lead wording asterisked)</b>	<p><u>RSA2.1</u> GPUB/PW/06/17 Eaton Gate Super Facility Pubs and Restaurants</p> <p><u>RSA2.2</u> v27.6 APR18 Eaton Gate Super Facility Retail</p>
<b>Governing law clause of lead wording</b>	<p><b>You</b> and <b>We</b> can choose the law which applies to this <b>Policy</b>.</p> <p>Unless <b>You</b> and <b>We</b> have agreed otherwise this <b>Contract</b> shall be subject to English Law and the Courts of England shall have exclusive jurisdiction in all disputes connected with this <b>Policy</b>.</p> <p>If there is any dispute as to which law and jurisdiction apply it will be English law and the Courts of England (p.3, RSA2.1; p.3, RSA2.2).</p>
<b>Disease clause</b>	N/A
<b>Denial of access clause</b>	<p><b>Extensions</b></p> <p>Cover provided by this [Sub-]Section is extended to include interruption or interference with the <b>Business</b></p> <p><b>What is covered</b></p> <p><b>F [Prevention of Access - ] Public Emergency</b></p> <p>The actions or advice of a competent Public Authority due to an emergency likely to endanger life or property in the vicinity of the <b>Premises</b> which prevents or hinders the use or access to the <b>Premises</b>[.]</p>
<b>Definitions</b>	<p><b>Damage</b></p> <p>Material loss destruction or [damage][<b>Damage</b>]</p>
<b>Exclusions</b>	<p><u>RSA2.1</u></p> <p>Any loss...</p> <p>b) during any period other than the actual period when access to the Premises was prevented...</p> <p>e) - as a result of the diseases specified in Extension A (a) – Diseases.</p> <p>Any amount in excess of £10,000.</p> <p>...</p> <p>[Extension] <b>A. Disease</b></p> <p>The occurrence of</p> <p>a) Acute Encephalitis Acute Poliomyelitis Anthrax Chickenpox Cholera Diphtheria Dysentery Legionellosis Legionnaires Disease Leprosy Leptospirosis Malaria Measles Meningococcal infection Mumps Ophthalmia Neonatorum Paratyphoid Fever Plague Rabies Rubella Scarlet Fever</p>

	<p>Smallpox Tetanus Tuberculosis Typhoid Fever Viral Hepatitis Whooping Cough or Yellow Fever sustained by any person at the <b>Premises</b></p> <p><u>RSA2.2</u></p> <p>Any loss...</p> <p>a)...</p> <p>b) during any period other than the actual period when access to the Premises was prevented</p> <p>...</p> <p>e) As a result of infectious or contagious diseases any amount in excess of £10,000.</p> <p><b>General Policy Exclusions</b></p> <p>We will not be liable for any claim in respect of:</p> <p><b>F. Pollution and Contamination (Applicable to Sections 1 2 4 5 7 and 9)</b></p> <p>Damage or loss of <b>Gross Profit</b> caused by or arising from pollution or contamination except (unless otherwise excluded) Damage to the Property insured caused by:</p> <p>a) pollution or contamination which itself results from fire lightning explosion aircraft or other aerial devices or articles dropped therefrom riot civil commotion strikers locked out workers malicious persons theft involving physical force or violence earthquake storm flood escape of water from any tank apparatus or pipe or impact by any road vehicle or animal</p> <p>b) any of the contingencies in (a) above which itself results from pollution or contamination</p>
<b>Trends clause</b>	<p><b>Adjustments</b></p> <p>In adjusting the amount paid all variations or special circumstances affecting the Business shall be taken in to account in order that the amount paid shall represent as nearly as practicable the results which would have been expected if the Damage had not occurred[.]</p>

<b>Example reasons for declining cover</b>	<p>The policy does not cover losses that result from any measures of social distancing, lack of demand, reduced footfall or general downturn in public consumption. [...]</p> <p>The Prevention of Access - Public Emergency cover provided under Extension F only covers emergencies likely to endanger life or Property in the vicinity of the Premises. The intention of this cover is for incidents such as fire damaged buildings or escapes of water in the vicinity of an Insured's premises where there is an insured peril and imminent risk to life or property. The extension is concerned with isolated occurrences at your premises or within closed [sic] proximity and not any wider nationwide health strategy. The Government instruction to close premises like your own was not because of an emergency likely to endanger life in the vicinity of your premises but rather to prevent the spread of the virus.</p>
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### 3. RSA type 3 of 4: "RSA3"

This Wording is pleaded to at:

- General sections A to H.
- Section I: There was a human infectious or human contagious disease an outbreak of which the competent local authority has stipulated shall be notified to them from 5 March 2020 as set out in paragraphs 36 and 37.
- Section J: There was an occurrence of an illness sustained by a person resulting from COVID-19 within a radius of 25 miles of the insured premises when a person or persons with COVID-19 was within 25 miles of the premises as set out in paragraphs 41.1 and 41.3.
- Section L: there was interruption of and interference with the business from 16 March 2020 as set out in paragraph 46, alternatively (and only where the business was ordered to close) from 20 March 2020 as set out in paragraph 47.

- Section M: there was no pollution and/or contamination within the relevant exclusion or the occurrence of the disease arose directly from the pollution and/or contamination and therefore the exclusion is inapplicable as set out in paragraph 52.
- Section N: The loss was sufficiently causally connected with the interruption and interference as set out in paragraph 71, interruption of or interference with the business was following the occurrence of COVID-19 as set out in paragraph 68.1, and the trends clause does not apply as set out in paragraph 75 and even if it did apply would not prevent recovery as set out in paragraphs 76 to 79.

Particular declarations sought:

- 1) There was interruption of or interference with the business following illness sustained by a person resulting from a human infectious or contagious disease, an outbreak of which the competent local authority has stipulated shall be notified to them (the COVID-19 outbreak) within a radius of 25 miles of the premises when a person or persons with COVID-19 was/were within that radius of the premises within 25 miles of the premises;
- 2) As to proof of presence within 25 miles, general declaration (7) above is repeated;
- 3) The pollution and/or contamination exclusion is not applicable;
- 4) The trends clause is not applicable to claims under the item(s) of additional cover or extension(s) of cover; and
- 5) Any losses as insured were sufficiently causally connected with the interruption or interference, and the interruption and interference followed the occurrence of COVID-

19, if they would not have occurred had there been no COVID-19 outbreak or interventions by the government.

<b>Policies (lead wording asterisked)</b>	*v1.3 APR18 Eaton Gate Super Facility Commercial Combined
<b>Governing law clause of lead wording</b>	<p>You and We can choose the law which applies to this Policy.</p> <p>Unless You and We have agreed otherwise this Contract shall be subject to English Law and the Courts of England shall have exclusive jurisdiction in all disputes connected with this Policy.</p> <p>If there is any dispute as to which law and jurisdiction apply it will be English law and the Courts of England. (p3)</p>
<b>Disease clause</b>	<p><b>Extensions to Section 2 – Business Interruption</b></p> <p>Cover provided by this section is extended to include;</p> <p>...</p> <p>vii. Infectious Diseases</p> <p><b>We</b> shall indemnify <b>You</b> in respect of interruption of or interference with the <b>Business</b> during the <b>Indemnity Period</b> following:</p> <p>a. any:</p> <p>...</p> <p>iii. occurrence of a Notifiable Disease within a radius of 25 miles of the Premises;</p> <p><b>Additional Definition in respect of Notifiable Diseases</b></p> <p>1. Notifiable Disease shall mean illness sustained by any person resulting from:</p> <p>i. ...</p> <p>ii. any human infectious or human contagious disease excluding Acquired Immune Deficiency Syndrome (AIDS) or an AIDS related condition an outbreak of which the competent local authority has stipulated shall be notified to them</p> <p>...</p> <p>2. For the purposes of this clause:</p> <p>Indemnity Period shall mean the period during which the results of the Business shall be affected in consequence of the occurrence discovery or accident beginning:</p> <p>i. in the case of a) and d) above with the date of the occurrence or discovery; or</p> <p>ii. ...</p> <p><b>Premises</b> shall mean only those locations stated in the <b>Premises</b> definition. In the event that the section includes an extension which deems</p>

	<p>loss destruction or <b>Damage</b> at other locations to be an <b>Incident</b> such extension shall not apply to this clause.</p> <p>...</p> <p>4. We shall only be liable for the loss arising at those <b>Premises</b> which are directly affected by the occurrence discovery or accident Maximum <b>Indemnity Period</b> shall mean 3 months</p>
Denial of access clause	N/A
Definitions	<p><b>Incident</b></p> <p>a) Loss or destruction of or <b>Damage</b> to <b>Property</b> used by <b>You</b> at the <b>Premises</b> for the purpose of the <b>Business</b>; or</p> <p>b) Loss destruction of or <b>Damage</b> to <b>Your</b> books of account or other <b>Business</b> books or records at the <b>Premises</b> in respect of Book Debts</p>
Exclusions	<p><b>L Applicable to all sections other than Section 5 – Employers’ Liability and Section 6 – Public Liability</b></p> <p>...</p> <p><b>Contamination or Pollution Clause</b></p> <p>a) The insurance by this <b>Policy</b> does not cover any loss or <b>Damage</b> due to contamination pollution soot deposition impairment with dust chemical precipitation adulteration poisoning impurity epidemic and disease or due to any limitation or prevention of the use of objects because of hazards to health.</p> <p>b) this exclusion does not apply if such loss or <b>Damage</b> arises out of one or more of the following Perils:</p> <ul style="list-style-type: none"> <li>• Fire, Lightning, Explosion, Impact of Aircraft;</li> <li>• Vehicle Impact Sonic Boom;</li> <li>• Accidental Escape of Water from any tank apparatus or pipe Riot, Civil Commotion, Malicious Damage;</li> <li>• Storm; Hail Flood Inundation Earthquake;</li> <li>• Landslide <b>Subsidence</b> Pressure of Snow, Avalanche Volcanic Eruption;</li> </ul> <p>[c)][a][bis]] If a Peril not excluded from this <b>Policy</b> arises directly from <b>Pollution and/or Contamination</b> any loss or <b>Damage</b> arising directly from that Peril shall be covered.</p>
Trends clause	<p>Special provision applicable to this section: Under <b>Rate of Gross Profit, Annual Turnover, Standard Turnover, Annual Rent receivable, Standard Rent, Receivable Annual Gross Revenue and Standard Gross Revenue</b> adjustments shall be made as may be necessary to provide for the trend of the <b>Business</b> and for variations in or other circumstances affecting the <b>Business</b> either before or after the <b>Incident</b> or which would have affected the <b>Business</b> had the <b>Incident</b> not occurred so that the figures thus adjusted shall represent as nearly as may be reasonably</p>

	practicable the results which but for the <b>Incident</b> would have been obtained during the relative period after the <b>Incident</b> .
<b>Example reasons for declining cover</b>	<p>The General Exclusions, which are applicable to all sections of the policy and are specifically stated to apply to Section 2, contains a Contamination or Pollution Clause which specifically excludes any loss or damage due to disease and epidemic. COVID-19 is a disease and has been considered an epidemic since at least 5/3/20 and so this exclusion is triggered and any losses you have sustained are not covered. Notwithstanding the above, the core Business Interruption cover under Section 2 is premised on there being Property Damage at your Premises as defined in the policy. The Government instruction to close premises is an attempt to stop the spread of the virus; not because the premises themselves have suffered damage.</p> <p>The policy does not cover losses that result from any measures of social distancing, lack of demand, reduced footfall or general downturn in public consumption. The Infectious Diseases Extension requires either an occurrence of a Notifiable Disease at the Premises or within 25 miles of the Premises. We are not aware that there has been a confirmed case of COVID-19 on your premises. Whilst there may well be a confirmed case within 25 miles of your premises, the policy requires there to be a causal connection between any such occurrence and the interruption or interference with your business. The Infectious Disease extension is concerned with isolated occurrences at your premises or within a 25 mile radius and not any wider national or international outbreak. In any event, the general exclusion referred to above will still apply. The Prevention of Access – Public Emergency Extension specifically states that the insurer will not be liable for any loss resulting from Notifiable Diseases which includes COVID-19.</p>

#### 4. RSA type 4 of 4: “RSA4”

This Wording is pleaded to at:

- General sections A to H.
- Section I: There was a disease notifiable under the Health Protection Regulations (2010) the initial outbreak of which was 31 December 2019, alternatively 31 January 2020 when the first two UK cases of COVID-19 were diagnosed, alternatively such later date as the Court shall determine, as set out in paragraphs 37 to 40.



