



RESOLUTION NO. 20221129-09

RESOLUTION RATIFYING THE EXECUTION OF THE PURCHASE OF AN INSURANCE POLICY FOR RAIL OPERATIONS WITH DUFFER AND OFFENHAUSER INSURANCE THROUGH INDIAN HARBOR FOR TEXAMERICAS CENTER OPERATIONS (\$32,421.83)

WHEREAS, TexAmericas Center is a political subdivision of the State of Texas with the powers and authorities specified in Chapter 3503 of the Special District Local Laws Code of the State of Texas; and

WHEREAS, TexAmericas Center Board of Directors deems it necessary to procure the insurance to fulfill certain contractual obligations and to protect TexAmericas Center from risks of loss; and

WHEREAS, the insurance agency of Duffer and Offenhauser Insurance has brokered a competitively priced product for the covered list of services through Indian Harbor Insurance as per the attached bid;

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of TexAmericas Center that the purchase of the insurance policy for rail operations is hereby approved and the execution thereof is hereby ratified.

PASSED AND APPROVED THIS 29th day of November, 2022.

A handwritten signature in blue ink, appearing to read "Jim Roberts", is written above a horizontal line.

Jim Roberts, Chairman of the Board

ATTEST:

A handwritten signature in blue ink, appearing to read "Justin Powell", is written above a horizontal line.

Justin Powell, Secretary

Attached: Indian Harbor Policy



 Insurance

Railroad

Policy



CLAIM REPORTING INSTRUCTIONS

New claims can be reported by phone, fax, mail or email, 24 hours a day, seven days a week, 365 days a year.

Please include, if available, the name, address and phone number for all relevant parties, the date and time of loss, the location of the loss, a description of the loss, and any damage information.

When reporting your claim, please be sure to indicate if the claim involves a fatality, serious bodily injury, pollution spill, or requires an immediate response.

Phone: **1-800-823-7351** (Toll-Free)

Fax: **1-866-262-9002** (Toll-Free)
1-678-819-7388 (Toll)

Email: napropcasclaimnewnotices@axaxl.com (New Claims Notices)

Email: napropcasclaims@axaxl.com (All Other Claims Correspondence)

USPS Mail: **AXA XL**
 Attn: Railroad
 PO Box 614002
 Orlando, FL 32861-4002

Overnight Mail: **AXA XL**
 Attn: Railroad
 4209 Vineland Road, Suite J-2
 Orlando, FL 32811

INSTRUCTIONS FOR REQUESTING LOSS RUNS

Due to privacy issues, AXA XL can only honor requests for loss runs when submitted in writing by our broker of record or by the Insured, on their company letterhead. We can only deliver loss runs to our producer of record or to the Insured.

To request a copy of loss runs for your policy, please submit your request to:

XLRail.LossRuns@axaxl.com

NOTICE TO POLICYHOLDERS

PRIVACY POLICY

The AXA XL insurance group (the “Companies”), believes personal information that we collect about our customers, potential customers, and proposed insureds (referred to collectively in this Privacy Policy as “customers”) must be treated with the highest degree of confidentiality. For this reason and in compliance with the Title V of the Gramm-Leach-Bliley Act (“GLBA”), we have developed a Privacy Policy that applies to all of our companies. For purposes of our Privacy Policy, the term “personal information” includes all information we obtain about a customer and maintain in a personally identifiable way. In order to assure the confidentiality of the personal information we collect and in order to comply with applicable laws, all individuals with access to personal information about our customers are required to follow this policy.

Our Privacy Promise

Your privacy and the confidentiality of your business records are important to us. Information and the analysis of information is essential to the business of insurance and critical to our ability to provide to you excellent, cost-effective service and products. We understand that gaining and keeping your trust depends upon the security and integrity of our records concerning you. Accordingly, we promise that:

1. We will follow strict standards of security and confidentiality to protect any information you share with us or information that we receive about you;
2. We will verify and exchange information regarding your credit and financial status only for the purposes of underwriting, policy administration, or risk management and only with reputable references and clearinghouse services;
3. We will not collect and use information about you and your business other than the minimum amount of information necessary to advise you about and deliver to you excellent service and products and to administer our business;
4. We will train our employees to handle information about you or your business in a secure and confidential manner and only permit employees authorized to use such information to have access to such information;
5. We will not disclose information about you or your business to any organization outside the AXA XL insurance group of Companies or to third party service providers unless we disclose to you our intent to do so or we are required to do so by law;
6. We will not disclose medical information about you, your employees, or any claimants under any policy of insurance, unless you provide us with written authorization to do so, or unless the disclosure is for any specific business exception provided in the law;
7. We will attempt, with your help, to keep our records regarding you and your business complete and accurate, and will advise you how and where to access your account information (unless prohibited by law), and will advise you how to correct errors or make changes to that information; and
8. We will audit and assess our operations, personnel and third party service providers to assure that your privacy is respected.

Collection and Sources of Information

We collect from a customer or potential customer only the personal information that is necessary for (a) determining eligibility for the product or service sought by the customer, (b) administering the product or service obtained, and (c) advising the customer about our products and services. The information we collect generally comes from the following sources:

- Submission – During the submission process, you provide us with information about you and your business, such as your name, address, phone number, e-mail address, and other types of personal identification information;
- Quotes – We collect information to enable us to determine your eligibility for the particular insurance product and to determine the cost of such insurance to you. The information we collect will vary with the type of insurance you seek;

NOTICE TO POLICYHOLDERS

- Transactions – We will maintain records of all transactions with us, our affiliates, and our third party service providers, including your insurance coverage selections, premiums, billing and payment information, claims history, and other information related to your account;
- Claims – If you obtain insurance from us, we will maintain records related to any claims that may be made under your policies. The investigation of a claim necessarily involves collection of a broad range of information about many issues, some of which does not directly involve you. We will share with you any facts that we collect about your claim unless we are prohibited by law from doing so. The process of claim investigation, evaluation, and settlement also involves, however, the collection of advice, opinions, and comments from many people, including attorneys and experts, to aid the claim specialist in determining how best to handle your claim. In order to protect the legal and transactional confidentiality and privileges associated with such opinions, comments and advice, we will not disclose this information to you; and
- Credit and Financial Reports – We may receive information about you and your business regarding your credit. We use this information to verify information you provide during the submission and quote processes and to help underwrite and provide to you the most accurate and cost-effective insurance quote we can provide.

Retention and Correction of Personal Information

We retain personal information only as long as required by our business practices and applicable law. If we become aware that an item of personal information may be materially inaccurate, we will make reasonable effort to re-verify its accuracy and correct any error as appropriate.

Storage of Personal Information

We have in place safeguards to protect data and paper files containing personal information.

Sharing/Disclosing of Personal Information

We maintain procedures to assure that we do not share personal information with an unaffiliated third party for marketing purposes unless such sharing is permitted by law. Personal information may be disclosed to an unaffiliated third party for necessary servicing of the product or service or for other normal business transactions as permitted by law.

We do not disclose personal information to an unaffiliated third party for servicing purposes or joint marketing purposes unless a contract containing a confidentiality/non-disclosure provision has been signed by us and the third party. Unless a consumer consents, we do not disclose “consumer credit report” type information obtained from an application or a credit report regarding a customer who applies for a financial product to any unaffiliated third party for the purpose of serving as a factor in establishing a consumer’s eligibility for credit, insurance or employment. “Consumer credit report type information” means such things as net worth, credit worthiness, lifestyle information (piloting, skydiving, etc.) solvency, etc. We also do not disclose to any unaffiliated third party a policy or account number for use in marketing. We may share with our affiliated companies information that relates to our experience and transactions with the customer.

Policy for Personal Information Relating to Nonpublic Personal Health Information

We do not disclose nonpublic personal health information about a customer unless an authorization is obtained from the customer whose nonpublic personal information is sought to be disclosed. However, an authorization shall not be prohibited, restricted or required for the disclosure of certain insurance functions, including, but not limited to, claims administration, claims adjustment and management, detection, investigation or reporting of actual or potential fraud, misrepresentation or criminal activity, underwriting, policy placement or issuance, loss control and/or auditing.

NOTICE TO POLICYHOLDERS

Access to Your Information

Our employees, employees of our affiliated companies, and third party service providers will have access to information we collect about you and your business as is necessary to effect transactions with you. We may also disclose information about you to the following categories of person or entities:

- Your independent insurance agent or broker;
- An independent claim adjuster or investigator, or an attorney or expert involved in the claim;
- Persons or organizations that conduct scientific studies, including actuaries and accountants;
- An insurance support organization;
- Another insurer if to prevent fraud or to properly underwrite a risk;
- A state insurance department or other governmental agency, if required by federal, state or local laws; or
- Any persons entitled to receive information as ordered by a summons, court order, search warrant, or subpoena.

Violation of the Privacy Policy

Any person violating the Privacy Policy will be subject to discipline, up to and including termination.

For more information or to address questions regarding this privacy statement, please contact your broker.

NOTICE TO POLICYHOLDERS

FRAUD NOTICE

Alabama	Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or who knowingly presents false information in an application for insurance is guilty of a crime and may be subject to restitution fines or confinement in prison, or any combination thereof.
Arkansas	Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents false information in an application for insurance is guilty of a crime and may be subject to fines and confinement in prison.
Colorado	It is unlawful to knowingly provide false, incomplete, or misleading facts or information to an insurance company for the purpose of defrauding or attempting to defraud the company. Penalties may include imprisonment, fines, denial of insurance, and civil damages. Any insurance company or agent of an insurance company who knowingly provides false, incomplete, or misleading facts or information to a policyholder or claimant for the purpose of defrauding or attempting to defraud the policyholder or claimant with regard to a settlement or award payable from insurance proceeds shall be reported to the Colorado Division of Insurance within the Department of Regulatory Agencies.
District of Columbia	WARNING: It is a crime to provide false or misleading information to an insurer for the purpose of defrauding the insurer or any other person. Penalties include imprisonment and/or fines. In addition, an insurer may deny insurance benefits if false information materially related to a claim was provided by the applicant.
Florida	Any person who knowingly and with intent to injure, defraud, or deceive any insurer files a statement of claim or an application containing any false, incomplete, or misleading information is guilty of a felony of the third degree.
Kansas	A "fraudulent insurance act" means an act committed by any person who, knowingly and with intent to defraud, presents, causes to be presented or prepares with knowledge or belief that it will be presented to or by an insurer, purported insurer, broker or any agent thereof, any written, electronic, electronic impulse, facsimile, magnetic, oral, or telephonic communication or statement as part of, or in support of, an application for the issuance of, or the rating of an insurance policy for personal or commercial insurance, or a claim for payment or other benefit pursuant to an insurance policy for commercial or personal insurance which such person knows to contain materially false information concerning any fact material thereto; or conceals, for the purpose of misleading, information concerning any fact material thereto.
Kentucky	Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance containing any materially false information or conceals, for the purpose of misleading, information concerning any fact material thereto commits a fraudulent insurance act, which is a crime.
Louisiana	Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents false information in an application for insurance is guilty of a crime and may be subject to fines and confinement in prison.
Maine	It is a crime to knowingly provide false, incomplete or misleading information to an insurance company for the purpose of defrauding the company. Penalties may include imprisonment, fines, or denial of insurance benefits.
Maryland	Any person who knowingly or willfully presents a false or fraudulent claim for payment of a loss or benefit or who knowingly or willfully presents false information in an application for insurance is guilty of a crime and may be subject to fines and confinement in prison.
New Jersey	Any person who includes any false or misleading information on an application for an insurance policy is subject to criminal and civil penalties.