- Section J: There was an occurrence COVID-19 within the Vicinity of the insured premises on 31 January 2020, alternatively when COVID-19 occurred within a more localised area surrounding the insured premises (such as within a 1 mile and/or 25 mile radius), as set out in paragraph 41.5. There were health reasons or concerns from 3 March 2020, alternatively 12 March 2020 as set out in paragraph 43.
- Section K: the advice and regulations referred to above in paragraph 18 were actions and advice of a governmental authority or agency as set out in paragraph 44, and were in the Vicinity of the premises on the date on which they were taken as set out in paragraph 45.
- Section L: there was interruption of and interference to the business and prevention or hindrance of the use of or access to and enforced closure of the insured locations from 16 March 2020 as set out in paragraph 46, alternatively (and only where the business was ordered to close) from 20 March 2020 as set out in paragraph 47.
- Section N: The loss was resulting from interruption and interference as set out in paragraph 73, interruption and interference with the business was a result of COVID-19 occurring within the Vicinity as set out in paragraph 70 and the public authority action as set out in paragraph 62, the public authority action was for health reasons or concerns as set out in paragraph 64, and the trends clause does not apply as set out in paragraph 75 and even if it did apply would not prevent recovery as set out in paragraphs 76 to 79.

Particular declarations sought:

- 1) There was interruption of and interference with the business as a result of a disease notifiable under the Health Protection Regulations (2010) within the Vicinity from 16

March 2020 given the government advice and lockdown restrictions from that date, alternatively (and only where the business was ordered on that date to close) from 20 March 2020, alternatively when COVID-19 occurred within a localised area surrounding the insured premises (such as within a 1 mile and/or 25 mile radius);

- 2) There was interruption of and interference with the business as a result of enforced closure by a governmental authority or agency for health reasons or concerns from 16 March 2020, given the government advice and lockdown restrictions from that date, alternatively (and only where the business was ordered on that date to close) from 20 March 2020;
- 3) There was interruption of and interference with the business as a result of the actions and advice of governmental authority or agency in the Vicinity of the insured locations which prevents and hinders the use of and access to insured locations from 16 March 2020 given the government advice and lockdown restrictions from that date, alternatively (and only where the business was ordered on that date to close) from 20 March 2020; and
- 4) Any losses as insured were sufficiently causally connected with the interruption or interference, and the interruption and interference was a result of occurrence of COVID-19 and the public authority action and the enforced closure, the enforced closure was for health reasons, if they would not have occurred had there been no COVID-19 outbreak or interventions by the government.

<b>Policies (lead wording asterisked)</b>	*Marsh Material Damage and BI – Resilience Jelf Material Damage and BI – Resilience
<b>Governing law clause of lead wording</b>	i. Under the laws of the United Kingdom (England, Scotland, Wales and Northern Ireland) both parties may choose the law which applies to this policy to the extent permitted by those laws, unless the parties agree

	<p>otherwise in writing the Insurer has agreed with the Policyholder that this policy is subject to the law applying in that part of the United Kingdom of Great Britain and Northern Ireland, the Channel Islands, or the Isle of Man where the Policyholder Address, as shown in Item 1 of the Schedule, is located.</p> <p>ii. If there is any dispute as to which law applies, it will be English Law. (p.13)</p>
<b>Disease clause</b>	<p>In consideration of the payment of premium or promise to pay the premium by the <b>Policyholder</b>, the <b>Insurer</b> agrees as follows:</p> <p><b>2. BUSINESS INTERRUPTION</b></p> <p><b>2.3 BUSINESS INTERRUPTION – SPECIFIED CAUSES</b></p> <p>In the event of interruption or interference to the <b>Insured's Business</b> as a result of:</p> <p>i...</p> <p>viii. <b>Notifiable Diseases &amp; Other Incidents</b></p> <p>a ...</p> <p>d ... occurring within the <b>Vicinity</b> of an <b>Insured Location</b>, during the <b>Period of Insurance</b>;</p> <p>...</p> <p>within the <b>Territorial Limits</b>, the <b>Insurer</b> agrees to pay the <b>Insured</b> the resulting <b>Business Interruption Loss</b>.</p>
<b>First denial of access clause</b>	<p>In consideration of the payment of premium or promise to pay the premium by the <b>Policyholder</b>, the <b>Insurer</b> agrees as follows:</p> <p><b>2. BUSINESS INTERRUPTION</b></p> <p><b>2.3 BUSINESS INTERRUPTION – SPECIFIED CAUSES</b></p> <p>In the event of interruption or interference to the <b>Insured's Business</b> as a result of:</p> <p>...</p> <p>viii. <b>Notifiable Diseases &amp; Other Incidents</b></p> <p>a...</p> <p>d occurring within the <b>Vicinity</b> of an <b>Insured Location</b>, during the <b>Period of Insurance</b>;</p> <p>...</p> <p>within the <b>Territorial Limits</b>, the <b>Insurer</b> agrees to pay the <b>Insured</b> the resulting <b>Business Interruption Loss</b>.</p>
<b>Second denial of access clause</b>	<p>In consideration of the payment of premium or promise to pay the premium by the <b>Policyholder</b>, the <b>Insurer</b> agrees as follows:</p> <p><b>2. BUSINESS INTERRUPTION</b></p> <p><b>2.3 BUSINESS INTERRUPTION – SPECIFIED CAUSES</b></p>

	<p>In the event of interruption or interference to the <b>Insured's Business</b> as a result of:</p> <p>i. ...</p> <p>xii. <b>Prevention of Access – Non Damage</b> during the <b>Period of Insurance</b> where such interruption or interference is for more than eight (8) consecutive hours;</p> <p>...</p> <p>within the <b>Territorial Limits</b>, the <b>Insurer</b> agrees to pay the <b>Insured</b> the resulting <b>Business Interruption Loss</b>.</p>
<b>Definitions</b>	<p><b>Business Interruption Loss</b> means:</p> <p>i. the <b>Reduction in Turnover</b>...</p> <p><b>Covered Event</b> means the events described in Insuring Clause 2.1, 2.2[,] 2.3 or 2.4 ....</p> <p><b>Notifiable Diseases &amp; Other Incidents</b> means:</p> <p>i. one of the following tabulated diseases and/or illnesses:</p> <p>...</p> <p>ii. any additional diseases notifiable under the Health Protection Regulations (2010), where a disease occurs and is subsequently classified under the Health Protection Regulations (2010) such disease will be deemed to be notifiable from its initial outbreak;</p> <p>...</p> <p>v. defective sanitation or any other enforced closure of an <b>Insured Location</b> by any governmental authority or agency or a competent local authority for health reasons or concerns.</p> <p><b>Prevention of Access – Non-Damage</b> means:</p> <p>i...</p> <p>ii. the actions or advice of the police, other law enforcement agency, military authority, governmental authority or agency in the <b>Vicinity</b> of the <b>Insured Locations</b>...</p> <p>which prevents or hinders the use of or access to <b>Insured Locations</b> during the <b>Period of Insurance</b>.</p> <p><b>Vicinity</b> means an area surrounding or adjacent to an <b>Insured Location</b> in which events that occur within such area would be reasonably expected to have an impact on an <b>Insured</b> or the <b>Insured's Business</b>.</p> <p><b>Reduction in Turnover</b> means:</p> <p>i. the amount by which the <b>Turnover</b> during the <b>Indemnity Period</b> falls short of the <b>Standard Turnover</b>; LESS ...</p>

	<p><b>Standard Turnover</b> means the <b>Turnover</b> during that equivalent period before the date of any <b>Covered Event</b> which corresponds with the <b>Indemnity Period</b> to which adjustments have been made to take into account the trend of the <b>Insured's Business</b> and for variations in or other circumstances affecting the <b>Insured's Business</b> either before or after the <b>Covered Event</b> or which would have affected the <b>Insured's Business</b> had the <b>Covered Event</b> not occurred so that the figures thus adjusted will represent as nearly as may be reasonably practicable the results which but for the <b>Covered Event</b> would have been obtained during the <b>Indemnity Period</b>.</p>
<b>Exclusions</b>	N/A
<b>Trends clause</b>	See definitions, above.
<b>Example reasons for declining cover</b>	<p><u>Business Interruption cover under the Notifiable Diseases Clause</u></p> <p>... the policy does not cover losses arising from a general reduction in turnover or increased costs as a result of the wider Coronavirus pandemic - including as a consequence of social distancing measures, self-isolation requirements or restrictions on travel.</p> <p>For businesses classified by the Government as non-essential, the relevant period for claims would be from 5th March to the date of Government closure (in most cases, 20th March or 23rd March as appropriate). We are finding that Business interruption losses arising after this point are the result of the wider Government restrictions imposed to combat the global Covid-19 pandemic and, as such, do not fall within the cover provided by the policy</p> <p><u>Business Interruption cover under the Prevention of Access – Non Damage Clause</u></p> <p>...</p> <p>Many of our customers are facing restrictions in order to comply with Government guidance. In most cases, however, this is not in response to any action or advice of the relevant authority or agency in the Vicinity of our customers' premises, as is required by the policy, but a direct consequence of UK wide measures adopted by the Government. Even without any locally imposed restrictions within the Vicinity, businesses would still be sustaining losses due to the nationwide measures. To date, the restrictions introduced within the UK in response to Covid-19 apply nationally, and not to specific geographic areas. For example, no trading restriction has been placed on businesses classified as essential, irrespective of location. As a result, the losses sustained by most businesses cannot be attributed to the action of a named authority within the Vicinity, as is required by the policy.</p>

## **SCHEDULE 8 - ZURICH**

### **1. Zurich type 1 of 2: "Zurich1"**

This Wording is pleaded to at:

- General sections A to H.
- Section J: there was a danger in the vicinity of the premises from 3 March 2020, alternatively 12 March 2020 as set out in paragraph 43, alternatively whenever it is proven that a person with COVID-19 had been present within the vicinity of the premises as set out in paragraph 43.
- Section K: the advice and regulations referred to above in paragraph 18 were action by a competent civil authority, as set out in paragraph 44.
- Section L: there was interruption of and interference with the business and access to the premises was prevented from 16 March 2020 as set out in paragraph 46, alternatively (and only where the business was ordered to close) from 20 March 2020 as set out in paragraph 47.
- Section N: The losses resulted from the interruption of or interference with the business as set out in paragraph 71.1, the interruption or interference was in consequence of the public authority action as set out in paragraph 62, the action was following the danger in the vicinity of the premises as set out in paragraph 64, and the trends clause (if present) does not prevent recovery as set out in paragraphs 76 to 79.

Particular declarations sought:

- 1) There was interruption of or interference with the business following action by a competent civil authority following a danger in the vicinity of the premises where access will be prevented from 16 March 2020, alternatively whenever it is proven that a person with COVID-19 had been present within the vicinity of the premises;
- 2) As to proof of presence within the vicinity, general declaration (7) above is repeated;  
and
- 3) Any losses as insured resulted from the interruption or interference, the interruption or interference was in consequence of the public authority action, and the action followed the danger, if they would not have occurred had there been no COVID-19 outbreak or interventions by the government.