NOTICE TO POLICYHOLDERS

New Mexico	ANY PERSON WHO KNOWINGLY PRESENTS A FALSE OR FRAUDULENT CLAIM FOR PAYMENT OF A LOSS OR BENEFIT OR KNOWINGLY PRESENTS FALSE INFORMATION IN AN APPLICATION FOR INSURANCE IS GUILTY OF A CRIME AND MAY BE SUBJECT TO CIVIL FINES AND CRIMINAL PENALTIES.
New York	<p>General: All applications for commercial insurance, other than automobile insurance: Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information, or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime, and shall also be subject to a civil penalty not to exceed five thousand dollars and the stated value of the claim for each such violation.</p> <p>All applications for automobile insurance and all claim forms: Any person who knowingly makes or knowingly assists, abets, solicits or conspires with another to make a false report of the theft, destruction, damage or conversion of any motor vehicle to a law enforcement agency, the department of motor vehicles or an insurance company, commits a fraudulent insurance act, which is a crime, and shall also be subject to a civil penalty not to exceed five thousand dollars and the value of the subject motor vehicle or stated claim for each violation.</p> <p>Fire: Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance containing any false information, or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime.</p> <p>The proposed insured affirms that the foregoing information is true and agrees that these applications shall constitute a part of any policy issued whether attached or not and that any willful concealment or misrepresentation of a material fact or circumstances shall be grounds to rescind the insurance policy.</p>
Ohio	Any person who, with intent to defraud or knowing that he is facilitating a fraud against an insurer, submits an application or files a claim containing a false or deceptive statement is guilty of insurance fraud.
Oklahoma	<p>WARNING: Any person who knowingly, and with intent to injure, defraud or deceive any insurer, makes any claim for the proceeds of an insurance policy containing any false, incomplete or misleading information is guilty of a felony.</p> <p>WARNING: All Workers Compensation Insurance: Any person or entity who makes any material false statement or representation, who willfully and knowingly omits or conceals any material information, or who employs any device, scheme, or artifice, or who aids and abets any person for the purpose of:</p> <ol style="list-style-type: none"> 1. obtaining any benefit or payment, 2. increasing any claim for benefit or payment, or 3. obtaining workers' compensation coverage under the Administrative Workers' Compensation Act, shall be guilty of a felony punishable pursuant to Section 1663 of Title 21 of the Oklahoma Statutes.
Pennsylvania	<p>Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information or conceals for the purpose of misleading, information concerning any fact material thereto commits a fraudulent insurance act, which is a crime and subjects such person to criminal and civil penalties.</p> <p>Automobile Insurance: Any person who knowingly and with intent to injure or defraud any insurer files an application or claim containing any false, incomplete or misleading information shall, upon conviction, be subject to imprisonment for up to seven years and the payment of a fine of up to \$15,000.</p>

NOTICE TO POLICYHOLDERS

Puerto Rico	Any person who knowingly and with the intention of defrauding presents false information in an insurance application, or presents, helps, or causes the presentation of a fraudulent claim for the payment of a loss or any other benefit, or presents more than one claim for the same damage or loss, shall incur a felony and, upon conviction, shall be sanctioned for each violation by a fine of not less than five thousand dollars (\$5,000) and not more than ten thousand dollars (\$10,000), or a fixed term of imprisonment for three (3) years, or both penalties. Should aggravating circumstances [be] present, the penalty thus established may be increased to a maximum of five (5) years, if extenuating circumstances are present, it may be reduced to a minimum of two (2) years.
Rhode Island	Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents false information in an application for insurance is guilty of a crime and may be subject to fines and confinement in prison.
Tennessee	It is a crime to knowingly provide false, incomplete or misleading information to an insurance company for the purpose of defrauding the company. Penalties include imprisonment, fines and denial of insurance benefits. Workers' Compensation: It is a crime to knowingly provide false, incomplete or misleading information to any party to a workers' compensation transaction for the purpose of committing fraud. Penalties include imprisonment, fines and denial of insurance benefits.
Utah	Workers' Compensation: Any person who knowingly presents false or fraudulent underwriting information, files or causes to be filed a false or fraudulent claim for disability compensation or medical benefits, or submits a false or fraudulent report or billing for health care fees or other professional services is guilty of a crime and may be subject to fines and confinement in state prison.
Virginia	It is a crime to knowingly provide false, incomplete or misleading information to an insurance company for the purpose of defrauding the company. Penalties include imprisonment, fines and denial of insurance benefits.
Washington	It is a crime to knowingly provide false, incomplete or misleading information to an insurance company for the purpose of defrauding the company. Penalties include imprisonment, fines and denial of insurance benefits.
West Virginia	Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents false information in an application for insurance is guilty of a crime and may be subject to fines and confinement in prison.
All Other States	Any person who knowingly and willfully presents false information in an application for insurance may be guilty of insurance fraud and subject to fines and confinement in prison. (In Oregon, the aforementioned actions may constitute a fraudulent insurance act which may be a crime and may subject the person to penalties).

NOTICE TO POLICYHOLDERS

U.S. TREASURY DEPARTMENT'S OFFICE OF FOREIGN ASSETS CONTROL ("OFAC")

No coverage is provided by this Policyholder Notice nor can it be construed to replace any provisions of your policy. You should read your policy and review your Declarations page for complete information on the coverages you are provided.

This Policyholder Notice provides information concerning possible impact on your insurance coverage due to the impact of U.S. Trade Sanctions¹. Please read this Policyholder Notice carefully.

In accordance with the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC") regulations, or any other U.S. Trade Sanctions embargoes or export controls applied by any regulatory body, if it is determined that you or any other insured, or any person or entity claiming the benefits of this insurance has violated U.S. sanctions, embargoes or export controls law, is a Specially Designated National and Blocked Person ("SDN"), or is owned or controlled by an SDN, this insurance will be considered a blocked or frozen contract. When an insurance policy is considered to be such a blocked or frozen contract, neither payments nor premium refunds may be made without authorization from OFAC or the applicable regulator. Other limitations on the premiums and payments also apply.

¹ "U.S Trade Sanctions" may be promulgated by Executive Order, act of Congress, regulations from the U.S. Departments of State, Treasury, or Commerce, regulations from the State Insurance Departments, etc.

NOTICE TO POLICYHOLDERS

TEXAS

Where you can get information or make a complaint

If you have a question or a problem with a claim or your premium, contact your insurance company first. You can also get information or file a complaint with the Texas Department of Insurance.

AXA XL

To get information or file a complaint with your insurance company:

Call: Risk Associate at: 1-800-622-7311
Toll Free: 1-800-622-7311
Email: USinquiries@axaxl.com
Mail: Seaview House, 70 Seaview Avenue, Stamford, CT 06902-6040

The Texas Department of Insurance

To get help with an insurance question, learn about your rights, or file a complaint with the state:

Call: 1-800-252-3439
Online: www.tdi.texas.gov
Email: ConsumerProtection@tdi.texas.gov
Mail: MC 111-1A, P.O. Box 149091, Austin, TX 78714-9091

To compare policies and prices

Visit HelpInsure.com to compare prices and coverages on home and auto insurance policies. The website is a service of the Texas Department of Insurance and the Office of Public Insurance Counsel.

Donde puede obtener información o presentar una queja

Si tiene una pregunta o un problema con una reclamación o con su prima de seguro, comuníquese primero con su compañía de seguros. Usted también puede obtener información o presentar una queja ante el Departamento de Seguros de Texas (Texas Department of Insurance, por su nombre en inglés).

AXA XL

Para obtener información o para presentar una queja ante su compañía de seguros:

Llame a: Risk Associate al: 1-800-622-7311
Teléfono gratuito: 1-800-622-7311
Correo electrónico: USinquiries@axaxl.com
Dirección postal: Seaview House, 70 Seaview Avenue, Stamford, CT 06902-6040

El Departamento de Seguros de Texas

Para obtener ayuda con una pregunta relacionada con los seguros, para conocer sus derechos o para presentar una queja ante el estado:

Llame: 1-800-252-3439
En línea: www.tdi.texas.gov
Correo electrónico: ConsumerProtection@tdi.texas.gov
Dirección postal: MC 111-1A, P.O. Box 149091, Austin, TX 78714-9091

Para comparar pólizas y precios

Visite HelpInsure.com para comparar precios y coberturas en pólizas de seguro para el hogar y automóvil. El sitio web es un servicio del Departamento de Seguros de Texas y de la Oficina del Asesor Público de Seguros (Office of Public Insurance Counsel, por su nombre en inglés).



REGULATORY OFFICE
505 Eagleview Blvd., Ste. 100
Dept: Regulatory
Exton, PA 19341-1120
Telephone: 800-688-1840

Insurance Company Providing Coverage: Indian Harbor Insurance Company

**RAILROAD LIABILITY INSURANCE DECLARATIONS
OCCURRENCE**

THIS INSURANCE CONTRACT IS WITH AN INSURER NOT LICENSED TO TRANSACT INSURANCE IN THIS STATE AND IS ISSUED AND DELIVERED AS SURPLUS LINE COVERAGE UNDER THE TEXAS INSURANCE STATUTES. THE TEXAS DEPARTMENT OF INSURANCE DOES NOT AUDIT THE FINANCES OR REVIEW THE SOLVENCY OF THE SURPLUS LINES INSURER PROVIDING THIS COVERAGE, AND THE INSURER IS NOT A MEMBER OF THE PROPERTY AND CASUALTY INSURANCE GUARANTY ASSOCIATION CREATED UNDER CHAPTER 462, INSURANCE CODE. CHAPTER 225, INSURANCE CODE, REQUIRES PAYMENT OF A 4.85 PERCENT TAX ON GROSS PREMIUM.

Policy Number: US00113886LI22A **Renewal or Replacement of:** US00113886LI21A

Item 1. Named Insured: TexAmericas Center
Address: 107 Chapel Lane
 New Boston, TX 75570

Item 2. Policy Period: **From:** November 1, 2022 **To:** November 1, 2023
 12:01 A.M. Standard time at the Named Insured’s address stated above.