<b>Policies (lead wording asterisked)</b>	*Endorsement POA3 to the Combined All Risks Policy ZCYP36
<b>Governing law clause of lead wording</b>	In the UK the law allows both you and us to choose the law applicable to this contract. This contract will be subject to the relevant law of England and Wales, Scotland, Northern Ireland, the Isle of Man or the Channel Islands depending upon your address stated in the schedule. If there is any dispute as to which law applies it will be English law. (p.6)
<b>Disease clause</b>	N/A
<b>Denial of access clause</b>	<b>EXTENSIONS</b> Section B1 The Business Interruption cover is subject to the extensions shown below: Any loss as insured by this Section resulting from interruption of or interference with the Business in consequence of accidental loss destruction or damage at the under-noted situations or to property as under-noted shall be deemed to be an Incident, provided that, after the application of all other terms and conditions of the Policy the liability under the Extension(s) in respect of any one occurrence shall not exceed:

	<p><sup>16</sup>[a] the percentage of:</p> <p>(i) 133.33% of the Estimated Gross Profit;</p> <p>(ii) the sum insured by all other items of this Section]</p> <p><u><sup>17</sup>[a] the percentage of:</u></p> <p><u>(i) 133.33% of the Estimated Gross Revenue;</u></p> <p><u>(ii) the sum insured by all other items of this Section]</u></p> <p><sup>18</sup>[a] the percentage of the total of the sums insured by each item of this Section]</p> <p>or</p> <p>b) the amount</p> <p>shown below against such situations or property as the limit.</p> <p><b>EXTENSIONS – CONTINUED</b></p> <p><b>Action of Competent Authorities</b></p> <p>Action by the Police or other competent Local, Civil or Military Authority following a danger or disturbance in the vicinity of the Premises whereby access thereto shall be prevented provided there shall be no liability under this Section of this Extension for loss resulting from interruption of the Business during the first [variable] hours of the Indemnity Period.</p> <p>For the purpose of this Extension:</p> <p>a) the limit is [variable]%</p> <p>b) the Maximum Indemnity Period is [variable] months</p>
<b>Definitions</b>	N/A
<b>Exclusions</b>	<p><b>Exclusions applicable to Sections A, B1 and B2:</b></p> <p><b>Sections A, B1 and B2 do not cover:</b></p> <p>...</p> <p>4b) in respect of Section B1 and B2</p> <p>loss resulting from pollution or contamination but this shall not exclude loss resulting from destruction of or damage to property used by the Insured at the Premises for the purpose of the Business, not otherwise excluded, caused by:</p> <p>i) pollution or contamination at the Premises which itself results from a Defined Peril</p>

<sup>16</sup> Included if the policy is written on a Loss of Gross Profit basis.

<sup>17</sup> Included if the policy is written on a Loss of Gross Revenue basis.

<sup>18</sup> Included if the policy is written on an Increased Cost of Working basis.



	<p>ii) a Defined Peril hereby insured against which itself results from pollution or contamination</p> <p>iii) sudden, identifiable, unintended and unexpected pollution or contamination at the Premises which itself results from an occurrence other than a Defined Peril</p> <p>iv) an occurrence other than a Defined Peril which itself results from sudden, identifiable, unintended and unexpected pollution or contamination</p> <p>subject to a total limit of liability in respect of a) iii) and iv) and b) iii) and iv) in any one Period of Insurance of £25,000</p>		
<b>Trends clause</b>	<p><u>If the policy is written on a Loss of Gross Profit basis</u><sup>49</sup></p> <p><b>SPECIFICATION TO SECTION B1</b></p> <p><b>Item 1 – On Gross Profit</b></p> <p>The Insurance under this Item is limited to loss of Gross Profit due to a) Reduction in Turnover and b) Increase in Cost of Working and the amount payable as indemnity thereunder shall be:</p> <p>a) in respect of Reduction in Turnover: the sum produced by applying the Rate of Gross Profit to the amount by which the Turnover during the Indemnity Period shall fall short of the Standard Turnover in consequence of the Incident...</p> <p>...</p> <p><b>DEFINITIONS</b></p> <table border="0"> <tr> <td> <p><b>Rate of Gross Profit:</b> The rate of Gross Profit earned on the Turnover during the financial year immediately before the date of the Incident</p> <p><b>Standard Turnover:</b> The Turnover during that period in the twelve months immediately before the date of the Incident which corresponds with the Indemnity Period</p> </td><td> <p>to which such adjustments shall be made as may be necessary to provide for the trend of the Business and for variations in or other circumstances affecting the Business either before or after the Incident or which would have affected the Business had the Incident not occurred, so that the figures thus adjusted shall represent as nearly as may be reasonably practicable the results which but for the Incident would have been obtained during the relative period after the Incident.</p> </td></tr> </table>	<p><b>Rate of Gross Profit:</b> The rate of Gross Profit earned on the Turnover during the financial year immediately before the date of the Incident</p> <p><b>Standard Turnover:</b> The Turnover during that period in the twelve months immediately before the date of the Incident which corresponds with the Indemnity Period</p>	<p>to which such adjustments shall be made as may be necessary to provide for the trend of the Business and for variations in or other circumstances affecting the Business either before or after the Incident or which would have affected the Business had the Incident not occurred, so that the figures thus adjusted shall represent as nearly as may be reasonably practicable the results which but for the Incident would have been obtained during the relative period after the Incident.</p>
<p><b>Rate of Gross Profit:</b> The rate of Gross Profit earned on the Turnover during the financial year immediately before the date of the Incident</p> <p><b>Standard Turnover:</b> The Turnover during that period in the twelve months immediately before the date of the Incident which corresponds with the Indemnity Period</p>	<p>to which such adjustments shall be made as may be necessary to provide for the trend of the Business and for variations in or other circumstances affecting the Business either before or after the Incident or which would have affected the Business had the Incident not occurred, so that the figures thus adjusted shall represent as nearly as may be reasonably practicable the results which but for the Incident would have been obtained during the relative period after the Incident.</p>		

<sup>49</sup> ~~Zurich has informed the FCA that cover written on a Loss of Revenue basis also contains a trends clause, but has not supplied any instances of the same. Pending examples being provided, the FCA's position is reserved.~~

	<p><u>If the policy is written on a Loss of Gross Revenue basis</u></p> <p><b><u>SPECIFICATION TO SECTION B1</u></b></p> <p><b><u>Item 1 – On Gross Revenue</u></b></p> <p><u>The Insurance under this Item is limited to a) Loss of Gross Revenue and b) Increase in Cost of Working and the amount payable as indemnity thereunder shall be:</u></p> <p><u>a) in respect of Loss of Gross Revenue, the amount by which the Gross Revenue during the Indemnity Period shall fall short of the Standard Gross Revenue in consequence of the Incident...</u></p> <p><u>...</u></p> <p><b><u>DEFINITIONS</u></b></p> <p><b><u>Standard Gross Revenue</u></b></p> <p><u>The Gross Revenue during that period in the twelve months immediately before the date of the Incident which corresponds with the Indemnity Period to which such adjustments shall be made as may be necessary to provide for the trend of the Business and for variations in or other circumstances affecting the Business either before or after the Incident or which would have affected the Business had the Incident not occurred, so that the figures thus adjusted shall represent as nearly as may be reasonably practicable the results which but for the Incident would have been obtained during the relative period after the Incident.</u></p> <p><u>If the policy is written on an Increased Cost of Working basis</u></p> <p><b><u>SPECIFICATION TO SECTION B1</u></b></p> <p><b><u>Item 2 – On Increased Cost of Working</u></b></p> <p>The Insurance under this Item is limited to Increased Cost of Working and the amount payable as indemnity thereunder shall be the increase in expenditure reasonably incurred by the Insured during the Indemnity Period in order to minimise any interruption of or interference with the Business in consequence of the Incident.</p> <p>[No trends language]</p>
<p><b>Example reasons for declining cover</b></p>	<p>Based on the information provided, there was no action by a competent authority that related to your premises or its vicinity and which has prevented access. The Government's order related to nationwide measures to prevent the spread of COVID-19, applied to all relevant businesses nationwide and have had the effect of suppressing business rather than impeding access... Your policy does not provide cover for pandemics</p>

2. Zurich type 2 of 2: "**Zurich2**"

This Wording is pleaded to at:

- General sections A to H.
- Section J: there was a danger in the vicinity of the premises from 3 March 2020, alternatively 12 March 2020 as set out in paragraph 43, alternatively whenever it is proven that a person with COVID-19 had been present within the vicinity of the premises as set out in paragraph 43.
- Section K: the advice and regulations referred to above in paragraph 18 were action by a competent civil authority, as set out in paragraph 44.
- Section L: there was interruption of and interference with the business and access to the premises was prevented from 16 March 2020 as set out in paragraph 46, alternatively (and only where the business was ordered to close) from 20 March 2020 as set out in paragraph 47.
- Section N: The losses resulted from the interruption of or interference with the business as set out in paragraph 71.1, the interruption or interference was in consequence of the public authority action as set out in paragraph 62, the action was following the danger in the vicinity of the premises as set out in paragraph 64, and the trends clause does not prevent recovery as set out in paragraphs 76 to 79.

Particular declarations sought:

- 1) There was interruption of or interference with the business following action by a competent civil authority following a danger in the vicinity of the premises where access will be prevented from 16 March 2020, alternatively 12 March 2020, alternatively whenever it is proven that a person with COVID-19 had been present within the vicinity of the premises;

- 2) As to proof of presence within the vicinity, general declaration (7) above is repeated;  
and
- 3) Any losses as insured resulted from the interruption or interference, the interruption or interference was in consequence of the public authority action, and the action followed the danger, if they would not have occurred had there been no COVID-19 outbreak or interventions by the government.

<b>Policies (lead wording asterisked)</b>	<p>*Commercial combined - Manufacturing (Acturis) SME557</p> <p>Commercial combined – Professional and Business Services (Acturis) SME563</p> <p>Commercial combined – Sports, leisure and entertainment (Acturis) SME567</p> <p>Commercial combined - Wholesale and Retail (Acturis) SME561</p> <p>Commercial Combined (Acturis) SME500</p> <p>Contractors Combined SME555</p>
<b>Governing law clause of lead wording</b>	<p>In the UK the law allows both you and us to choose the law applicable to the contract. This contract will be subject to the relevant law of England and Wales, Scotland, Northern Ireland, the Isle of Man or the Channel Islands depending upon your address as stated in your policy documentation. If there is any dispute as to which law applies it will be English law (p.11)</p>
<b>Disease clause</b>	N/A
<b>Denial of access clause</b>	<p><b>Sub-section B1 – Business interruption ‘all risks’</b></p> <p><b>Cover</b></p> <p>In the event of any <i><b>incident</b></i> occurring during the period of insurance and in consequence the <b>business</b> carried on by <b>you</b> at the <b>premises</b> being interrupted or interfered with then <b>we</b> will pay <b>you</b> in respect of each item in the schedule the amount of loss resulting from such interruption or interference.</p> <p><b>Additional cover extensions applicable to Sub-section B1 – Business interruption ‘all risks’</b></p> <p>Any loss as insured under this section resulting from interruption of or interference with the <b>business</b> in consequence of:</p> <p>a) <b>damage</b> at any situation or to any property shown below; or</p> <p>b) any of the under-noted contingencies</p> <p>will be deemed to be an <i><b>incident</b></i>.</p> <p><b>1. Action of competent authorities</b></p>