Item 3. Limits of Liability:
Each Occurrence: \$ 3,000,000
Policy Aggregate: \$ 6,000,000

Item 4. Self-Insured Retention:
Each Occurrence: \$ 25,000

Item 5. First Coverage Date: N/A
(if applicable)

Item 6. Policy Premium: **Rate:** Flat
Annual Exposure Estimate: N/A

Policy Premium: \$ 30,900
Premium for Acts of Terrorism: \$ Excluded
Total Policy Premium: \$ 30,900

Minimum and Deposit Premium: \$ 30,900

Minimum Premium: \$ 30,900

Item 7. Premium Audit Terms:
 Policy is not subject to audit Policy is subject to audit

Item 8. Form(s) and Endorsement(s) made a part of this policy at time of issue:

Endorsement Number	Endorsement Title
PN CW 02 0119	Notice To Policyholders – Privacy Policy
PN CW 01 1121	Notice To Policyholders – Fraud Notice
PN CW 05 0519	Notice To Policyholders – U.S. Treasury Department’s Office of Foreign Assets Control (“OFAC”)
PN TX 01 0520	Notice To Policyholders – Texas
IL MP 91 04 0314 IHIC	In Witness – Indian Harbor Insurance Company
RRL 101 0219	Railroad Liability Insurance Policy – Occurrence Form
Endorsement # 001 RRL 203 0911	Named Insured Schedule
Endorsement # 002 MANUS 0164 0114	Limitation Of Coverage To Designated Premises And Or Railroad Equipment
Endorsement # 003 RRL 301 0911	Absolute Employers’ Liability (FELA) Exclusion
Endorsement # 004 RRL 325 0520	Access or Disclosure Exclusion
Endorsement # 005 MANUS 0039 0915	Advise of Cancellation
Endorsement # 006 RRL 344 0522	Additional Insured - Primary Coverage
Endorsement # 007 RRL 010 0915	Exclusion Of Certified Acts Of Terrorism
Endorsement # 008 XL-TX- SOP 0118	Service of Process

Item 9. Producer Name: New World Casualty & Consulting
Address: 101 Merritt 7 Corporate Park, Suite 300
Norwalk, CT 06851

By: _____


THESE DECLARATIONS TOGETHER WITH THE COMMON POLICY CONDITIONS, COVERAGE PART COVERAGE FORM(S) AND FORMS AND ENDORSEMENTS, IF ANY, ISSUED TO FORM A PART THEREOF, COMPLETE THE ABOVE NUMBERED POLICY.

Date Issued: November 15, 2022

IN WITNESS

INDIAN HARBOR INSURANCE COMPANY

REGULATORY OFFICE
505 EAGLEVIEW BOULEVARD, SUITE 100
DEPARTMENT: REGULATORY
EXTON, PA 19341-1120
PHONE: 800-688-1840

It is hereby agreed and understood that the following In Witness Clause supercedes any and all other In Witness clauses in this policy.

All other provisions remain unchanged.

IN WITNESS WHEREOF, the Company has caused this policy to be executed and attested, and, if required by state law, this policy shall not be valid unless countersigned by a duly authorized representative of the Company.



Joseph Tocco
President



Toni Ann Perkins
Secretary

RAILROAD LIABILITY INSURANCE POLICY – OCCURRENCE FORM

NOTICE: THIS INSURANCE POLICY IS WRITTEN ON AN “OCCURRENCE” BASIS. THE INSURANCE AFFORDED BY THIS POLICY PROVIDES THAT THE LIMIT OF LIABILITY TO PAY DAMAGES WILL BE REDUCED BY AMOUNTS INCURRED FOR “DEFENSE EXPENSES”. THE COMPANY DOES NOT HAVE A DUTY TO DEFEND. VARIOUS PROVISIONS IN THE POLICY RESTRICT COVERAGE. READ THE ENTIRE POLICY CAREFULLY TO DETERMINE THE “INSURED’S” RIGHTS, DUTIES AND WHAT IS AND IS NOT COVERED.

Other word and phrases that appear in quotation marks have special meaning. Refer to Section IV. Definitions.

In consideration of the payment of the premium and in reliance upon the statements in the application for insurance and any and all supplementary information provided to the Company which shall be deemed to be incorporated herein, the Company named in the Declarations agrees to insure the “Insured” subject to the Insuring Agreements, Limit of Liability, Exclusions, Conditions, Definitions and other terms of this policy.

SECTION I. INSURING AGREEMENT

1. OCCURRENCE COVERAGE

- A. The Company will pay on behalf of the “Insured” for “Ultimate Net Loss”, in excess of the “Self-Insured Retention”, which the “Insured” must legally pay as damages and “Defense Expenses” because of “Covered Injury” to which this policy applies which results from an “Occurrence” during the “Policy Period”. This policy applies only to liability imposed on the “Insured” by law or assumed under an “Insured Contract”.
- B. The amount the Company will pay for “Ultimate Net Loss” is limited as described in 3. Limits of Liability.
- C. No other obligation or liability to pay sums or perform acts or services is covered except as specifically provided for in 4. “DEFENSE EXPENSES” and 5. ALLOCATION OF “DEFENSE EXPENSES”.

2. SELF- INSURED RETENTION

- A. Regardless of the number of “Insureds” or “Claims” made, the number of persons or organizations making “Claims” or the number of or types of “Covered Injuries” for which “Claims” are made against the “Insured”, the “Insured” shall always be liable for the amount of the “Self-Insured Retention” for each and every “Occurrence”.
- B. The amount of the “Self-Insured Retention” for which the “Insured” is liable shall apply to “Ultimate Net Loss” inclusive of “Defense Expenses”. “Defense Expenses” which are incurred by the “Insured” in connection with such “Occurrence” shall serve to reduce the “Self-Insured Retention”.
- C. The “Self-Insured Retention” shall only apply to “Covered Injuries” which would be otherwise covered by this policy except for their amount.
- D. Regardless of the number of “Insureds”, “Claims” or “Occurrence(s)” or the number of or types of “Covered Injuries”, the “Self-Insured Retention” is not subject to any aggregate limitation.
- E. The Company shall only be liable for the “Ultimate Net Loss” in excess of the “Self-Insured Retention”. In the event of any failure by the “Insured” to satisfy the “Self-Insured Retention” for any reason, the insurance afforded by this policy shall not drop down, or replace or supplement the “Self-Insured Retention”. At no time shall the Company be required to substitute for the “Insured” as respects to the “Insured’s” responsibility within the “Self-Insured Retention”.

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3. LIMITS OF LIABILITY

- A. The Limits of Liability specified in Item 3. of the Declarations and the terms and conditions of this policy determine the most the Company will pay regardless of the number of:
- (1) "Insureds",
 - (2) types of "Covered Injuries",
 - (3) "Occurrences"
 - (4) "Claims" made, or
 - (5) persons or organizations making "Claims".
- B. The Company shall only be liable for "Ultimate Net Loss" in excess of the "Self-Insured Retention", which applies to each and every "Occurrence".
- C. The "Policy Aggregate" is the most the Company will pay for all "Ultimate Net Loss" under this policy, excess of the "Self-Insured Retention", because of all covered "Occurrences" combined.
- D. The Company shall not be obligated to pay for any "Ultimate Net Loss" after the applicable Limit of Liability specified in Item 3. of the Declarations, has been exhausted by the payment of "Ultimate Net Loss".
- E. The Limits of Liability, specified in Item 3. of the Declarations, apply separately to each consecutive annual period and any remaining period less than twelve (12) months, starting with the beginning of the "Policy Period" shown in the Declarations, unless the "Policy Period" is extended after issuance for an additional period of less than twelve (12) months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Liability.

4. DEFENSE EXPENSES

- A. The "Insured" shall be solely responsible for the investigation, settlement, defense and final disposition of any "Claim(s)" made against any "Insured" to which this policy would apply. The "Insured" shall use diligence and prudence to settle all such "Claim(s)" and shall not make or agree to any settlement for any sum involving this policy without the Company's prior written approval. The Company shall not unreasonably withhold its approval.
- B. At no time shall the Company be called upon to assume charge of the investigation, settlement or defense of any "Claim(s)" made against any "Insured", but the Company shall have the right and shall be given the opportunity to associate with the "Insured" in the control, defense or trial of any "Claim(s)" which, in the Company's opinion, involves or appears reasonably likely to involve this policy. If the Company avails itself of such right and opportunity, the "Insured" and the Company shall cooperate in the control, defense or trial of such "Claim(s)", so as to effect a final determination thereof. Failure on the part of any "Insured" to so cooperate shall relieve the Company of liability for such "Claim(s)" and "Defense Expenses" arising under this policy.
- C. If the "Insured" is complying with the foregoing and if, at any time and solely at its option, the Company wishes to assume charge of the investigation, settlement or defense of any "Claim(s)" made against any "Insured", the "Insured" shall immediately relinquish control of said investigation, settlement or defense to the Company. If the Company assumes charge of the investigation, settlement or defense of any "Claim(s)", "Defense Expenses" incurred by the Company shall not be included within and shall not reduce the "Self-Insured Retention" notwithstanding the following paragraph. If the Company settles such "Claim(s)" the "Insured" shall promptly pay the amount of the "Self-Insured Retention" at the time of the settlement. Failure on the part of any "Insured" to relinquish control to or to cooperate with the Company in the investigation, settlement or defense of any "Claim(s)" shall relieve the Company of liability for such "Claim(s)" arising under this policy.
- D. All "Defense Expenses" incurred by the "Insured" in the investigation, settlement, control, defense or trial of any "Claim" shall reduce the "Insured's" "Self-Insured Retention".

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- E. All "Defense Expenses" directly or indirectly incurred by the Company in the investigation, settlement, control, defense or trial of any "Claim" shall reduce the Company's Limit of Liability in this policy and all such "Defense Expenses" are included within, not in addition to the Limit of Liability as shown in Item 3. of the Declarations.
- F. If the Company chooses to exercise its right to provide or participate in the defense of any "Claim", such participation ends when the applicable Limit of Liability has been exhausted by the payment of "Ultimate Net Loss".

5. ALLOCATION OF DEFENSE EXPENSES

- A. When a "Claim" is covered in part by this policy, the amount of "Defense Expenses" that this policy will pay as part of "Ultimate Net Loss" shall be calculated by dividing the part of the total "Claim" award or settlement which is covered by this policy by the total amount of the "Claim" award or settlement and applying that percentage to the total "Defense Expenses" of that "Claim".
- B. The Company shall have no liability for such allocated "Defense Expenses" until the amount of "Ultimate Net Loss" (inclusive of "Defense Expenses") exceeds the "Self-Insured Retention".
- C. When a "Claim(s)" which results from one "Occurrence" is finally resolved and the amount of "Ultimate Net Loss" (inclusive of "Defense Expenses") does not exceed the "Self-Insured Retention" then the Company shall not be liable for any "Defense Expenses".

6. FREESTANDING CONTRACT

This policy is a freestanding contract subject only to the terms and conditions contained therein. Nothing contained in this policy nor any representation by any person or organization shall make this policy subject to the terms and conditions of any other insurance, trust, contract or agreement or to reduce the "Self-Insured Retention" required by this policy.

SECTION II. EXCLUSIONS

This policy does not apply to:

- 1. Any "Covered Injury" either expected or intended from the standpoint of the "Insured". This exclusion does not apply to "Covered Injury" resulting from the use of reasonable force to protect persons or property.
- 2. Any "Claim" or "Occurrence" of which the "Insured" has given written or other notice to any other insurer prior to the effective date of this policy.
- 3. Any liability imposed on the "Insured" under any of the following:
 - A. the Employees Retirement Income Security Act (ERISA) of 1974 as now or hereafter amended;
 - B. any workers compensation, employers liability including occupational disease (but this does not apply to the Federal Employers' Liability Act; see "Employers' Liability" definition) unemployment compensation, retirement or disability benefits law or statute, or
 - C. any law similar to A. or B. above.
- 4. Liability arising out of any partnership or joint venture of which any "Insured" is or was a partner or member unless the partnership or joint venture is the "Named Insured" specified in Item 1. of the Declarations.
- 5. Any liability arising out of:

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- A. failure to hire any prospective employee or any applicant for employment;
 - B. dismissal, discharge or termination of any employee;
 - C. failure to promote or advance any employee; or
 - D. employment-related practices, policies, acts, omissions or misrepresentations directed at a present, past, future or prospective employee, including but not limited to:
 - (1) coercion, harassment, humiliation or discrimination;
 - (2) demotion, evaluation, reassignment, discipline or retaliation;
 - (3) libel, slander, humiliation, defamation, or invasion of privacy; or
 - (4) violation of civil rights.
6. "Property Damage"
- A. to any real property owned, rented, leased or occupied by any "Insured" or to any real property in the care, custody or control of any "Insured".
 - B. to any personal property owned, rented, leased or occupied by any "Insured" or to any personal property in the care, custody or control of any "Insured" but this does not apply to "Property Damage" to "Foreign Rolling Stock" or "Bill of Lading" provided that such "Property Damage" to "Foreign Rolling Stock" or "Bill of Lading" results solely from a "Railroad Accident", "Acts of God", or fire, explosion, vandalism or malicious mischief or theft (by persons other than the "Insured" or any "Insured's" employees) or "Property Damage" to "Bill of Lading" which results from loading or unloading.
7. Any "Covered Injury" which arises out of or results from the ownership, maintenance, operation, use, loading or unloading of any "Automobile", "Watercraft" or "Aircraft", except with respect to "Employers' Liability".
8. Any "Covered Injury" which arises out of or results from:
- A. the ownership, maintenance, operation, use, loading or unloading of any "Mobile Equipment" , except with respect to "Employers' Liability" but this exclusion does not apply to "Mobile Equipment" owned, maintained, operated, used, loaded or unloaded in the course of the "Insured's" "Railroad Operations" or at "Railroad Facilities" owned or used by the "Insured".
 - B. the use of "Mobile Equipment" in or while in practice for any, or while being prepared for, any racing, speeding, demolition and/or stunt activity.
9. A. Any "Covered Injury" which arises out of or results from the actual, alleged or threatened emission, discharge, dispersal, seepage, release or escape of "Pollutants" at any time.
- B. Any loss, costs or expense arising out of any:
- (1) request, demand or order that any "Insured" or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize or in any way respond to, assess the effects of "Pollutants"; or
 - (2) "Claim" or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to or assessing the effects of "Pollutants";
- C. However, Exclusions A. and B. do not apply to "Covered Injury" or loss, costs or expense from the actual discharge, dispersal, release or escape of "Pollutants" that arises out of or results solely from a "Railroad Accident" that takes place at the site of the "Railroad Accident", during the "Policy Period", and is caused solely by:
- (1) unintended fire, lightning, explosion or implosion;
 - (2) collision or overturning of an "Automobile";
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- (3) collision, overturning or derailment of a train or trains;
- (4) vandalism or malicious mischief to "Railroad Equipment", except vandalism and malicious mischief caused by or resulting from acts committed alone or in collusion with others by an "Insured" and/or employees of any "Insured", and such emission, discharge, seepage, release or escape of "Pollutants" results solely from vandalism or malicious mischief to "Railroad Equipment" which first commences during the "Policy Period"; or
- (5) any "Railroad Accident" other than C. (1) through (4) above, but only if the "Insured" becomes aware of the commencement of such "Pollutants" within thirty (30) days of such commencement and in accordance otherwise with the Notice of "Occurrence(s)", "Claim(s)" or "Suit(s)" condition of this policy.

All "Covered Injury" arising from a "Railroad Accident" is considered to be one "Occurrence", subject only to the policy Limits of Liability in effect at the time the "Railroad Accident" occurs.

- D. Regardless of the exceptions, coverage provided in C. (1) through (4) above, it is agreed that this policy shall not apply under any circumstances to any "Covered Injury", loss, costs or expenses:
 - (1) resulting from sub-surface operations of the "Insured" or damage to sub-surface oil, gas or any other substance (operation of "Railroad Equipment" through tunnels is not considered to be sub-surface operations); or
 - (2) from any premises, site or location used in whole or in part for the handling, processing, treatment, storage, disposal or dumping of any "Pollutants" or waste materials.
- 10. "Property Damage" to the "Insured's Products" arising out of or resulting from such products or any part of such products.
- 11. "Property Damage":
 - A. to work performed by or on behalf of any "Insured" arising out of or resulting from the work or any portion thereof, or out of or from materials, parts or equipment furnished in connection therewith.
 - B. for loss of use of tangible property which has not been physically injured or destroyed resulting from a delay in or lack of performance by or on behalf of the "Insured" of any contract or agreement.
- 12. Damages claimed for the loss of use, withdrawal, inspection, repair, replacement, recall, adjustment, removal or disposal of the "Insured's Products" or work completed by or for the "Insured" or any property of which such products or work form a part, if such products, work or property are withdrawn or recalled from the market or from use because of any known or suspected defect, deficiency, inadequacy or dangerous condition therein.
- 13. "Advertising Injury" arising out of:
 - A. failure of performance of contract;
 - B. infringement of registered trademark, copyright, patent, trade secret, trade name or trade dress other than titles and slogans by use thereof with goods or services sold, offered for sale or advertised;
 - C. incorrect description of any article, commodity or service;
 - D. mistake in advertised price; or
 - E. piracy, unfair competition or any other willful act.

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14. "Personal Injury" which arises out of:
- A. the publication or alleged publication or utterance of libel or slander or of other defamatory or disparaging material concerning any person, organization or business enterprise, or its products or services, made by or at the direction of the "Insured" with the knowledge of the falsity thereof; or
 - B. an electronic chatroom or bulletin board the "Insured" hosts, owns, or over which the "Insured" exercises control.
15. A. "Covered Injury" arising out of any act, error, omission or mistake committed or alleged to have been committed by or on behalf of the "Insured" or any indemnitee of the "Insured" in the rendering or failing to render service, treatment or advice of a professional nature.
- B. "Covered Injury" for which the "Insured" is obligated to pay damages by reason of liability assumed under an "Insured Contract" for the rendering or failure to render services, treatment or advice of a professional nature.

This exclusion does not apply to "Bodily Injury" caused by or arising out "Incidental Medical Malpractice".

16. Any "Covered Injury" arising out of "Aircraft Products".
17. A. Any Covered Injury which arises out of or results from, in whole or in part, either directly or indirectly, any exposure to asbestos, asbestos products, products containing asbestos, asbestos fibers or asbestos dust;
- B. Any loss, cost or expense arising out of testing for, monitoring of, clean-up, removal, containment or treatment of asbestos, asbestos products, products containing asbestos, asbestos fibers or asbestos dust; or
- C. Any obligation to investigate, settle or defend any "Claim", suit, or proceeding against any "Insured" alleging actual or threatened injury or damage of any nature or kind to persons or property which, directly or indirectly, arises out of exposure to asbestos, asbestos products, products containing asbestos, asbestos fibers or asbestos dust.
18. Any liability of an "Insured" directly or indirectly caused by, happening through or in consequence of war (whether war be declared or not), invasion, act of foreign enemies, hostilities, civil war, rebellion, revolution, insurrection, strike, riot, military or usurped power or confiscation or nationalization or requisition or destruction of or damage to property by or under the order of any government or public or local authority.
19. Any "Covered Injury" which results from an "Occurrence" which involves "Railroad Operations" conducted by the "Insured" for the purpose of carrying passengers for a fare or other consideration or any "Covered Injury" sustained by such passengers at "Railroad Facilities" owned or used by the "Insured".
20. Any "Bodily Injury" or "Property Damage" for which any "Insured" may be held liable by reason of:
- A. causing or contributing to the intoxication of any person;
 - B. the furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or
 - C. any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

This exclusion applies only if the "Insured" is in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages.

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- 21.** Fire suppression if the fire arises out of or results from:
- A.** the burning of slash, weeds, brush or other natural growth or any waste materials at times or under conditions not approved by, directed by or provided for by proper state, federal or local government officials or by state, federal or local government laws, codes or regulations; or
 - B.** the conducting of "Railroad Operations" at a time during which suspension of such operations has been directed by proper state, federal or local government officials.

- 22.** Damages arising out of the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate electronic data.

As used in this exclusion, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMs, DVDs, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

- 23.** Any liability arising out of:
- A.** any violation of any securities law or similar law or any regulation promulgated thereunder;
 - B.** the purchase, sale, offer of sale or solicitation of any security, debt, insurance policy, bank deposit or financial interest or instrument;
 - C.** any representations made at any time in relation to the price or value of any security, debt, insurance policy, bank deposit or financial interest or instrument; or
 - D.** the depreciation or decline in price or value of any security, debt, insurance policy, bank deposit or financial instrument.

- 24. A.** Any "Covered Injury":
- (1)** with respect to which an "Insured" under this policy is also an "Insured" under a nuclear energy liability policy issued by the Nuclear Energy Liability-Property Insurance Association, the American Nuclear Insurers, Mutual Atomic Energy Liability Underwriters or the Nuclear Insurance Association of Canada, or any of their successors, or would be an "Insured" under any such policy but for its termination upon exhaustion of its limits of liability; or
 - (2)** resulting from the hazardous properties of nuclear material and with respect to which:
 - (a)** any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or
 - (b)** the "Insured" is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.
- B.** Any "Covered Injury" resulting from the hazardous properties of nuclear material if:
- (1)** the nuclear material
 - (a)** is at any nuclear facility owned by, or operated by or on behalf of, any "Insured", or
 - (b)** has been discharged or dispersed there from;
 - (2)** the nuclear material is contained in spent fuel or waste at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of any "Insured"; or

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- (3) the "Covered Injury" arises out of the furnishing by any "Insured" of services, materials, parts or equipment in connection with the planning construction, maintenance, operation, or use of any nuclear facility.