	<p>Action by the police or other competent local, civil or military authority following a danger or disturbance in the vicinity of the <b>premises</b> whereby access thereto will be prevented provided there will be no liability under this section of this extension for loss resulting from interruption of the <b>business</b> during the first 3 hours of the <i>indemnity period</i>.</p> <p><u>All policies save Contractors Combined SME555</u></p> <p>The <i>maximum indemnity period</i> is 12 months.</p> <p><u>Contractors Combined SME555 only</u></p> <p>The <i>maximum indemnity period</i> is 3 months.</p>
<b>Definitions</b>	N/A
<b>Exclusions</b>	<p><b>Exclusions applicable to Sections A and B</b></p> <p><b>Sections A and B do not cover:</b></p> <p>...</p> <p><b>11. Pollution or contamination exclusion</b></p> <p>...</p> <p>b) in respect of Sub-sections B1 and B2:</p> <p>loss resulting from pollution or contamination but this will not exclude loss resulting from <b>damage</b> to property used by <b>you</b> at the <b>premises</b> for the purpose of the <b>business</b>, not otherwise excluded, caused by:</p> <p>i) pollution or contamination at the <b>premises</b> which itself results from a <b>defined peril</b></p> <p>ii) a <b>defined peril</b> hereby insured against which itself results from pollution or contamination</p> <p>iii) sudden, identifiable, unintended and unexpected pollution or contamination at the <b>premises</b> which itself results from an occurrence other than a <b>defined peril</b></p> <p>iv) an occurrence other than a <b>defined peril</b> which itself results from sudden, identifiable, unintended and unexpected pollution or contamination subject to a total limit of liability in respect of a) iii) and iv) and b) iii) and iv) in any one period of insurance of £25,000</p>
<b>Trends clause</b>	<p><b>Basis of claim settlement</b></p> <p>These terms of settlement only apply if the item title appears in <b>your</b> schedule.</p> <p><b>Item 1 – On Gross profit or Estimated gross profit</b></p> <p>The amount payable as indemnity under this item will be:</p> <p>a) in respect of reduction in <i>turnover</i>: the sum produced by applying the <i>rate of gross profit</i> to the amount by which the <i>turnover</i> during the</p>

	<p><i>indemnity period</i> falls short of the <i>standard turnover</i> in consequence of the <i>incident</i></p> <p>...</p> <p><b>Notes to the special definitions</b></p> <p>In respect of the definitions of <i>annual research and development expenditure</i>, <i>standard gross revenue</i>, <i>insured amounts per week</i>, <i>standard fees</i> and <i>standard turnover</i> adjustments will be made as may be necessary to provide for the trend of the <b>business</b> and for variations in or other circumstances affecting the <b>business</b> either before or after the <i>incident</i> which would have affected the <b>business</b> had the <i>incident</i> not occurred so that the figures thus adjusted will represent as nearly as may be reasonably practicable the results which but for the <i>incident</i> would have been obtained during the relative period after the <i>incident</i>.</p>
<b>Example reasons for declining cover</b>	<p>Based on the information provided, there was no action by a competent authority that related to your premises or its vicinity and which has prevented access. The Government's order related to nationwide measures to prevent the spread of COVID-19, applied to all relevant businesses nationwide and have had the effect of suppressing business rather than impeding access... Your policy does not provide cover for pandemics.</p>

## **ANNEXE 1 – THE REGULATORY CONTEXT**

### **The FCA's statutory functions**

1. The FCA's statutory strategic objective is ensuring that the relevant markets function well (FSMA, s1B(2)). The relevant markets include the financial markets and the markets for services provided by insurers in carrying on regulated activities (FSMA, ss1F and 1H(2)(a)).
2. The FCA has the following statutory operational objectives:
  - 2.1. the consumer protection objective, which is securing an appropriate degree of protection for consumers who are defined to include all persons who use, have used or may use services provided by authorised persons in carrying on regulated activities (FSMA, ss1B(3)(a), 1C(1) and 1G(1)(a));
  - 2.2. the integrity objective, which is protecting and enhancing the integrity of the UK financial system, including financial markets and exchanges and regulated activities (FSMA, ss (ss1B(3)(b), 1D(1) and 1I); and
  - 2.3. the competition objective, which is promoting effective competition in the interests of consumers (ss1B(3)(c) and 1E).
3. The FCA's general functions include:
  - 3.1. making rules under FSMA pursuant to s137A(1)(a);
  - 3.2. giving of general guidance under FSMA pursuant to (s139A(1); and
  - 3.3. determining the general policy and principles by reference to which it performs particulars statutory functions (FSMA, s1B(6)).

4. In discharging its general functions, the FCA must, so far as reasonably possible, act in a way which is compatible with its strategic objective and advances one or more of its operational objectives (FSMA, s1B(1)(b)). Further, the FCA must, so far as is compatible with acting in a way which advances the consumer protection objective and the integrity objective, discharge its general functions in a way which promotes effective competition in the interests of consumers (FSMA, s1B(4)).

The relevant aspects of the regulatory code for authorised insurance firms

5. No person may carry on a regulated activity in the UK unless he is an authorised person or an exempt person (s19)).
6. Effecting and carrying out contracts of insurance and managing the underwriting capacity of a Lloyd's syndicate as a managing agent at Lloyd's in the UK are regulated activities (s22 and articles 10 and 57 of the FSMA (Regulated Activities) Order 2001).
7. The FCA, as the conduct regulator of authorised firms, has established a detailed regulatory code that covers, among other things, the provision of insurance services, the handling of insurance claims and the handling of customers' complaints. The following rules are of particular relevance to the handling of COVID-19 business interruption claims and related complaints by the Defendants and other authorised insurers.
  - 7.1. A firm must pay due regard to the interests of its customers and treat them fairly (PRIN 2.1, Principle 6). Treating customers fairly is the core regulatory principle that governs the relationship between authorised firms and their customers.
  - 7.2. A firm must act honestly, fairly and professionally in accordance with the best interests of its customer (ICOBS 2.5.-1 R).



7.3. A firm must:

- (a) handle claims promptly and fairly;
- (b) provide reasonable guidance to help a policyholder make a claim and appropriate information on its progress;
- (c) not unreasonably reject a claim (including by terminating or avoiding a policy); and
- (d) settle claims promptly once settlement terms are agreed. (ICOBS 8.1.1 R).

- 8. The FCA's Handbook contains rules regulating the investigation and assessment of customers' complaints and the provision of appropriate redress (DISP 1.4.1R). Factors that may be relevant to the assessment of a complaint include relevant guidance provided by the FCA (DISP 1.4.2G).
- 9. The FCA must maintain arrangements for supervising authorised person (s1L(1)).
- 10. The FCA may take disciplinary measures if authorised persons breach the relevant requirements (ss204A-211). A breach of regulatory requirements may also enable the FCA to exercise other powers, including to seek injunctions (s.380) and restitution orders (s382).

The legal uncertainty over whether certain insurance policies respond to COVID-19 business interruption claims

- 11. The COVID-19 pandemic and the controls imposed by the Government as a result are causing substantial losses and financial distress to businesses, in particular small and medium-sized enterprises but other businesses as well.

12. A large number of claims are being made to the Defendants and other insurers under the terms of policies of insurance covering business interruption losses. Depending on the policy wording and the circumstances of the insured's claim, the Defendants and other insurers are paying claims in relation to some policies and rejecting claims in relation to others. Several businesses and groups of businesses have indicated their intention to challenge the rejection of their claims in court or arbitration proceedings or bring complaints to the Financial Ombudsman Service.
13. The FCA considers that there is legal uncertainty as to whether the policies that are the subject of the claim ought to respond to COVID-19 business interruption claims. As the regulator responsible for regulating and supervising the conduct of the Defendants and other insurers in the UK, it urgently seeks resolution of this legal uncertainty for the purposes of exercising and performing its statutory powers and duties under the Financial Services and Markets Act 2000, and in particular for the purpose of determining and pursuing its regulatory and supervisory policy in relation to the handling of COVID-19 business interruption claims and complaints.

The selection of the policies and issues on which declaratory relief is sought

14. The FCA, in consultation with the Defendants, other insurers, policyholders, brokers and other stakeholders has conducted a comprehensive review of the policy wordings for business interruption insurance that exist in the market. It has focussed not on policies that require physical or property damage but rather on those that have 'non-damage' covers or extensions. It has identified certain policies in relation to which it claims declaratory relief.

The importance of the claim for the FCA's supervisory and regulatory policy and for the guidance to be issued by the FCA

15. The FCA considers that the court's judgment on the questions on which it seeks declaratory relief will provide a legal precedent that, as regards at least the substantial majority of COVID-19 business interruption claims under policies that do not require property damage, will either determine whether the claim is covered or provide relevant guidance that will assist with that determination.
16. The present claim and the court's judgment in due course are the basis of the FCA's regulatory and supervisory policy in relation to the handling of COVID-19 business interruption claims. On 1 June 2020, the FCA consulted on draft guidance in relation to the implications of this claim for the handling of COVID-19 business interruption claims under non-damage business interruption policies and related complaints.
17. The draft guidance applies to:
  - 17.1. all insurance firms which, before the claim began, underwrote a policy containing wording which provides cover for business interruption losses in circumstances where there has been no physical damage to the insured property;
  - 17.2. insurance intermediaries and insurers which handle claims on another insurer's relevant non-damage business interruption policy; and
  - 17.3. managing agents that manage a Lloyd's syndicate which has underwritten relevant non-damage interruption policies.
18. The application of the draft guidance is subject to one of two conditions being satisfied. The first condition is that the insurer has received a claim or complaint for losses from the COVID-19 pandemic and has decided to reject the claim, or has made an adjustment or deduction for general causation, or has not yet made a decision. The

second condition is that the insurer has told policyholders or said publicly that their business interruption policies with non-damage cover do not respond to COVID-19.

19. The draft guidance includes the following advice in summary.

19.1. Insurers should review whether or not the present claim may be relevant to the decisions that they have taken or may take to reject claims. The results of the review should be reported to the FCA.

19.2. Insurers and insurance intermediaries should filter claims and complaints (including those received before the guidance came into effect) to consider whether the final determination of the present claim may be relevant to the claim or complaint.

19.3. Policyholders should be kept appropriately informed about the present claim and its implications for COVID-19 business interruption claims and related complaints made by policyholders and for any relevant settlement offers that the firm may make.

19.4. When the present claim has finally been determined after the exhaustion of rights of appeal, firms should treat customers fairly by applying the judgment to COVID-19 business interruption claims and related complaints in so far as it is relevant to such claims and complaints. The recommended course of action includes reassessing all COVID-19 business interruption claims which have been rejected before the final determination of the present claim but which may be affected by the court's judgment. The same advice has been given in relation to the reassessment of complaints (except where a firm has received notification from the Financial Ombudsman service that it has accepted a complaint for consideration).

20. The FCA will take into account whether or not the Defendants and other insurers are following the guidance (once issued, having taken representations into account) when considering what if any further regulatory or supervisory action it may be appropriate to take.
21. Regardless of the outcome of the proceedings, the court's judgment will enable the FCA to monitor whether the Defendants and other insurers are handling COVID-19 business interruption claims and related complaints in accordance with their legal obligations (including their regulatory obligations) and to take such further regulatory and supervisory action as it may consider necessary.
22. Further, the FCA considers that the declaratory relief that is seeks, together with guidance that it intends to issue in relation to the proceedings and any further regulatory or supervisory action that it may take, may alleviate financial distress and enable businesses to avoid insolvency. The FCA therefore considers that, in seeking to obtain declaratory relief that will benefit policyholders in relation to questions concerning the scope of cover for COVID-19 business interruption claims under certain insurance extensions or other coverage clauses that do not require damage to the insured's property , it is advancing its consumer protection objective.

## ANNEXE 2 – ASSUMED FACTS

### 1. INTRODUCTION

The following set of *assumed facts*<sup>20</sup> has not been tailored to the specific policies selected but represents an overview of what the FCA currently perceives to be a range of possible fact patterns for policyholders, and in particular SME businesses, affected by the current situation. It is intended as a useful and neutral document, with high-level fact scenarios, and in a form flexible enough to enable more detailed factual scenarios (arising in respect of particular businesses and policies) to be considered within its framework. It specifically takes into account scenarios which insurers, policyholders and brokers have put forward.