C. As used in this exclusion:

- (1) hazardous properties include radioactive, toxic or explosive properties;
- (2) nuclear material means source material, special nuclear or byproducts material;
- (3) source material, special nuclear material, and byproduct materials have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof;
- (4) spent fuel means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a nuclear reactor;
- (5) waste means any waste material:
 - (a) containing byproduct material other than the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content; and,
 - (b) resulting from the operation by any person or organization of any nuclear facility;
- (6) nuclear facility means:
 - (a) any nuclear reactor;
 - (b) any equipment or device designed or used for (i) separating the isotopes of uranium or plutonium (ii) processing or utilizing spent fuel, or (iii) handling, processing or packaging waste;
 - (c) any equipment or device used for the processing, fabricating or alloying of special nuclear material if at any time the total amount of such material in the custody of the "Insured" at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;
 - (d) any structure, basin, excavation, premises or place prepared or used for the storage or disposal of waste, and includes the site on which any of the foregoing is located, all operations conducted on each site and all premises used for such operations;
- (7) nuclear reactor means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material;
- (8) With respect to injury to or destruction of property, the phrase "Property Damage" includes all forms of radioactive contamination of property.

SECTION III. CONDITIONS

1. BANKRUPTCY OF THE INSURED

In the event of the bankruptcy, insolvency, receivership or any refusal or inability of the "Insured" to pay "Ultimate Net Loss" to which this policy applies, the insurance afforded by this policy shall not replace or supplement the "Self-Insured Retention" or the "Defense Expenses" attendant thereto but shall apply in the same manner as though the "Insured" were willing and able to pay.

2. NOTICE OF "OCCURRENCE(S)", "CLAIM(S)" OR SUIT(S)

A. Notice of "Occurrence(s)"

As a condition precedent to coverage, the "Insured" shall immediately notify the Company of any "Occurrence(s)":

- (1) which may reasonably be expected to result in a "Claim(s)" against this policy. The "Insured" will notify the Company on the assumption as if the "Insured" were liable and for any amount claimed;
- (2) which involve(s) a serious "Bodily Injury" including those within "Employers' Liability" with regard to liability, including but not limited to:
 - (a) spinal cord injury (including paraplegia, quadriplegia or any other type of paralysis);
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- (b) amputations of any part of the body;
 - (c) brain damage affecting mentality or the central nervous system including permanent disorientation, behavior disorders, personality change, seizures, motor deficit, inability to speak (aphasia), hemiplegia or unconsciousness (comatose);
 - (d) loss of vision or hearing;
 - (e) second or third degree burns over ten percent (10%) of the body;
 - (f) multiple bone fractures involving more than one body member or non-union (non-connecting) bones, including fracture of both heel bones;
 - (g) nerve damage-;
 - (h) internal injuries affecting body organs;
 - (i) injury to nerves at the base of the spinal canal or any other back injury involving intervertebral discs, or resulting in incontinence of bowel or bladder;
 - (j) fatalities;-
 - (k) any other serious "Bodily Injury" which in the "Insured" or "Insured's" defense counsel's or any claims handling firm's estimate of the value of injuries or damages sought, without regard to liability, might equal twenty-five percent (25%) of the "Self-Insured Retention" set forth in Item 4. of the Declarations, or more;
- (3) which involve a "Crossing Accident";
 - (4) which involve(s) or might involve "Evacuation Expenses", "Fire Suppression Expenses" or "Pollution Clean-Up Expenses";
 - (5) with respect to which the "Insured" or the "Insured's" defense counsel or any claims handling firm has paid "Defense Expenses" and/or established a reserve for loss and/or "Defense Expenses" which are equal to a greater than twenty-five percent (25%) of the "Self-Insured Retention".

Such notice shall contain sufficient information to identify the "Insured" and reasonably obtainable information as to the date, time, place and circumstances of the "Occurrence(s)", the names and addresses of any injured persons and any witnesses and a description of any injuries or damages.

The Company shall be deemed to have received notice of an "Occurrence(s)" under this policy from the "Insured" when any "Insured" has given notice by telephone, email, or registered mail, directly to the Company and the Company has received such notice at the following address:

AXA XL
 Attn: Railroad
 PO Box 614002
 Orlando, FL 32861-4002
napropcasclaimnewnotices@axaxl.com
 877-720-8844 Telephone

B. Notice of "Claim(s)" or Suit(s)

As a condition precedent to coverage under this policy, the "Insured" shall immediately notify the Company of any "Claim(s)" made or suit(s) brought against the "Insured", without regard to liability.

Such notice shall contain sufficient information to identify the "Insured" and reasonably obtainable information as to the date, time, place, circumstances of the "Occurrence" which resulted in the "Claim(s)" for "Covered Injury", the name and address of each party sustaining or claiming to sustain "Covered Injury", a description of such injury or damage and the name, address and telephone number of the persons who are handling the investigation, settlement and defense of the "Claim(s)" or suit(s).

The Company shall be deemed to have received notice of "Claim(s)" or suit(s) under this policy from the "Insured" when any "Insured" has given notice by email or registered mail directly to the Company and the Company has received such notice at the following address:

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AXA XL
Attn: Railroad
PO Box 614002
Orlando, FL 32861-4002
napropcasclaimnewnotices@axaxl.com
877-720-8844 Telephone

The "Insured" shall enforce any right of contribution or indemnity against any person or organization who or which may be liable to the "Insured" because of liability with respect to which insurance is afforded under this policy.

The "Insured" shall enforce any right of contribution or indemnity against any person or organization who or which may be liable to the "Insured" because of liability with respect to which insurance is afforded under this policy.

3. PREVENTION OF FURTHER "CLAIMS"

As soon as the "Insured" becomes aware of an "Occurrence" or receives a "Claim", the "Insured" shall immediately and at its own expense take all reasonable steps to prevent further "Covered Injury" resulting from the same "Occurrence" or conditions which might cause another "Occurrence".

4. ATTACHMENT OF LIABILITY

The liability of the Company in this policy shall not attach unless and until the "Insured" shall have paid an amount which is equivalent to the "Self-Insured Retention" and the "Insured" shall have complied with all the terms and conditions of this policy.

5. APPEALS

In the event that any "Insured" elects not to appeal a judgment for "Covered Injury" in excess of the "Self- Insured Retention", the Company may elect to make such appeal at its own cost and expense, and shall be liable for the taxable costs, disbursements and additional interest on judgments incidental thereto.

If the Company elects to appeal, in no event shall the Company's liability exceed the Limit of Liability specified in Item 3. of the Declarations plus the costs and expenses of such appeal.

6. SEPARATION OF INSUREDS

Except with respect to the Limit of Liability, and any rights or duties specifically assigned in this policy to the first "Named Insured", this policy applies:

- A. as if each "Named Insured" were the only "Named Insured"; and
- B. separately to each "Insured" against whom "Claim" is made or suit is brought.

7. TRANSFER OF RIGHTS OF RECOVERY

A. If any "Insured" has rights to recover all or part of any payment the Company have made under this policy, those rights are transferred to the Company. The "Insured" must do nothing after a loss to impair these rights and must help the Company enforce them.

B. Any recoveries shall be applied as follows:

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- (1) any person or organization, including the "Insured" that has paid an amount in excess of the applicable Limits of Liability of this policy will be reimbursed first;
- (2) the Company will be reimbursed up to the amount the Company have paid; and
- (3) any person or organization, including the "Insured" that has paid an amount over which this policy is excess is entitled to claim the remainder.

Expenses incurred in the exercise of rights or recovery shall be apportioned among the persons or organizations, including the "Insured", in the ratio of their respective recoveries as finally determined.

- C. If, prior to the time of an "Occurrence", the "Insured" waived any right of recovery against a specific person or organization for injury or damage as required under an "Insured Contract", the Company will also waive any rights the Company may have against such person or organization.

8. CHANGES

This policy's terms shall not be waived or changed, except by an endorsement issued by the Company.

9. TRANSFER OF INSURED'S RIGHTS AND DUTIES

- A. The "Insured's" rights and duties under this policy may not be transferred without the Company's written consent, except in the case of death to an individual "Named Insured".
- B. In the event of death or the "Named Insured" is declared legally bankrupt, the "Insured's" rights and duties will be transferred to the "Insured's" legal representative, but only while acting within the scope of duties as the "Insured's" legal representative. Until the "Insured's" legal representative is appointed, anyone having proper and legal temporary custody of the "Insured's" property will have the "Insured's" rights and duties, but only with respect to that property.

10. TERMINATION

- A. The first "Named Insured" may cancel this policy. The "Named Insured" must mail or deliver advance notice to the Company stating when the cancellation is to take effect.
- B. The Company may cancel this policy. If the Company cancels because of non-payment of premium, the Company must mail or deliver to the first "Named Insured", not less than thirty (30) days advance written notice stating when the cancellation is to take effect. If the Company cancels for any other reason, the Company must mail or deliver to the first "Named Insured", not less than ninety (90) days advance written notice stating when the cancellation is to take effect. If notice is mailed, proof of mailing that notice to the first "Named Insured" at the mailing address shown in Item 1. of the Declarations will be sufficient proof of notice.
- C. The "Policy Period" will end on the day and hour stated in the cancellation notice.
- D. If the Company cancels, final premium will be calculated pro rata based on the time this policy was in force. Final premium will not be less than the pro rata share of the Minimum Premium shown in Item 6. of the Declarations.
- E. If the first "Named Insured" cancels, final premium will be more than pro rata; it will be based on the time this policy was in force and increased by our short rate cancellation table and procedure. Final premium will not be less than the short rate share of the Minimum Premium shown in Item 6. of the Declarations.
- F. Premium adjustment may be made at the time of cancellation or as soon as practicable thereafter, but the cancellation will be effective even if the Company has not made or offered any refund of unearned premium. The Company's check or our representative's check, mailed or delivered, shall be sufficient tender of any refund due the "Insured".

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- G. The first "Named Insured" shall act on behalf of all other "Insureds" with respect to the giving and receiving of notice of cancellation and the receipt of any refund that may become payable under this policy.
- H. Any of these provisions that conflict with a law that controls the cancellation of this policy is changed by this statement to comply with that law.
- I. The premium due to the Company for this policy is the amount specified in Item 6. of the Declarations and is payable and due on the effective date of this policy. If the premium due is not received by the Company within thirty (30) days of the effective date of this policy, this policy shall be canceled and the Company shall be relieved of any further liability in this policy after the effective date of cancellation.
- J. In the event that the Company will non-renew this policy, the Company shall give written notice to the "Named Insured" not less than ninety (90) days prior to the expiration date of this policy. Any change in premium, Limit of Liability, terms or conditions of the policy by the Company shall not be deemed to be a non-renewal of the policy.

11. OTHER INSURANCE

This policy is excess over any other valid and collectible insurance that applies to any "Claim" or suit to which this policy applies, whether such other insurance is written on a primary, excess, contingent or on any other basis (except, if that other insurance is purchased by the "Insured" specifically to apply in excess of this policy), and this policy will not contribute with any other such insurance.

12. CURRENCY

The Limits of Liability, "Self-Insured Retention", premiums and losses of this policy are payable in United States currency unless otherwise specified in the Declarations or by endorsement.

13. LEGAL ACTION AGAINST THE COMPANY

No person or organization has a right under this policy:

- A. to join the Company as a party or otherwise bring the Company into a suit asking for damages from an "Insured"; or
- B. to sue the Company on this policy unless all of its terms have been fully complied with.