The methodology adopted is intended to cover the following variables in respect of policies:

- a) the type of business and type of government interference by reference to the nature of the advice and/or guidance and/or mandate given to specific businesses and the categories in the Health Protection (Coronavirus, Business Closure) (England) Regulations 2020 SI 2020/237 (“**21 March Regulations**”) and the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 SI 2020/350 (“**26 March Regulations**”), together with the 21 March Regulations the “**Regulations**”) (Categories 1-7 in the *Assumed Fact Patterns* below);
- b) single use and mixed use (hybrid) premises;
- c) the type of location of the business (city, town, rural, etc) which may be relevant to variable (d) below;
- d) incidence of disease by reference to the insured location, if a specific proximity requirement is imposed by the policy wording;
- e) opening, closure and downturn permutations – i.e. whether a business stayed open, timing of any closure (e.g. before/when/after it was advised to do so and/or was required to do so) or suffered a downturn in business prior to/after such advice or requirements;
- f) the nature of any local authority or police intervention if a requirement for such is imposed by the policy wording; and
- g) the nature of loss suffered, e.g. business/physical restrictions at premises; increased cost of working; reduced footfall; cancelled or postponed bookings; reduced turnover; or general lost revenue from being unable (in whole or part) to conduct business.

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<sup>20</sup> As defined in the Framework Agreement para 1.3.

The *Assumed Fact Patterns* do not seek to address loss of rent claims expressly or multiple insured locations (since the litigation has a primary focus on SME policyholders rather than larger commercial organisations with multiple branches) or multiple business interruptions. The rulings of the Court on the other *Assumed Fact Patterns* will still have value in interpreting cover for these scenarios.

Whilst the *Assumed Fact Patterns* are assumed to relate to businesses in England, they can be readily adapted to businesses in Scotland, Wales and Northern Ireland where similar advice was given and legislation enacted save that there are minor differences in the dates when COVID-19 became notifiable, regarding the enforceability of the 2-metre rule (in Scotland & Wales), listed businesses (though these are extremely minor) and guidance given by devolved governments (e.g. “stay alert” versus “stay at home”, etc.)

These fact patterns are intended to highlight the sorts of issues that arise and will need to be tested, to the extent that facts are relevant at all to these issues. It is important for the Court to be aware of the wide range of different circumstances to which the policies apply. The *Assumed Facts Patterns* are intended to provide an overview of the various contexts within which the relevant policy terms operate. They provide a basis for considering and testing arguments. Insurers have proposed detailed specific factual scenarios to supplement the *Assumed Fact Patterns*. At the appropriate time (likely to be after service of Defences) the FCA will engage in further dialogue with insurers to consider whether it may be appropriate and helpful to the Court for there to be a limited number of simplified but instructive factual scenarios agreed for use by the Parties in their respective submissions to assist in the argument on one or more of the issues before the Court. If so, these are best developed in light of the issues as pleaded by all parties. However, any such dialogue will not prevent the Court from hearing argument concerning the potential application of the policy terms to a wide variety of businesses and entities in a wide variety of circumstances, to ensure the judgment can be applied to as many businesses as possible. Mention of a business type below does not indicate that that business will specifically be considered or that other businesses not mentioned will not be considered.

## 2. OVERVIEW OF APPROACH

The table below represents an overview of the general approach to be taken to *assumed facts*. Note it is not to be read directly horizontally across each row, but rather to take the applicable type of business/type of government interference, then to consider its use (single/mixed), location, then disease incidence, etc across each column. Some of the available permutations set out in the table will not apply on particular policy wordings: notably, the opening/closure/impact permutations will often be heavily dependent on the type of business and/or government advice/action, as set out in more detail in the section below the table. The table is not intended to cover all scenarios; instead, as stated, it is an overview of the variables involved in the analysis and is subject to the *agreed facts*.<sup>21</sup>

A TYPE OF BUSINESS AND TYPE OF GOVERNMENT ADVICE/ACTION	B SINGLE/ MIXED USE	C TYPE OF LOCATION	D DISEASE INCIDENCE	E OPENING/ CLOSURE/ IMPACT PERMUTATIONS	F LOCAL AUTHORITY/ POLICE ADVICE/ACTION	G NATURE OF LOSS/ CIRCUMSTANCES
Businesses which public was advised not to attend, and were then mandated to close save that can stay open to an extent to sell food or drink for consumption off the premises (Category 1: Regulations Part 1 Business). [e.g. restaurant, café, bar, public house]	Single use	Urban (e.g. city or town)	COVID-19 within specified proximity	Closed or applied restrictions or suffered an adverse business impact before government guidance	Local authority or police or similar issued guidance or took action (where relevant under the policy) – subject to <i>agreed facts</i>	Loss of revenue/income  Loss of footfall for (part of) business allowed to remain open (such as takeaway restaurant)
Businesses which public was advised not to attend and were then mandated to close (Category 2: Regulations Part 2 Business). [e.g. from 21 March 2020 cinema, theatre, nightclub, concert hall, betting shop, gym, leisure centre; from 26	Mixed use (i.e. one use was permitted and one use was prohibited or restricted - e.g. supermarket incorporating	Rural (e.g. village or more remote rural location)	COVID-19 not within specified proximity but beyond it	Closed or applied restrictions or suffered an adverse business impact between government guidance and government order	Local authority or police or similar did not issue guidance or take action (where relevant under the policy) – subject to <i>agreed facts</i>	Increased/additional costs of working

<sup>21</sup> As defined in the Framework Agreement para 1.2.



March 2020 hairdressers and prescribed other businesses]	café, physiotherapy clinic incorporating a gym)					
Businesses expressly permitted to stay open (Category 3: Regulations Part 3 Business). No express restrictions. In England guidance and in Scotland and Wales a requirement to take reasonable measures to ensure compliance with the 2-metre rule.  [e.g. convenience store, off-licence, supermarket, pharmacy, hardware store, petrol station, car repair garage, taxi business, dry cleaner, dentist, optician, chiropractor or other medical or health services, veterinary surgeon or pet shop]			Not relevant as <i>relevant term</i> does not require incidence of COVID-19	Closed or applied restrictions or suffered an adverse business impact on or after date of government order	Not relevant as <i>relevant term</i> refers directly to government action	Reduced footfall before e.g. 21 March 2020  Reduced footfall after e.g. 21 March 2020
Unlisted retail businesses offering goods for sale or hire advised to close, then mandated to close other than for deliveries or services in response to telephone, online or mail orders (Category 4: Regulations unlisted retail).  [e.g. clothes shop, other goods/services retail business not listed in Schedule 2, Part 3 to the <b>26 March Regulations</b> ]						
Other unlisted service business neither expressly required to close nor expressly permitted by the Regulations to remain open (Category 5: Regulations unlisted services).						

[e.g. manufacturer, accountancy firm, law firm, other service business not listed in the Regulations]						
Hotels, cottages, holiday accommodation advised to close, then mandated (with limited exceptions) to close (Category 6: Hotels or other holiday accommodation). [e.g. hotel, cottage or bungalow, bed & breakfast, hostel, holiday apartment, home, campsite, caravan park or boarding house]						
Nursery or educational establishment or place of worship (Category 7: Nursery or educational establishment or place of worship). [e.g. nursery, primary school, secondary school, sixth form college, community college, university, place of worship]						

### 3. ASSUMED FACT PATTERNS: DETAILED DELINEATION OF VARIABLES AND ANALYSIS<sup>22</sup>

#### CATEGORY 1: REGULATIONS PART 1 BUSINESS

(Provisional summary of government interference, subject to *agreed facts*: Public advised not to attend from 16 March 2020; closed by 21 March Regulations, save can stay open to extent sells for consumption off the premises. Guidance also produced on 11 May 2020 on how businesses should run their operations safely, including in relation to eight different types of business, in turn including (relevant to this category) restaurants offering takeaway or delivery.)

1. The business is a [restaurant, café, bar, public house].
2. It is in an [urban/rural] location.
3. There was incidence of COVID-19 [within a specified proximity/beyond that/not relevant to policy term].
4. Opening/closure/impact permutations:
  - a) It suffered a reduction in turnover from early March 2020 as a result of [self-isolation] and [voluntary social distancing] and/or [social distancing on advice].
  - b) It closed prior to 21 March 2020, and it is asserted that this was because of [COVID-19 in the locality and/or governmental or other advice (e.g. from a trade body)] [and/or][a general reduction in turnover over the preceding 3 weeks].
  - c) It closed fully on 21 March 2020, having no facility to sell for consumption off-premises, alternatively choosing not to sell for consumption off-premises.
  - d) It closed to eat-in customers on 21 March 2020 but continued to sell for consumption off-premises.
  - e) It stayed open to the extent permitted but suffered a downturn in business due to a more limited operation (e.g. due to needing to follow social distancing requirements, such as adhering to 2 metres between customers, customers and staff and staff members, or because it could only operate a takeaway service).

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<sup>22</sup> All *Assumed Fact Patterns* are subject to the *agreed facts*.

5. Local authority or police did/did not issue advice/guidance and/or take relevant action in general/in relation to the area/in relation to the business.
6. The business suffered loss due to [e.g. loss of revenue, increased cost of working, etc.].

## CATEGORY 2: REGULATIONS PART 2 BUSINESS

(Provisional summary of government interference, subject to *agreed facts*: Public advised not to attend from 16 March 2020; closed by 21 March Regulations, others closed from 26 March 2020 by 26 March Regulations.)

1. The business is a [cinema, theatre, nightclub, concert hall, betting shop, gym, leisure centre; from 26 March 2020 hairdressers and prescribed other businesses].
2. It is [single/mixed] use.
3. It is in an [urban/rural] location.
4. There was incidence of COVID-19 [within a specified proximity/beyond that/not relevant to policy term].
5. Opening/closure/impact permutations:
  - a) It suffered a reduction in turnover from early March 2020 as a result of [self-isolation] and [voluntary social distancing] and/or [social distancing on advice].
  - b) It closed prior to 21 March 2020, and it is asserted that this was because of COVID-19 in the locality and/or governmental or other advice (e.g. from a trade body)) [and/or] [a general reduction in turnover over the preceding 3 weeks].
  - c) It closed on 21 March 2020, or 26 March 2020 for some businesses.
6. Local authority or police did/did not issue advice/guidance and/or take relevant action in general/in relation to the area/in relation to the business.
7. The business suffered loss due to [e.g. loss of revenue, increased cost of working, etc.].

### CATEGORY 3: REGULATIONS PART 3 BUSINESS

(Provisional summary of government interference, subject to *agreed facts*: Expressly permitted to stay open. No express restrictions on Part 3 businesses in the Regulations. In Scotland and Wales businesses had (under legislation) to take reasonable measures to ensure compliance with the 2 metre rule but this was not a requirement in England where it was in the form of guidance. Guidance also produced on 11 May 2020 on how businesses should run their operations safely, including in relation to eight different types of business, in turn including (relevant to this category, where specifically prescribed by Part 2, Schedule 3 to the Regulations) certain offices (e.g. for this category, post offices, funeral directors) and certain shops and branches (e.g. for this category, food retailers).)

1. The business is a [convenience store, off-licence, supermarket, pharmacy, hardware store, petrol station, car repair garage, taxi business, dry cleaner, urgent dental centre<sup>23</sup>, optician, chiropractor or other medical or health services, veterinary surgeon or pet shop].
2. It is [single/mixed] use.
3. It is in an [urban/rural] location.
4. There was incidence of COVID-19 [within a specified proximity/beyond that/not relevant to policy term].
5. Opening/closure/impact permutations:
  - a) It suffered a reduction in turnover from early March 2020 as a result of [self-isolation] and [voluntary social distancing] and/or [social distancing on advice].
  - b) It closed prior to 26 March 2020 and it is asserted that this was because of COVID-19 in the locality and/or governmental or other advice.
  - c) It closed on 26 March 2020.
  - d) It stayed open but suffered a downturn in business due to a more limited operation (e.g. emergency appointments only, needing to follow social distancing requirements) or cancellations or incurred additional costs of operating.
6. Where relevant, local authority or police did/did not issue advice/guidance and/or take relevant action in general/in relation to the area/in relation to the business
7. The business suffered loss due to [e.g. loss of revenue or increased cost of working, etc.].

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<sup>23</sup> Other dental practices were effectively closed by a range of measures (including regulatory measures) taken by a combination of the NHS, the Chief Dental Officer and the Care Quality Commission, which took effect between 25 and 30 March 2020 (subject to the *agreed facts*, as defined in the Framework Agreement para 1.2).

#### **CATEGORY 4: REGULATIONS UNLISTED SHOPS OFFERING GOODS FOR SALE OR HIRE**

(Provisional summary of government interference, subject to *agreed facts*: Closed by governmental announcements, guidance and advice on 16, 18, 22 and 23 March 2020, or by 26 March Regulations other than making deliveries or providing services in response to phone/online/mail orders. Guidance also produced on 11 May 2020 on how businesses should run their operations safely, including in relation to eight different types of business, in turn including (relevant to this category) factories/plants/warehouses, offices and contact centres, people delivering to other people's homes and shops and branches.)

1. The business is a [clothes shop, other goods retail business not listed in Schedule 2, Part 3 to the 26 March Regulations.
2. It is in an [urban/rural] location.
3. There was incidence of COVID-19 [within a specified proximity/beyond that/not relevant to policy term].
4. Opening/closure/impact permutations:
  - a) It suffered a reduction in turnover from early March 2020 as a result of [self-isolation] and [voluntary social distancing] and/or [social distancing on advice].
  - b) It closed prior to 26 March 2020 and it is asserted that this was because of COVID-19 in the locality and/or governmental or other advice.
  - c) It closed fully on 26 March 2020, having no delivery or phone/online/mail order business, alternatively choosing not to deliver or provide services by phone/online/mail order.
  - d) It closed on 26 March 2020, but started or continued to deliver or provide services by phone/online/mail order.
5. Local authority or police did/did not issue advice/guidance and/or take relevant action in general/in relation to the area/in relation to the business.
6. The business suffered loss due to [e.g. loss of revenue or increased cost of working, etc.].

## CATEGORY 5: REGULATIONS UNLISTED SERVICES

(Provisional summary of government interference, subject to *agreed facts*: The Regulations did not require business to close but government advice was not to travel to work unless necessary. Guidance also produced on 11 May 2020 on how businesses should run their operations safely, including in relation to eight different types of business, in turn including (relevant to this category) construction and other outdoor work, factories/plants/warehouses, laboratories and research facilities, offices and contact centres, people working in, visiting or delivering to other people's homes, shops and branches and vehicle based businesses.)

1. The business is a [manufacturer, accountancy firm, law firm, recruitment agency, other service business not listed in the Regulations].
2. It is [single/mixed] use.
3. It is in an [urban/rural location].
4. There was incidence of COVID-19 [within a specified proximity/beyond that/not relevant to policy term].
5. Opening/closure/impact permutations:
  - a) It suffered a reduction in turnover from early March 2020 as a result of [self-isolation] and [voluntary social distancing] and/or [social distancing on advice].
  - b) It closed entirely [partially] and it is asserted that this was because of COVID-19 in the locality and/or governmental or other advice.
  - c) It continued but remotely in part or whole.
6. Local authority or police did/did not issue advice/guidance and/or take relevant action in general/in relation to the area/in relation to the business.
7. The business suffered loss due to [e.g. loss of revenue or increased cost of working etc.].



## **CATEGORY 6: HOTEL OR OTHER HOLIDAY ACCOMMODATION**

(Provisional summary of government interference, subject to *agreed facts*: Advised on 24 March 2020 to “take steps to close for commercial use as quickly as is safely possible” and mandated to close by 26 March Regulations save for very limited category guests such as critical workers)

1. The business is a [hotel, cottage, bed & breakfast or other holiday accommodation].
2. It is [single/mixed] use.
3. It is in an [urban/rural location].
4. There was incidence of COVID-19 [within a specified proximity/beyond that/not relevant to policy term].
5. Opening/closure/impact permutations:
  - a) It suffered a reduction in turnover from early March 2020 as a result of [self-isolation] and [voluntary social distancing] and/or [social distancing on advice].
  - b) It closed prior to 24 March 2020 due to governmental announcements (e.g. on 16 March 2020 for citizens to “stop all unnecessary travel”) and/or to protect employees/customers and/or because of a drop in turnover and/or because it could not safely operate.
  - c) It [did not close/closed] on 24 March 2020 on receipt of government advice.
  - d) It closed on 26 March 2020 when it was required to close.
6. Local authority or police did/did not issue advice/guidance and/or take relevant action in general/in relation to the area/in relation to the business.
7. The business suffered loss due to [e.g. loss of revenue or increased cost of working, etc.].

## **CATEGORY 7: NURSERY, EDUCATIONAL ESTABLISHMENT OR PLACE OF WORSHIP**

(Provisional summary of government interference, subject to *agreed facts*: Announced on 16 March 2020 that non-essential contact, confined spaces and mass gatherings should be avoided. Further announced on 18 March 2020 that schools would close from after 20 March 2020 save for vulnerable children and children of critical workers. Power to close educational institutions and childcare premises conferred by section 37 and Schedule 16 of Coronavirus Act 2020. Places of worship required to close pursuant to regulation 5(5) of the 26 March Regulations save for funerals, to broadcast an act of worship or provide essential voluntary services or urgent public support services.)

1. The business is a [nursery, educational establishment or place of worship].
2. It is in an [urban/rural location].
3. There was incidence of COVID-19 [within a specified proximity/beyond that/not relevant to policy term].
4. Opening/closure/impact permutations for nursery or educational establishments:
  - a) It suffered a reduction in turnover from early March 2020 as a result of [self-isolation] and [voluntary social distancing] and/or [social distancing on advice].
  - b) It closed entirely [partially] prior to 21 March 2020, e.g. due to the governmental announcement on 18 March 2020.
  - c) It closed entirely on 21 March 2020, alternatively closed save for children of key workers and vulnerable children and/or online lessons.
5. Opening/closure/impact permutations for places of worship:
  - a) It suffered a reduction in revenue from early March 2020 as a result of voluntary self-isolation and social distancing advice.
  - b) It closed prior to 26 March 2020, e.g. due to the government announcement on 16 March 2020.
  - c) It closed on 26 March 2020, save to the extent permitted to remain open (e.g. to conduct funerals).
6. Local authority or police did/did not issue advice/guidance and/or take relevant action in general/in relation to the area/in relation to the business.
7. The business suffered loss due to [e.g. loss of revenue or increased costs etc.].

### **ANNEXE 3 – QUESTIONS FOR DETERMINATION**

The document is intended to be high level and encompass the potential issues arising from the wordings neutrally. The Framework Agreement at 5.1.8(b) expressly provides for the settling of a list of issues for trial having regard to the *Questions for Determination*,<sup>24</sup> based on the Parties' statements of case. These are likely to narrow down what is in dispute. The *Questions for Determination* is not a statement of case or a formal list of issues and it will be superseded by the statements of case and the list of issues agreed for trial. Its purpose is to identify the scope of the litigation and for initial case management, as contemplated by paragraphs 2.2 to 2.8 of the Framework Agreement.

<b>A.</b>	<b>CENTRAL QUESTIONS</b>
1.	Under the policy wording in question, construed as a whole and applying the <i>agreed facts</i> <sup>25</sup> and on the applicable permutation(s) if any of the <i>assumed facts</i> , <sup>26</sup> is there cover in principle under any relevant non-damage insuring clause in respect of loss arising as a result of interruption or interference with the insured's business (or as otherwise required by the specific insuring clause in question) by the COVID-19 pandemic (including its effects)?
2.	Where coverage in principle is established pursuant to (1) above, whether on the <i>agreed facts</i> and on the applicable permutation(s) if any of the <i>assumed facts</i> , the policyholders can in principle establish the necessary causal link between assumed losses sustained by policyholders and the relevant peril, event or circumstance that is covered, including taking into account the relevance (if any) of a trends clause or equivalent wording (if applicable)?
<b>B.</b>	<b>GENERIC ISSUES</b>
3.	In principle, what effect on the business is required in order for it to be interrupted or interfered with for the purposes of references in cover clauses to "interruption" or "interference" with the insured business?

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<sup>24</sup> As defined in the Framework Agreement para 1.4.

<sup>25</sup> As defined in the Framework Agreement para 1.2.

<sup>26</sup> As defined in the Framework Agreement para 1.3.

<b>C. DISEASE COVER<sup>27</sup></b>	<p>A clause which provides cover if there is notifiable disease or some other categorisation of disease (e.g. “human infectious or contagious disease”) either at all or within a certain radius or within the vicinity of premises.</p> <p>The selected wordings do <u>not</u> include:</p> <ul style="list-style-type: none"> <li>a) clauses that have an exhaustive list of notifiable diseases which does not include COVID-19; and</li> <li>b) clauses which require the disease to be present on the insured premises.</li> </ul>
4.	Subject to any specific policy definition does “notifiable disease” <sup>28</sup> or “human infectious or human contagious disease” or similar <sup>29</sup> include COVID-19?
5.	<p>If the disease is required by a particular policy to be in the "vicinity" of the insured premises, what does this mean in principle?</p> <p>(E.g. if undefined<sup>30</sup> or defined as “area surrounding or adjacent to Insured Location in which events occur within such area would be reasonably expected to have an impact on an Insured or the Insured’s Business”<sup>31</sup>)</p>
6.	<p>If the policy requires that the disease must exist within a geographical limit of the premises (e.g. 1<sup>32</sup> or 25 miles<sup>33</sup>), what is required by way of proof? In particular, can the existence of COVID-19 be satisfied on the balance of probabilities:</p> <ul style="list-style-type: none"> <li>a) by inference given the average known or scientifically inferred (given the lack of testing) incidence of it in the UK, or in a particular area of the UK, and its population? How should this be determined in an urban area versus a rural area? How should it be determined on a given date? To what extent can under-reporting, death certificates recording COVID-19 and symptomless carriers be taken into account?</li> <li>b) when there is one laboratory-confirmed case of COVID-19 in the appropriate area?</li> <li>c) where there is one case of classic COVID-19 symptoms but without laboratory confirmation or medical diagnosis in the appropriate area?</li> <li>d) when there is a hospital or similar facility housing patients, in the appropriate area or a hospital housing patients who have been confirmed (by laboratory testing) to have COVID-19 or who have classic COVID-19 symptoms but without laboratory confirmation or medical diagnosis?</li> </ul>

<sup>27</sup> In some cases, Disease cover includes a Denial/Prevention of Access component (e.g. Hiscox’s public authority wording). The applicable *Questions for Determination* should be applied for each element of such hybrid clauses.

<sup>28</sup> RSA type 1.

<sup>29</sup> Argenta type 1, Ecclesiastical types 1.1 and 1.2 exclusions, Hiscox types 1 to 3, MS Amlin types 1 and 2, QBE types 1 to 3, RSA types 3 and 4, RSA type 2.2 exclusion.

<sup>30</sup> See (in the context of Denial or Prevention of Access clauses) Question 13 and footnote 42 below.

<sup>31</sup> RSA type 4.

<sup>32</sup> Hiscox type 4, QBE type 3.

<sup>33</sup> Argenta type 1, MS Amlin types 1 and 2, QBE types 1 and 2, RSA types 1 and 3.

7.	<p>If a policy refers to “occurrence” of notifiable disease,<sup>34</sup> or has a requirement for the disease to be “manifested”<sup>35</sup> by any person or illness to be “sustained by any person” as a result of disease within a required area, what is the meaning of these expressions in the context of the policy and when does the trigger apply?</p> <p>If a policy refers to “an occurrence” of a notifiable disease, on the true construction of the policy to what extent (if at all) is the occurrence required to be local and/or specific to the insured or the insured’s business, activities, premises or property?<sup>36</sup></p> <p>Do these terms alter the answer to (6) above?</p>
8.	<p>If a policy refers to an “outbreak” of a notifiable disease,<sup>37</sup> what is its meaning in the context of the policy?</p>
9.	<p>If a policy refers to a disease or outbreak being notifiable to the [competent] local authority (e.g. “an outbreak of which the local authority has stipulated shall be notified to them”<sup>38</sup> or “an outbreak of which the competent local authority has stipulated [shall/will] be notified to them”<sup>39</sup> or “an outbreak of which must be notified to the local authority”<sup>40</sup>) or “any additional diseases notifiable under the Health Protection Regulations (2010)”,<sup>41</sup> what is required to be proved by the policyholder?</p>
10.	<p>If any notifiable disease extension to cover contains a condition stating “We will only [be liable for] [pay for] the loss arising at those premises which are directly affected by the loss, discovery or accident”<sup>42</sup>, what is the meaning and effect of that condition?</p>

<sup>34</sup> Argenta type 1, Ecclesiastical types 1.1 and 1.2, Hiscox types 1.