A person or organization may sue the Company to recover on an agreed settlement or on a final judgment against an "Insured" obtained after an actual trial; but the Company will not be liable for damages that are not payable under the terms of this policy or that are in excess of the applicable Limit of Liability. An agreed settlement means a settlement and release of liability signed by the Company, the "Insured" and the claimant or the claimant's legal representative.

14. INSPECTION AND AUDIT

The Company shall have the right but not be obligated to inspect an "Insured's" facility(ies) and operations at any time. Neither the Company's right to make inspections nor the making thereof nor any report thereon shall constitute an undertaking, on behalf of or for the benefit of the "Insured" or others, to determine or warrant that such facilities or operations are safe or healthful, or are in compliance with any law, rule or regulation.

The Company shall be permitted but not obligated to inspect an "Insured's" "Railroad Facility(ies)" and "Railroad Operations" for any "Occurrence(s)" notified to the Company or as a result of any "Claim(s)" made against the "Insured".

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The Company may examine and audit the "Insured's" books and records at any time during the "Policy Period" and extensions thereof and within five (5) years after the final termination of the policy, as far as they relate to the subject matter of this policy.

15. ADDITIONAL NAMED INSUREDS

In no event shall any person or organization not scheduled as an "Insured" in this policy at the effective date of this policy at the beginning of the "Policy Period" be added as an "Insured" without the Company's written concurrence and this policy being so endorsed.

If any "Insured" acquires or forms an organization or wishes to add any person or organization as an "Insured" after the effective date of this policy, a full submission must be made to the Company, which has the right to accept, decline or alter the policy terms and conditions and to charge an additional premium.

The acceptance by the Company of any additional "Insured" shall not increase the Company's Limits of Liability specified in Item 3 of the Declarations.

16. SOLE AGENT

The first "Named Insured" is authorized to act on behalf of all "Insureds" with respect to giving or receiving notice of cancellation or non-renewal, paying premium or agreeing to change in this policy.

17. REPRESENTATIONS

By accepting this policy, the "Insured" agrees:

- A.** the statements in the Declarations, the statements in the application for insurance and the statements in any and all supplementary information provided to the Company are accurate and complete;
- B.** those statements are based upon representations made by the "Insured" to the Company; and
- C.** the Company has issued this policy in reliance upon the "Insured's" representations.

The willful and deliberate misrepresentation of any matter by the "Insured" or the "Insured's" agent will render this policy null and void and relieve the Company of all liability.

18. POLICY TERRITORY

The insurance afforded by this policy applies anywhere in North America.

19. NON-CUMULATION OF LIABILITY

This policy shall not apply to any "Claim" made against any "Insured" during this "Policy Period" if such "Claim" is covered in whole or in part or would have been but for its termination upon exhaustion of its applicable Limit of Liability under any prior policy issued by the Company.

20. VALUATION OF "PROPERTY DAMAGE" TO "FOREIGN ROLLING STOCK" OR "BILL OF LADING"

- A.** With respect to "Property Damage" to "Foreign Rolling Stock" the Company shall not be liable for more than the actual cash value of the "Foreign Rolling Stock" at the time damage or loss occurs. The damage or loss shall be ascertained or estimated according to such actual cash value with proper deduction for depreciation, however caused, and in no event shall it exceed what it would then cost to repair or replace the material with material of like kind and quality.

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If the "Insured" and Company fail to agree as to the amount of "Property Damage" to "Foreign Rolling Stock", such disagreement shall be settled according to the Rules of Interchange of the Association of American Railroads.

- B.** With respect to "Property Damage" to "Bill of Lading", the Company shall not be liable for more than:
- (1)** the amount of invoice, including any earned or advance freight charges not collectible from others;
 - (2)** in the absence of an invoice, the actual cash value of the freight, merchandise, baggage or other property at the time of the loss or damage, less any salvage; or
 - (3)** the valuation of loss or damage under (1) or (2) above shall not exceed the cost to repair the property or replace the property with property of like kind and quality.
- C.** In case of loss or damage to property covered under this policy, the "Insured", its factors, servants and assigns, shall at its own expense sue, labor and travel for, in and about the defense, safeguard and recovery of the property "Insured" hereunder or any part hereof. Such action shall not prejudice this policy or constitute a waiver of any rights of the "Insured".
- D.** The Company, at its sole option, may take all, or any part, of the property at the agreed or appraised value, or to repair, rebuild or replace the property destroyed or damaged with other of like kind and quality within a reasonable time, upon giving notice of its intention to do so within sixty (60) days after the receipt of the proof of loss herein required.
- E.** There can be no abandonment to the Company of any property.

21. LOSS PAYABLE

Any amount for which the Company is liable in this policy shall be due and payable to the party or parties with whom or which settlement is reached or to who or which an award is made, unless otherwise agreed upon by the "Named Insured" and the Company. The "Named Insured" shall render a complete accounting to the Company of all damages and expenses paid and all "Insureds" shall cooperate fully with the Company in its verification of such accounting. When the Company has verified and agreed to the amount, such amount shall be promptly paid in full.

22. ARBITRATION

Should the "Insured" and the Company disagree as to the appropriateness or value of any settlement or final disposition of any "Claim(s)" which exceed(s) the "Self-Insured Retention", the matter shall be arbitrated following final adjudication or compromise of the "Claim(s)" by the Company. The propriety of "Defense Expenses" incurred by the "Insured" or the Company is not subject to arbitration. Either party may make written demand for arbitration. Each party will select an arbitrator. The two arbitrators will select a third; if they cannot agree within thirty (30) days, either may request that selection of a third arbitrator be made by a judge of a court having jurisdiction. Each party will pay the expenses it incurs and bear the expenses of the third arbitrator equally.

Notwithstanding the arbitration process, the Company shall only be liable for the "Ultimate Net Loss" in excess of the "Self-Insured Retention", subject to the Limit of Liability as stated In Item 3. of the Declarations.

SECTION IV. DEFINITIONS

This policy is subject to the following definitions:

- 1.** "Acts of God" means windstorms, cyclones, tornadoes, hurricanes, hail, rain, lightning, sleet, freeze, snow, earthquake, aftershock, landslide, sinkhole collapse or flood (as defined below):

An "Occurrence" as respects "Property Damage" to "Foreign Rolling Stock" or "Bill of Lading" caused by "Acts of God" shall be deemed to include all "Property Damage" to "Foreign Rolling Stock" or "Bill of Lading" from the
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commencement of such windstorms, cyclones, tornadoes, hurricanes, hail, rain, lightning, sleet, freeze, snow, earthquake, aftershock, landslide, sinkhole collapse or flood (as defined below) whether such are continuous or sporadic in their sweep or scope provided the "Acts of God" are due to the same meteorological or geological condition. An "Occurrence" as respects to "Property Damage" to "Foreign Rolling Stock" or "Bill of Lading" caused by "Acts of God" shall be deemed to have taken place at the time when the first "Property Damage" to "Foreign Rolling Stock" or "Bill of Lading" begins.

An "Occurrence" as respects to "Covered Injury" which arises out of or results from the actual emission, discharge, dispersal, seepage, release or escape of "Pollutants" caused by a "Railroad Accident" resulting from "Acts of God" shall be deemed to have taken place at the time at which the "Railroad Accident" took place.

As used in this definition, the word flood means waves, tide(s) or tidal water(s), surface water and the rising (including the overflowing or breaking of boundaries) of lakes, ponds, reservoirs, dams, rivers, harbors, streams, oceans or similar bodies of water.

2. "Advertising Injury" means injury arising out of one or more of the following offenses committed in the course of advertising the "Insured's" goods, products or services:
 - A. oral or written publication of material which libels or slanders a person or organization or disparages a person's or organization's goods, products or services;
 - B. oral or written publications of material which violates a person's right of privacy;
 - C. infringement of copyright title or slogan;
 - D. misappropriation of advertising ideas; or
 - E. regarding websites, only that part of a website that identifies the "Insured's" goods, products or services for the purpose of attracting customers or supporters is considered an advertisement.
3. "Aircraft" means any heavier than air, or lighter than aircraft designed to transport persons or property through the air. The term includes equipment or craft intended in whole or in part for use outside the earth's atmosphere.
4. "Aircraft Products" means the "Insured's Products" which are either an "Aircraft" or any part of an "Aircraft".
5. "Automobile" means a land motor vehicle, trailer, or semi-trailer designed for use on public roads including any attached machinery or equipment, but does not include "Mobile Equipment".
6. "Bill of Lading" means personal property for which the "Insured" is liable as a common carrier, warehouseman, forwarder or custodian under uniform bill of lading, government bill of lading or shipping receipt for "Property Damage" to freight, merchandise, baggage or other personal property, including earned and advance freight charges and the "Insured's" interest therein.
7. "Bodily Injury" means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time. Bodily injury also means mental injury, mental anguish or shock sustained by that person or a relative of that person as a result of such injury.
8. "Claim" means a written demand upon the "Insured" for damages because of "Covered Injury" to an individual person or an individual organization. A written demand shall include but shall not be limited to any summons or paper instituting suit or arbitration proceedings against the "Insured". "Claim" does not include reports of "Occurrences", incidents or offenses which may give rise to a "Claim" under this policy. All "Claims" for "Covered Injury" to an individual person or an individual organization which results from the same "Occurrence" shall be deemed to be one "Claim". A "Claim" shall be deemed to have been made when notice of such "Claim" is received by the Company.

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9. "Covered Injury" means:
- A. "Advertising Injury";
 - B. "Bodily Injury";
 - C. "Employer's Liability";
 - D. "Evacuation Expenses";
 - E. "Fire Suppression Expenses";
 - F. "Personal Injury";
 - G. "Pollution Clean-up Expenses"; or
 - H. "Property Damage"

as defined herein, and not listed in Section II. Exclusions.