<sup>35</sup> QBE type 1, RSA type 1, RSA type 4.

<sup>36</sup> Hiscox type 3.

<sup>37</sup> RSA type 4.

<sup>38</sup> QBE type 1

<sup>39</sup> Argenta type 1, MS Amlin types 1 and 2, QBE type 2, RSA type 3.

<sup>40</sup> Hiscox all types.

<sup>41</sup> RSA type 4.

<sup>42</sup> MS Amlin types 1 and 2.

<b>D.</b>	<b>DENIAL or PREVENTION OF ACCESS COVER</b>
	A clause which provides cover where some form of authority so acts or some happening is required as to prevent or restrict access to or use of the insured premises.
11.	<p>What does the policyholder have to prove in principle in order to establish:</p> <ul style="list-style-type: none"> <li>a) “prevention of access to”,<sup>43</sup> “access... being prevented”,<sup>44</sup> “access... [will/shall] be prevented”,<sup>45</sup> or “prevent... access” to;<sup>46</sup></li> <li>b) “prevent... use of”<sup>47</sup> or “use...being prevented”;<sup>48</sup></li> <li>c) “denial of access” to;<sup>49</sup></li> <li>d) “hindrance in access” to,<sup>50</sup> “hinder... access” to<sup>51</sup> or “access... being... hindered by”,<sup>52</sup></li> <li>e) “hinder use of”<sup>53</sup>, “hinders the use of”<sup>54</sup> or “use... being... hindered by”,<sup>55</sup></li> <li>f) “inability to use”,<sup>56</sup></li> <li>g) “closure” of;<sup>57</sup></li> <li>h) “enforced closure of”;<sup>58</sup> and</li> <li>i) “restrictions placed on”;<sup>59</sup></li> </ul> <p>the insured premises/location (by reference in particular to the advice and legislation of the UK Government<sup>60</sup>, which it is intended will be part of the <i>agreed facts</i>)?</p> <p>If the policy requires closure of the whole or part of the premises, does that make any difference, and what then is required (e.g. the Regulations or advice requiring closure of the business, the Regulations or advice requiring people to stay at home save for limited circumstances and employers to provide social distancing, a specific closure order, etc.)?</p>

<sup>43</sup> Arch type 1.

<sup>44</sup> Ecclesiastical types 1.1 and 1.2.

<sup>45</sup> MS Amlin type 1, Zurich types 1 and 2.

<sup>46</sup> MS Amlin type 3, RSA types 2.1, 2.2 and 4.

<sup>47</sup> MS Amlin type 3, RSA type 2.1 and 2.2.

<sup>48</sup> Ecclesiastical types 1.1 and 1.2.

<sup>49</sup> Hiscox type 1, some Hiscox type 2, Hiscox type 4, MS Amlin type 2.

<sup>50</sup> Hiscox type 1, some Hiscox type 2, Hiscox type 4, MS Amlin type 2.

<sup>51</sup> MS Amlin type 3, RSA type 2.1 and 2.2.

<sup>52</sup> Ecclesiastical types 1.1 and 1.2.

<sup>53</sup> MS Amlin 3.

<sup>54</sup> RSA Type 4.

<sup>55</sup> Ecclesiastical types 1.1 and 1.2.

<sup>56</sup> Hiscox all types. However, this phrase appears in Hiscox’s public authority wording, which is treated as the Disease cover in this list. The phrase is not in its denial of access wording – see footnote 4 above.

<sup>57</sup> RSA type 1.

<sup>58</sup> RSA type 4.

<sup>59</sup> RSA type 1.

<sup>60</sup> ‘UK Government’ in the *Questions for Determination* includes, where appropriate, the devolved administrations of Scotland, Wales and/or Northern Ireland. The parties agree that the UK Government falls within the term “government”.

12.	<p>With reference to the advice and legislation of the UK Government or steps taken by other bodies (which are to be <i>agreed facts</i>), which of those, if any, in principle constitute:</p> <ul style="list-style-type: none"> <li>a) “action[s]”;<sup>61</sup></li> <li>b) “advice”;<sup>62</sup></li> <li>c) “order”;<sup>63</sup> and</li> <li>d) “restrictions”;<sup>64</sup></li> </ul> <p>of, by or imposed by government (or other authority as applicable), within the context of each applicable policy?</p> <p>In particular, applying the <i>agreed facts</i>, what does the policyholder have to prove in order to establish the above and on what dates would these likely be established?</p>
13.	<p>If the relevant actions/advice or emergency/endangerment (whether described as a “danger”, “incident” or some other circumstance) are required to be in the "vicinity" of the insured premises, what does the “vicinity” mean in principle within the context of each applicable policy (including policy definitions of “vicinity”) ?</p> <p>(E.g. undefined “in the vicinity of the premises”<sup>65</sup> or defined as “area [surrounding/adjacent] to an insured location in which events occur within such area would be reasonably expected to have an impact on an insured or the insured’s business”<sup>66</sup>).</p>
14.	<p>If the policy requires that the relevant actions/advice or emergency/endangerment (whether described as “danger”, “incident” or some other circumstance) must apply to, or must have occurred within, a geographical limit of the premises (e.g. 1 mile, 25 miles),<sup>67</sup> what is required by way of proof?</p>

<sup>61</sup> Amlin type 3, Arch type 1, Ecclesiastical types 1.1 and 1.2, MS Amlin types 1 and 3, RSA type 2.1, 2.2 and 4, Zurich types 1 and 2.

<sup>62</sup> Arch type 1, Ecclesiastical types 1.1 and 1.2 exclusions, RSA types 2.1, 2.2 and 4.

<sup>63</sup> Ecclesiastical types 1.1 and 1.2, Hiscox 1, 2 and 4, MS Amlin type 2.

<sup>64</sup> Hiscox all types.

<sup>65</sup> Some Hiscox type 2, MS Amlin types 1 and 3, Zurich all types, RSA type 2.1 and 2.2.

<sup>66</sup> RSA type 4.

<sup>67</sup> Hiscox types 1 and 2, MS Amlin type 2, RSA type 1.

15.	<p>Do the <i>agreed facts</i> constitute an “emergency [which is] likely to endanger life”<sup>68</sup> or an “emergency which could endanger human life”<sup>69</sup>, or a “threat or risk of damage or injury”,<sup>70</sup> “incident”<sup>71</sup> or “a danger or disturbance”<sup>72</sup> or “incident”<sup>73</sup> in the required area?</p> <p>If so, from what date?</p> <p>In particular, do the <i>agreed facts</i> constitute an emergency (or emergency likely to endanger life or danger or incident as required):</p> <ul style="list-style-type: none"> <li>a) If a hospital or other facility housing patients who have been confirmed (by laboratory testing) to have COVID-19 is in the required area?</li> <li>b) If premises are located in a well-populated area given the general level of COVID-19 in the population and fears of spreading?</li> <li>c) If premises are located in a sparsely-populated rural area given the general level of COVID-19 in the population and fears of spreading?</li> <li>d) Without any additional evidence, given the average known or scientifically inferred (given the lack of testing) incidence of it in the UK, or in a particular area of the UK, and its population?</li> </ul> <p>If the policy requires closure by a governmental authority or agency or a competent local authority for “health reasons or concerns”,<sup>74</sup> is that established on the <i>agreed facts</i>?</p>
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<sup>68</sup> Arch type 1 (with square bracketed text), RSA types 2.1 and 2.2.

<sup>69</sup> Ecclesiastical type 1.1 and 1.2.

<sup>70</sup> MS Amlin type 3.

<sup>71</sup> MS Amlin type 2.

<sup>72</sup> MS Amlin type 1, Zurich all types.

<sup>73</sup> MS Amlin type 2.

<sup>74</sup> RSA type 4.



16.	<p>If the definition of the appropriate authority applying to the clause providing cover in each applicable policy does not state "government",<sup>75</sup> but instead specifies "public authority",<sup>76</sup> "competent [P/p]ublic [A/a]uthority",<sup>77</sup> "a competent local authority",<sup>78</sup> "the police, other law enforcement agency, military authority, governmental authority or agency",<sup>79</sup> or "the [P/p]olice or other competent [L/l]ocal, [C/c]ivil or [M/m]ilitary authority",<sup>80</sup> "the police or other statutory authority"<sup>81</sup>, would the requirement be met:</p> <ul style="list-style-type: none"> <li>a) on the basis that the UK Government qualifies as a "governmental authority" "public authority" or "competent public authority" or "civil authority";</li> <li>b) where the "local authority" or "police" or other "civil authority" or "statutory authority" are required to implement and enforce the Government's requirements;</li> <li>c) if there exists "local authority" or police advice; or</li> <li>d) if there exists actual "local authority" or "police" enforcement action?</li> </ul>
<b>E.</b>	<b>CAUSATION</b>
17.	<p>The policy wordings usually contain a number of separate causal links. What is the necessary causal link that must be established on a particular policy wording between:</p> <ul style="list-style-type: none"> <li>a. The loss <u>and</u> the interruption to or interference with the business?</li> <li>b. The interruption to or interference with the business <u>and</u> the closure or other restriction identified in Q11 above by action/advice/order (as the case may be) of the government or other relevant authority or the fact of (notifiable) disease within the required proximity of the premises (if any)?</li> <li>c. The closure or other restriction (where closure or restriction is required), alternatively the advice or action of the relevant authority, <u>and</u> the required "emergency" or "danger" or "threat" or "risk" or "occurrence of disease" or "discovery of an organism" or "incident" (as applicable)?</li> <li>d. The interruption to or interference with the business and the required "emergency" or "danger" or "threat" or "risk" or "occurrence of disease" or "discovery of an organism" or "incident" (as applicable)?</li> </ul>

<sup>75</sup> "government" is included in MS Amlin type 2, Arch type 1, Ecclesiastical types 1.1 and 1.2, Hiscox type 1, some Hiscox type 2 and Hiscox 4.

<sup>76</sup> Hiscox type 3.

<sup>77</sup> MS Amlin type 3, RSA type 2.

<sup>78</sup> Ecclesiastical type 1.1 and 1.2, RSA type 4.

<sup>79</sup> RSA type 4.

<sup>80</sup> MS Amlin type 1, Zurich all types.

<sup>81</sup> Some Hiscox type 2.

18.	<p>What is the applicable test for causation in the context of each of the policy wordings and, in particular, where the following words are used, does each require a proximate cause or something narrower or broader and if so, what?</p> <ul style="list-style-type: none"> <li>a) “resulting from”;<sup>82</sup></li> <li>b) “which results in”;<sup>83</sup></li> <li>c) “as a result of”;<sup>84</sup></li> <li>d) “caused by”;<sup>85</sup></li> <li>e) “following”;<sup>86</sup></li> <li>f) “arising from”;<sup>87</sup></li> <li>g) “due to”;<sup>88</sup></li> <li>h) “as a consequence of”, “in consequence of” or “in consequence”;<sup>89</sup></li> <li>i) “because of”;<sup>90</sup></li> <li>j) “directly resulting from”;<sup>91</sup> and</li> <li>k) “resulting solely and directly from”.<sup>92</sup></li> </ul> <p>Do the answers differ where such words are used in the context of particular exclusions?</p>
19.	What is the proper interpretation and effect of the trends clauses or equivalent provisions in the policy wordings (if applicable) or any other clauses addressing a relevant counterfactual in relation to quantification, in relation to any test to be applied to causation of loss?
20.	If there is more than one potentially legally relevant of loss what are they and what is their legal effect, if any, on recovery? In particular what effect would the existence of more than one potentially legally relevant cause have to the application (if any) of any hypothetical counterfactual or the “but for” test?
<b>F.</b>	<b>POTENTIAL EXCLUSIONS</b>
21.	If there is an exclusion for loss arising out of or relating to a “micro-organism of any type, nature of description, including but not limited to any substance whose presence poses an actual or potential threat to human health”, <sup>93</sup> does this term include SARS-CoV-2?