10. "Crossing Accident" means any collision or other type of accident involving any "Insured's" "Railroad Equipment" which takes place at any railroad crossing or any grade crossing.
11. "Defense Expenses" means the costs and expenses of the investigation, adjustment, appraisal, defense and appeal and pre- and post-judgment interest paid or incurred by the "Insured" or the Company, in respect of the settlement, litigation or arbitration of a covered "Claim" under this policy, excluding the salaries of any "Insured's" or the Company's officers and employees. "Defense Expenses" shall not include any such costs, expenses and interest paid or incurred by the "Named Insured" arising from or with respect to any breach of contract warranty under an "Insured Contract" or any resulting action or proceeding against the "Named Insured" including any declaratory judgment action taken by the "Named Insured" or any bad faith action taken against the "Named Insured".
12. "Employers' Liability" means liability imposed on the "Insured" for "Bodily Injury" sustained by employees of the "Insured" in the course of their employment under the Federal Employers' Liability Act, U.S. Code (1970) Title 45, Chapter 2, Sections 51-60 and as amended.
- "Employers' Liability" includes "Bodily Injury" resulting from occupational disease sustained by employees of the "Insured" in the course of their employment. As respects occupational disease, each employee sustaining occupational disease shall be deemed to be a separate "Occurrence".
13. "Evacuation" means the removal of persons other than the "Insured" or the "Insured's" employees from a dangerous area to a designated safe area whether required by any public authority or at the instigation of any "Insured", solely as the result of a "Railroad Accident" or as result of a unintended fire or explosion which results from an "Occurrence" arising solely out of or resulting solely from the "Insured's" "Railroad Operations". An "Evacuation" shall be deemed to be over when the dangerous area is considered safe, by any public authority, for the persons to return.
14. "Evacuation Expenses" means expenses for which the "Insured" is liable for persons other than the "Insured" or the "Insured's" employees for food, travel and accommodation arising out of an "Evacuation". "Evacuation Expenses" does not include the salaries, overtime or any other compensation of any "Insured's" officers or employees nor any compensation of the "Insured" for use of its facilities or equipment.
15. "Fire Suppression Expenses" means expenses for which the "Insured" is liable to persons or organizations other than the "Insured" or the "Insured's" employees for fighting, containing and suppressing fires, provided that any such fire results from an "Occurrence" arising solely out of or resulting solely from the "Insured's" Railroad Operations. "Fire Suppression Expenses" does not include the salaries, overtime or any other compensation
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of any "Insured's" officers or employees nor any compensation of the "Insured" for use of its facilities or equipment.

16. "Foreign Rolling Stock" means rolling stock for which the "Insured" is held liable (other than rolling stock owned or leased by the "Insured") which is in the possession and control of the "Insured" as handling line, the property of other railroad(s), individuals, firms or corporations under the Rules of Interchange, operating or trackage agreement, or as a bailee but only to the extent of the "Insured's" liability, however expressed or stipulated.
17. "Incidental Medical Malpractice" means the rendering of or failure to render professional medical services by the employees of the "Insured" only while such employees are in the employ and service of the "Insured". "Incidental Medical Malpractice" shall not include the rendering of or failure to render medical service by a licensed physician.
18. "Insured" means only the following:
 - A. the "Named Insured" specified in Item 1. of the Declarations;
 - B. the "Named Insured's" subsidiaries and owned or financially controlled companies submitted to and accepted by the Company and scheduled on this policy;
 - C. (1) the "Named Insured's" subsidiaries and owned or financially controlled companies which have been acquired or formed after the inception of this "Policy Period" and which are:
 - (a) submitted to the Company within thirty (30) days of being acquired or formed, and
 - (b) accepted by the Company and endorsed onto this policy;
 - (2) such insurance as is afforded by this policy for such newly acquired or formed subsidiaries or owned or financially controlled companies shall be excess over all other insurance available to the "Insured".
 - D. additional "Insureds" other than as defined in B. or C. above which are submitted to and accepted by the Company and are scheduled on or endorsed onto this policy;
 - E. if the "Named Insured" is a partnership or joint venture, the partnership or joint venture can so designate any partner or member thereof but only with respect to their liability as such;
 - F. any officer, director, partner, employee or volunteer of the "Named Insured", while acting in their capacity as such; and
 - G. any person, firm or corporation to whom or to which the "Named Insured" is obligated by an "Insured Contract" to provide insurance of the type afforded by this policy, but only in connection with "Railroad Operations" or "Railroad Facilities" owned or used by the "Named Insured".
19. "Insured Contract" means that part of any written contract or agreement pertaining to the "Insured's" "Railroad Operations" or "Railroad Facilities" under which the "Insured" assumes the tort liability of another to pay damages because of "Bodily Injury", "Evacuation Expenses", "Fire Suppression Expenses", "Pollution Clean-up Expenses" or "Property Damage" to a third party or organization arising out of such "Railroad Operations" or "Railroad Facilities", provided such contract or agreement is made prior to the "Occurrence" which resulted in "Bodily Injury", "Evacuation Expenses", "Fire Suppression Expenses", "Pollution Clean-up Expenses" or "Property Damage". Tort liability means a liability which would be imposed by law in the absence of any contract or agreement.
20. "Insured's Products" means:
 - A. any goods or products, other than real property, which are manufactured, sold, handled, distributed or disposed of by:

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- (1) the "Insured"; or
- (2) others trading under the name of the "Insured".

B. containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.

21. "Mobile Equipment" means a land vehicle (including any machinery or apparatus attached thereto), whether or not self-propelled, providing that it is:

A. maintained exclusively for use on premises owned, used, or rented by the "Insured" including the ways immediately adjoining;

B. designed for use principally off public roads;

C. hi rail vehicles while on railroad tracks; or

D. designed or maintained for the sole purpose of affording mobility to equipment of the following types forming an integral part thereof or permanently attached to such vehicle: power cranes, shovels, loaders, diggers and drills; concrete mixers (other than mix-in-transit type); graders, scrapers, rollers and other trackbed construction or repair equipment, other railroad construction or repair equipment, air compressors, pumps and generators including spraying, welding and building equipment, provided always that such equipment is used in the "Railroad Operations" conducted by or on behalf of the "Insured" or in conjunction with "Railroad Facilities" owned or used by the "Insured".

22. "Named Insured" means the person or organization specified in Item 1. of the Declarations.

23. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.

For "Advertising Injury" coverage, "Occurrence" means an offense committed in the course of advertising your goods, products or services, but only if the offense was committed in the Policy Territory as defined in Item 2. of the Declarations during the "Policy Period";

For "Personal Injury" coverage, "Occurrence" means an offense arising out of your business, excluding advertising, publishing, broadcasting or telecasting done by or for you, but only if the offense was committed in the Policy Territory during the "Policy Period".

For "Employers' Liability" coverage, "Occurrence" means "Bodily Injury" to the employee which occurs during the "Policy Period" or "Bodily Injury" by disease caused or aggravated by the conditions of employment. The employee's last day of last exposure to the conditions causing or aggravating such "Bodily Injury" by disease must occur during the "Policy Period".

24. "Personal Injury" means injury other than "Bodily Injury" arising out of one or more of the following offenses:

A. false arrest, false imprisonment, wrongful eviction, wrongful detention or malicious prosecution;

B. libel, slander, defamation of character or invasion of rights of privacy, except that which arises out of any advertising activities; or

C. mental injury, anguish or shock sustained by the person as a result of such offenses in A. or B. above or mental injury, anguish or shock sustained by any relative of that person as a result of those offenses in A. or B. above.

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25. "Policy Aggregate" means the most the Company will pay for all "Ultimate Net Loss" because of all "Covered Injuries" to which this policy applies and shall not exceed the Limit of Liability stated in Item 3. of the Declarations, as "Policy Aggregate".
26. "Policy Period" means the period of time shown in Item 2. of the Declarations of this policy or as amended by endorsement or cancellation.
27. "Pollutants" means any noise, solid, semi-solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, mists, acids, alkalis, chemicals, toxic substances, toxic wastes, biological and other etiologic agents or materials, electromagnetic or ionizing radiation and energy, genetically engineered materials, teratogenic, carcinogenic and mutagenic materials, waste and any other materials to be disposed, recycled, reconditioned or reclaimed.
28. "Pollution Clean-up Expense" means the expenses for which the "Insured" is liable for testing for, monitoring, removal, containment, treatment, detoxification or neutralization of "Pollutants" which takes place at the site of a "Railroad Accident".

As respects "Pollution Clean-up Expenses" coverage, the discharge, dispersal, release or escape of "Pollutants" from a "Railroad Accident":

- A. must begin at the site of the "Railroad Accident" during the "Policy Period";
- B. ends in its entirety as soon as the dangerous area is considered safe by the "Insured" or by any public authority for persons to reoccupy the "Railroad Accident" site; and
- C. must be reported to the Company immediately, but in no event later than thirty (30) days from its commencement.

All interrelated, repeated or continuous episodes of a discharge, dispersal, release or escape of any "Pollutants" shall in its entirety be deemed to be a pollution "Occurrence" arising from a single "Railroad Accident". All "Pollution Clean-up Expenses" arising from a "Railroad Accident" shall be deemed to have occurred only at the specific time of the "Railroad Accident".

29. "Property Damage" means physical injury to or destruction of tangible property, including loss of use thereof, or loss of use of tangible property which has not been physically injured or destroyed.
30. "Railroad Accident" means:
- A. the collision, overturning or derailment of a train or trains or "Railroad Equipment"; or
- B. damage to "Railroad Equipment" caused by:
- (1) "Acts of God";
 - (2) vandalism and malicious mischief;
 - (3) loading or unloading by the "Insured";
 - (4) unintended fire, explosion or implosion

which arises out of the "Railroad Operations" conducted by the "Insured".

31. "Railroad Equipment" means railroad locomotives, engines, trackmobiles, railroad cars or other equipment; or "Automobiles" and "Mobile Equipment" which are built or modified to be operated on railroad track and is being so used.
32. "Railroad Facilities" means the property owned or used, including the ways immediately adjoining by land, by the "Insured" in the conduct of the "Named Insured's" "Railroad Operations".

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33. "Railroad Operations" means the ownership, operation, maintenance, or use of "Railroad Equipment" and "Railroad Facilities" for the purpose of providing transportation and other related services by the "Insured" that are customary and normal for a railroad or railway. "Railroad Operations" also includes all operations directly related to the conduct of the "Insured's" business as a railroad or railway.
34. "Self-Insured Retention" means the amount specified in Item 4. of the Declarations.
35. "Ultimate Net Loss" means the total sum which an "Insured" becomes legally obligated to pay by reason of "Covered Injury" either through adjudication or compromise, as damages and "Defense Expenses".
36. "Watercraft" means any craft designed to float or travel in, on or under water.

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ENDORSEMENT # 001

This endorsement, effective 12:01 a.m., November 1, 2022, forms a part of Policy No. US00113886LI22A issued to TexAmericas Center by Indian Harbor Insurance Company

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

NAMED INSURED SCHEDULE

This endorsement modifies insurance provided under the following:

RAILROAD LIABILITY INSURANCE POLICY
LESSOR'S RISK – CONTINGENT RAILROAD EQUIPMENT LIABILITY INSURANCE POLICY (WITHOUT SIR)
FOLLOWING FORM EXCESS LIABILITY INSURANCE POLICY – CLAIMS-MADE
EXCESS LIABILITY POLICY – OCCURRENCE

In consideration of the premium charged, it is agreed that **Item 1.** of the **DECLARATIONS**, "Named Insured" and all endorsements of this policy, are amended as follows:

TexAmericas Center
TAC-E Campus

All other terms and conditions of this policy remain unchanged.

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ENDORSEMENT # 002

This endorsement, effective 12:01 a.m., November 1, 2022, forms a part of Policy No. US00113886LI22A issued to TexAmericas Center by Indian Harbor Insurance Company

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

LIMITATION OF COVERAGE TO DESIGNATED PREMISES AND/OR RAILROAD EQUIPMENT

This endorsement modifies insurance provided under the following:

RAILROAD LIABILITY INSURANCE POLICY – OCCURRENCE

SCHEDULE:

Premises: Railroad Operations at Hooks, TX only

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement)

It is agreed that this insurance only applies to “Bodily Injury”, “Property Damage”, “Personal Injury”, “Advertising Injury” and medical expenses arising out of:

1. the ownership, maintenance or use of the premises shown in the Schedule and operations necessary or incidental to those premises; or
2. the “Railroad Equipment” shown in the Schedule.

It is further agreed that Section IV. DEFINITIONS, Definition 33. “Railroad Operations”, is amended to read as follows:

33. “Railroad Operations” means the ownership, operation, maintenance, or use of “Railroad Equipment” and “Railroad Facilities” for the purpose of providing transportation and other related services by the “Insured” that are customary and normal for a railroad or railway. “Railroad Operations” also includes all operations directly related to the conduct of the “Insured’s” business as a railroad, railway or lessee of “Railroad Equipment”.

All other terms and conditions of this policy remain unchanged.

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ENDORSEMENT # 003

This endorsement, effective 12:01 a.m., November 1, 2022, forms a part of Policy No. US00113886LI22A issued to TexAmericas Center by Indian Harbor Insurance Company

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ABSOLUTE EMPLOYERS' LIABILITY (FELA) EXCLUSION

This endorsement modifies insurance provided under the following:

RAILROAD LIABILITY INSURANCE POLICY
LESSOR'S RISK – CONTINGENT RAILROAD EQUIPMENT LIABILITY
INSURANCE POLICY (WITHOUT SIR) – CLAIMS-MADE

In consideration of the premium charged, it is agreed that this policy excludes "Employers' Liability" in its entirety.

It is further agreed, that **SECTION II., EXCLUSIONS, Exclusion 3.** is deleted in its entirety and replaced with the following:

- 3.** Any liability imposed on the "Insured" under any of the following:
 - A.** the Employees' Retirement Income Security Act (ERISA) of 1974 as now or hereafter amended;
 - B.** any workers compensation, employers' liability including occupational disease, unemployment compensation, retirement or disability benefits law or statute, or, "Employers' Liability", or,
 - C.** any law similar to A., or B. above.

All other terms and conditions of this policy remain unchanged.

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ENDORSEMENT # 004

This endorsement, effective 12:01 a.m., November 1, 2022, forms a part of Policy No. US00113886LI22A issued to TexAmericas Center by Indian Harbor Insurance Company

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ACCESS OR DISCLOSURE OF CONFIDENTIAL OR PERSONALLY IDENTIFIABLE INFORMATION AND DATA-RELATED LIABILITY EXCLUSION

This endorsement modifies insurance provided under the following:

RAILROAD LIABILITY INSURANCE POLICY – OCCURRENCE

It is agreed that **SECTION II. EXCLUSIONS**, Item **22**, is deleted in its entirety and replaced with the following:

I. **SECTION II. EXCLUSIONS:**

22. This insurance does not apply to:

1. Any liability relating to or arising out of any unauthorized or improper access to, acquisition, collection, use or disclosure of, or failure to protect or secure any “Electronic Data”, “Personally Identifiable Information”, confidential information, or any other type of non-public information, including but not limited to any patent, trade secret, processing method, customer list, or financial information;
2. Any loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate or process “Electronic Data”; or
3. Any violation of any statute, regulation, common law, or any other law regulating or protecting access to, acquisition, collection, use or disclosure of, or failure to protect or secure “Electronic Data”, “Personally Identifiable Information”, confidential information, or any other type of non-public information, including but not limited to any patent, trade secret, processing method, customer list, or financial information;

or

4. Any notification costs, credit monitoring expenses, forensic expenses, public relations expenses or any similar or related costs or expenses arising out from that which is described in Paragraphs 1., 2. or 3. above.

II. For the purpose of this endorsement, **SECTION IV. DEFINITIONS** is amended to include the following additional definitions:

“Electronic Data” means information, facts or programs, whether printed, digital, or electronic, encrypted or unencrypted, stored as or on, created or used on, or transmitted to or from any system, network, or software, including systems and applications software, hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other media which are used with electronically-controlled equipment or other electronic backup facilities, or data transmission or storage provided by means of the internet.

“Payment Card” means any credit card, charge card, debit card, stored value card, prepaid card, electronic payment card, or any card that is issued to an authorized card user and that allows the user to obtain goods, services, money or anything else of value from a merchant or other provider.

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“Personally Identifiable Information” means any information, whether printed, digital, or electronic, encrypted or unencrypted, that can be used to identify an individual, including but not limited to such information as name, social security number, address, birth date, physical characteristics, IP address, biometric data, mobile device identifier, geo-location data, telephone number, email address, user name, text message, email, call log, contacts or address book entry, financial information, “Payment Card” information, health or medical information, photos or videos or internet browsing history, or non-public personal information as defined by the Family Educational Rights and Protection Act, Individuals with Disabilities Act, or Gramm-Leach-Bliley Act; provided, however, “Personally Identifiable Information” does not include information that is lawfully available to the general public.

All other terms, definitions, conditions and exclusions of this Policy remain unchanged.

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ENDORSEMENT # 005

This endorsement, effective 12:01 a.m., November 1, 2022, forms a part of Policy No. US00113886LI22A issued to TexAmericas Center by Indian Harbor Insurance Company

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADVISE OF CANCELLATION TO ENTITIES OTHER THAN THE NAMED INSURED LIMITED TO EMAIL NOTIFICATION

This endorsement modifies insurance provided under the following:

RAILROAD LIABILITY INSURANCE POLICY
EXCESS LIABILITY INDEMNITY POLICY INSURANCE
COMMERCIAL GENERAL LIABILITY COVERAGE PART

It is agreed, that this policy is amended as follows:

SCHEDULE

Certificate Holder	Email address
CIT a division of First-Citizens Bank & Trust Company Attention: Amanda Reno 11 West 42nd St New York, NY 10036	Amanda.Reno@CIT.com

In the event the Company cancels this policy for any reason other than non-payment of premium, and

1. The cancellation effective date is prior to this policy's expiration date;
2. The "First Named Insured" is under an existing contractual obligation to notify a certificate holder when this policy is cancelled (hereinafter, the "Certificate Holder"(s)), and has provided to the Company, either directly or through its broker of record, the email address of the contact at such entity,

and the Company received this information after the "First Named Insured" receives notice of cancellation of this policy and prior to this policy's expiration effective date, via an electronic spreadsheet that is acceptable to the Company.

The Company will provide advise of cancellation ("The Advise") via email to such Certificate Holders listed in the schedule above.

Proof of the Company emailing "The Advise" using the information provided by the "First Named Insured" will serve as proof that the Company has fully satisfied its obligations under this endorsement.

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This endorsement does not affect, in any way, coverage provided under this policy or the cancellation of this policy, or the effective date. Thereof, nor shall this endorsement invest any rights in any entity not issued under this policy.

The following definition applies to this endorsement:

1. "First Named Insured" means the "Named Insured" shown on the Declarations Page of this policy.

All other terms and conditions of this policy remain unchanged.

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ENDORSEMENT # 006

This endorsement, effective 12:01 a.m., November 1, 2022, forms a part of Policy No. US00113886LI22A issued to TexAmericas Center by Indian Harbor Insurance Company

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – PRIMARY COVERAGE ENDORSEMENT

This endorsement modifies insurance provided under the following:

RAILROAD LIABILITY INSURANCE POLICY – CLAIMS-MADE
RAILROAD LIABILITY INSURANCE POLICY – OCCURRENCE FORM

SCHEDULE

Name of person or organization:

CIT a division of First-Citizens Bank & Trust Company
Attention: Amanda Reno
11 West 42nd St
New York, NY 10036

It is agreed as respects to "Railroad Operations" conducted by or on behalf of the "Named Insured", the following are included as additional "Insured(s)" but only as respects such "Railroad Operations" conducted by or on behalf of the "Named Insured" are covered by this policy:

It is further agreed, the following is added to **SECTION III. CONDITIONS**, Item **11. OTHER INSURANCE**:

This policy is primary for the person or organization shown in the schedule, but only with respect to liability arising out of the "Railroad Operations" for that "Insured" by or for you. Other insurance afforded to that "Insured" will apply as excess and not contribute as primary to the insurance afforded by this endorsement.

All other terms and conditions of this policy remain unchanged.

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ENDORSEMENT # 007

This endorsement, effective 12:01 a.m., November 1, 2022, forms a part of Policy No. US00113886LI22A issued to TexAmericas Center by Indian Harbor Insurance Company

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION OF CERTIFIED ACTS OF TERRORISM

This endorsement modifies insurance provided under the following:

RAILROAD LIABILITY INSURANCE POLICY
LESSOR'S RISK – CONTINGENT RAILROAD EQUIPMENT LIABILITY INSURANCE POLICY (WITHOUT SIR)

A. The following exclusion is added:

This insurance does not apply to:

TERRORISM

"Any injury or damage" arising, directly or indirectly, out of a "certified act of terrorism".

B. The following definitions are added:

1. For the purposes of this endorsement, "any injury or damage" means any injury or damage covered under any Policy to which this endorsement is applicable, and includes but is not limited to "Bodily Injury", "Property Damage", "Advertising Injury", injury or "Pollution Clean-up Expense" as may be defined in any applicable Policy.
2. "Certified act of terrorism" means an act that is certified by the Secretary of the Treasury in accordance with the provisions of the Federal Terrorism Risk Insurance Act, to be an act of terrorism pursuant to such Act. The criteria contained in the Terrorism Risk Insurance Act for a "certified act of terrorism" include the following:
 - a. The act resulted in insured losses in excess of \$5 million in the aggregate, attributable to all types of insurance subject to the Terrorism Risk Insurance Act; and
 - b. The act is a violent act or an act that is dangerous to human life, property, or infrastructure and is committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

C. The terms and conditions of any terrorism exclusion, or the inapplicability or omission of a terrorism exclusion, do not serve to create coverage for injury or damage that is otherwise excluded under this Policy.

All other terms and conditions of this policy remain unchanged.

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ENDORSEMENT # 008

This endorsement, effective 12:01 a.m., November 1, 2022, forms a part of Policy No. US00113886LI22A issued to TexAmericas Center by Indian Harbor Insurance Company

SERVICE OF PROCESS

The Commissioner of Insurance of the State of Texas is hereby designated the true and lawful attorney of the Insurer upon whom may be served all lawful process in any action, suit or proceeding arising out of this Policy. The Insurer further designates:

Sarah Mims
General Counsel
505 Eagleview Boulevard, Suite 100
Exton, PA 19341-1120

as its agent in Texas to whom such process shall be forwarded by the Commissioner of Insurance.

For Illinois exposures, the Insurer further designates the Director of the Illinois Division of Insurance and his successors in office, as its true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of the Insured or any beneficiary hereunder arising out of an Illinois exposure and this contract of insurance.

All other terms and conditions of this Policy remain unchanged.

(Authorized Representative)