<sup>82</sup> MS Amlin types 1 and 3, Arch type 1, Ecclesiastical type 1.1 and 1.2, QBE types 2 and 3.

<sup>83</sup> MS Amlin type 2, Hiscox type 1, some Hiscox type 2.

<sup>84</sup> MS Amlin type 1, Argenta type 1, Ecclesiastical type 1.1 and 1.2, QBE type 2, RSA types 1 and 4.

<sup>85</sup> MS Amlin type 2, Hiscox all types, QBE type 1.

<sup>86</sup> MS Amlin types 1 and 2, Hiscox all types, RSA type 3, Zurich all types.

<sup>87</sup> QBE type 1 (PBCC040120 only).

<sup>88</sup> Arch type 1, Ecclesiastical types 1.1 and 1.2, Hiscox all types, RSA type 2.

<sup>89</sup> QBE all types, Zurich all types.

<sup>90</sup> MS Amlin type 3.

<sup>91</sup> Ecclesiastical type 1.2.

<sup>92</sup> MS Amlin type 2, Hiscox all types.

<sup>93</sup> Argenta type 1.

22.	If there is an exclusion relating to “pollution” or “contamination”, <sup>94</sup> does this apply? If it includes references to “epidemic” and/or “disease” <sup>95</sup> does it apply (and, if so, how). How, if at all, does it apply to disease cover?
23.	If the policy contains an exclusion in relation to its denial or prevention of access cover excluding, or stating with respect to what is not covered, “any period when access to the premises was not prevented or hindered”, <sup>96</sup> what is the proper interpretation of this provision and in what circumstances would it apply?
24.	If the policy contains an exclusion in relation to its denial or prevention of access cover excluding, or stating with respect to what is not covered, “closure or restriction in the use of the premises due to the order or advice of the competent local authority as a result of an occurrence of an infectious disease”, <sup>97</sup> what is the proper interpretation of this provision and in what circumstances would it apply?
25.	If there is an exclusion “for any loss arising from” the premises “that are not directly affected by the occurrence discovery or accident” does this apply? <sup>98</sup>

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<sup>94</sup> MS Amlin types 1 and 2, QBE all types, RSA type 3, Zurich all types.

<sup>95</sup> RSA type 3.

<sup>96</sup> Ecclesiastical type 1.1 and 1.2.

<sup>97</sup> Ecclesiastical type 1.1 and 1.2.

<sup>98</sup> Argenta.

#### ANNEXE 4 – ISSUES MATRIX

This matrix summarises the effect of a few of the key terms that are likely to be argued. In including exclusions or trends clauses, the FCA does not thereby accept that they are in fact applicable to any or all claims being considered here. While a useful summary document, the Issues Matrix is likely to decrease in value as the litigation progresses, and the reader's attention is drawn to the pleadings and other documents which will set out in fuller detail the issues between the FCA and insurers.

Where comments are footnoted, they represent the comments of a particular party and have not been endorsed or agreed by any other party.

Policy type	PoA			Disease	All	
	Just denial or prevention of access	Authority includes 'government'	Vicinity	Vicinity	Trends clause or similar?	Exclusions, Conditions or similar?
Arch1 <sup>99</sup>	Yes	Yes	No vicinity limit	-	Two variants: (i) Commercial Combined, (ii) Retailers, Powerplace Both are expressed to apply to 'Damage'	<u>No indemnity for</u> : 'Notifiable Human Infectious or Contagious Disease' as defined in the current relevant legislation occurring at the Premises
Argenta1	-	-	-	25 miles	Two variants: (i) Guest House and B&B; (ii) Holiday Home and Self Catering Both are expressed to apply to 'Damage'	<u>Exclusion</u> : no liability for loss arising from those premises that are not directly affected by the occurrence  <u>Exclusion</u> : micro-organism exclusion

<sup>99</sup> Arch wishes to record that (i) it has accepted the existence of the policy coverage in a substantial proportion of claims made under this perils clause, (ii) Arch has not, in response to any claim, sought to rely upon the exclusion for 'Notifiable Human Infectious or Contagious Disease as defined in the current relevant legislation occurring at The Premises', and (iii) the relevance of the trends clause will need to be considered.

Ecclesiastical1.1 and 1.2	No (also hinder and use)	Yes	No vicinity limit	-	Three variants: (i) ME886 Nurseries; (ii) ME857 Parish Plus and ME858 Parishguard; (iii) all other policies All are expressed as being applicable to 'damage'	<u>Exclusion:</u> any period when access to the premises was not prevented or hindered  <u>Exclusion:</u> closure or restriction in the use of the premises due to the order or advice of the competent local authority as a result of an occurrence of an infectious disease (or the discovery of an organism resulting in or likely to result in the occurrence of an infectious disease)
Hiscox1	No (also hinder)	Yes	1 mile	No express vicinity limit	Two variants: (i) Expressly refers to insured damage: all policies except BI - OM (Jelf) - 8671 WD-HSP-UK- JMBI(3) and Recruitment BI - 8671 WD-HSP-UK- JMBI)  (ii) Expressly refers to damage, restriction, failure or cyber attack: (BI - OM (Jelf) - 8671 WD-HSP-UK- JMBI(3) and Recruitment BI - 8671 WD-HSP-UK-JMBI only)	-

Hiscox2	No (also hinder)	Yes	<p>Two variants:</p> <p>(i) 11431, 16258: 'vicinity'</p> <p>(ii) 16725, 7103 (both types): 1 mile</p>	No express vicinity limit	<p>Five variants:</p> <p>(i) 15779, 9102 – expressly refer to damage</p> <p>(ii) 7103 (ending PVB(2)) – expressly refers to insured damage</p> <p>(iii) 10117 – expressly refers to damage or restriction</p> <p>(iv) 18680, 16258, 7620, 9280, 10199, 11335, 11905, 10883, 12578, 11431 – expressly refer to insured damage or restriction</p> <p>(v) remainder: expressly refer to insured damage, insured failure or restriction</p>	-
Hiscox3	-	-	-	No express vicinity limit	<p>Two variants:</p> <p>(i) 8006 and 10272 – expressly refer to damage</p> <p>(ii) 8358, 14174, 9519 – expressly refer to insured damage or restriction</p>	-
Hiscox4	No (also hinder)	Yes	1 mile	1 mile	<p>Three variants:</p> <p>(i) 15299, 15447 – expressly refer to insured damage, insured failure, cyber-attack or restriction</p> <p>(ii) 15480 – expressly refers to insured damage, insured failure, loss of licence or restriction</p> <p>(iii) 20155 – expressly refers to insured damage or insured failure</p>	-

MSAmlin1	Yes	No	‘vicinity’	25 miles	Expressed as being applicable to ‘damage’	<u>Condition</u> (in Disease clause): Only premises directly affected <u>Exclusion</u> : Pollution and contamination
MSAmlin2	No (also hinder)	Yes	1 mile	25 miles	Variants: (i) Leisure and Retail (ii) Office and Surgery Both are expressed as being applicable to ‘damage’	<u>Condition</u> (in Disease clause): Only premises directly affected <u>Exclusion</u> : Pollution and contamination
MSAmlin3	No (also hinder and use)	No	‘vicinity’	-	Expressed as being applicable to ‘damage’	-
QBE1 <sup>100</sup>	-	-	-	25 miles	PBCC and POFF: expressed as being applicable to ‘damage’  POFP: uses the term ‘trend adjusted’ in the definitions of standard gross fees and standard gross revenue, but does not have a definition of that phrase	<u>Exclusion</u> : Pollution or contamination (PBCC only)

<sup>100</sup> QBE has not provided comments on the drafting or content of this document.

QBE2	-	-	-	25 miles	Expressed as being applicable to 'damage'	<u>Exclusion:</u> Pollution or contamination
QBE3	-	-	-	1 mile	Expressed as being applicable to 'damage'	<u>Exclusion:</u> Micro-organism <u>Exclusion:</u> Pollution or contamination
RSA1	-	-	-	25 miles	No trends clause, but the basis of settlement provision requires that any reduction in Gross Revenue be solely a result of ' <i>Damage to Buildings</i> '	<u>Exclusion:</u> Pollution or contamination <sup>101</sup> <u>Other:</u> the cover requires closure or restrictions placed on the Premises as a result of a disease 'manifesting itself'
RSA2.1 and 2.2	No (also hinder and use)	No	'vicinity'	-	Expressed as applicable to 'damage'	<u>Exclusion in RSA2.1 and 2.2:</u> any loss during any period other than the actual period when access to the Premises was prevented <u>Exclusion in RSA2.2:</u> Pollution or contamination; <sup>102</sup> <u>Exclusion in RSA2.2:</u> 'Any loss... As a result of infectious or contagious diseases any amount in excess of £10,000' <sup>103</sup>

<sup>101</sup> RSA: the need for consideration to be given to the 'pollution and contamination' exclusion is under review.

<sup>102</sup> RSA: the need for consideration to be given to the 'pollution and contamination' exclusion in the Retail policy is under review.

<sup>103</sup> RSA: the proper construction of this will need to be resolved: in particular whether it imposes a complete exclusion in respect of 'notifiable or contagious diseases' (with the inner limit of £10,000 being applicable generally to the Public Emergency Extension rather than only to 'notifiable or contagious diseases').



RSA3	-	-	-	25 miles	Expressed as applicable to 'incident' <sup>104</sup>	<u>Exclusion:</u> Pollution and contamination clause, which includes within it a reference to 'epidemic and disease' <u>Qualification on perils clause:</u> only loss arising at Premises directly affected by the occurrence discovery or accident
RSA4	First DoA clause <sup>105</sup> requires: 'enforced closure', rather than denial or prevention of access  Second DoA clause: <sup>106</sup> No (also hindrance and use)	Both DoA clauses: any governmental authority or agency	'Vicinity' is defined in the policy as being 'an area surrounding or adjacent to an Insured Location in which events that occur within such area would be reasonably expected to have an impact on an Insured or the Insured's Business' <sup>107</sup>	Vicinity is defined the policy as being 'An area surrounding or adjacent to an Insured Location in which events that occur within such area would be reasonably expected to have an impact on an Insured or the Insured's Business' <sup>108</sup>	Applies to 'Covered Event' as defined (and which includes the events as described in relevant insuring clauses)	No

<sup>104</sup> RSA: the relevant of the trends provisions (introduced via the definitions applicable to basis of settlement clause) to a non-damage extension will need to be considered.

<sup>105</sup> 'Notifiable Diseases & Other Incidents', sub-meaning (v).

<sup>106</sup> 'Prevention of Access – Non Damage', sub-meaning (ii).

<sup>107</sup> The application of the Vicinity requirement to the DoA clauses is a matter for consideration.

<sup>108</sup> RSA note that RSA4 also includes cover for 'Notifiable Diseases & Other Incidents' 'discovered at an Insured Location'.

Zurich1	Yes	No	‘vicinity’	-	Trends clause is included if the policy is written on a Loss of Gross Profit basis but not if written on an Increased Cost of Working basis <sup>109</sup>	<u>Exclusion:</u> Pollution or contamination
Zurich2	Yes	No	‘vicinity’	-	Trends clause applies to an ‘incident’	<u>Exclusion:</u> Pollution or contamination

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<sup>109</sup> Zurich has informed the FCA that if the cover is written on a Loss of Revenue basis, a trends clause on the same terms would be applied. Zurich has not provided the FCA with any examples to this effect and the FCA cannot confirm whether this is accurate.