

Food Borne Illness Insurance for Restaurant Chains

This Food Borne Illness Insurance Policy for Restaurant Chains is made between the *Insured* and Crum & Forster (hereafter “*Insurer*”). This Policy is effective during the policy period set forth on the declaration page.

In consideration of the Premium paid and in reliance upon the statements made to the *Insurer* in the application form, its attachments, all underwriting information submitted and the material incorporated therein forming a part thereof the *Insurer* agrees as follows.

Words and phrases that appear here in bold and italic have special meaning. Refer to the Definitions section of this policy.

1. INSURANCE COVER

The *Insurer* will reimburse the *Insured(s)* for its *Loss* in excess of the *Self Insured Retention* and applicable *Co-Insurance*, but not exceeding the Limits of Insurance, caused by or resulting from an *Insured Event* first discovered during the *Policy Period* and reported to the *Insurer* in writing during the *Policy Period* or up to thirty (30) days after expiration, pursuant to the terms of this Policy.

2. DEFINITIONS

- 2.1 *Accidental Contamination* means any accidental or unintentional, impairment or mislabeling of an *Insured Product(s)*, which occurs during or as a result of its production, mixing, blending, compounding, manufacture, packaging or distribution; provided that the use or consumption of such *Insured Product(s)* has resulted in or would result in *Bodily Injury*.
- 2.2 *Bodily Injury* means death, or clear, identifiable internal or external visible physical symptoms of injury, sickness or disease sustained by a person.
- 2.3 *Consultant Costs* means the reasonable cost and fees of ExpertRECALL and Levick Strategic Communications to assist the *Insured* in responding to an *Insured Event*.
- 2.4 *Co-Insurance* means the percentage set forth in the “Co-Insurance” section of the Declarations.
- 2.5 *Extortion Monies* means any monies which the *Insured(s)* has paid or was lost in transit subsequent to a *Product Extortion* demand. For the purpose of this policy the term monies includes cash, monetary instruments, bullion, or the fair market value of any securities, tangible property or services.
- 2.6 *Food Borne Illness* means the consumption of contaminated food (including but not limited to any *Accidental Contamination* or *Food Poisoning*) arising from the improper handling, preparation, or storage at any of the affected *Insured Location(s)* provided that the consumption of such *Insured Product(s)* has resulted in or would result in *Bodily Injury*.
- 2.7 *Food Poisoning* means any food infection caused by any pathogenic bacteria, viruses, prions or parasites that contaminate food.
- 2.8 *Insured(s)* means the sole proprietorship, partnership, limited liability company or corporation stated in the Declaration.

- 2.9 **Insured Event** means any:
- i. **Food Borne Illness**
 - ii. **Malicious Tampering**
- 2.10 **Insured Location(s)** means any of the **Insured(s)** owned restaurants listed in the Declaration of this Policy, and where such locations **Loss of Gross Profit** is negatively impacted directly and solely as a result of an **Insured Event**.
- 2.11 **Insured Products** means all ingestible products for human use or consumption, including any of their ingredients, components and/or packaging, provided such products:
- i. are in production; or
 - ii. have been manufactured, handled or distributed by the **Insured**; or
 - iii. have been manufactured by any contract manufacturer for the **Insured**; or
 - iv. are being prepared for or are available for sale.
- 2.12 **Loss** means the following expenses or costs incurred by the **Insured** directly and solely in connection with a covered **Insured Event**:
- i. **Pre-Incident Costs**
 - ii. **Loss of Gross Profit**
 - iii. **Rehabilitation Expenses**
 - iv. **Consultant Costs**
- Loss is limited to expenses or costs incurred within twelve (12) months of the **Insured Event** first becoming known to the **Insured**.
- 2.13 **Loss of Gross Profit** means the **Insured(s)** sales revenue projected prior to the happening of an **Insured Event**, but which has been lost during a period of 12 months beginning after the decrease in sales attributable to and caused directly by an **Insured Event**:
- i. less the variable costs that would have been incurred during the same period, but which have been saved as a result of not making those sales (including the cost of raw materials and all other saved costs, and less
 - ii. less the increased sales of another **Insured Product(s)** within the same product line as the affected product(s) claimed in the **Loss** as a result of an **Insured Event**
- 2.14 **Malicious Product Tampering** means any actual or threatened intentional, malicious and illegal alteration or adulteration of the **Insured(s) Product(s)**, whether in conjunction with a **Product Extortion** or not, so as to give the **Insured** or consumer reasonable cause to consider the **Insured(s) Product** unfit or dangerous for its intended use.
- 2.15 **Policy Period** means the period set forth in the Declaration or any shorter period arising as a result of cancellation of the Policy.
- 2.16 **Product Extortion** means any threat or connected series of threats to commit **Malicious Product Tampering**, for the purpose of demanding **Extortion Monies**, communicated to the **Insured(s)**.
- 2.17 **Pre-Incident Costs** means chemical analysis and/or physical examination in order to ascertain whether the **Insured Product(s)** has been contaminated and/or to ascertain the potential effect of **Food Borne Illness** or **Malicious Tampering**.
- 2.18 **Rehabilitation Expenses** means expenses incurred by the customer of the **Insured** as a direct result of an **Insured Event** to re-establish the **Insured Product(s)** to the reasonably projected level of sales or market share anticipated prior to the **Insured Event**.

- 2.19 **Self Insured Retention** means the amount(s) set forth in the “Self Insured Retention” section of the Declarations.
- 2.20 **Sub-limit** means the maximum amount the **Insured(s)** can collect under a specified section of the Policy.
- 2.21 **Terrorism** means an act, including the use of force or violence, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organization(s), committed for political, religious or ideological purposes including the intention to influence any government and/or to put the public in fear for such purposes.

3. EXCLUSIONS

The Policy does not apply to any Loss arising out of, based upon, attributable to or involving, directly or indirectly:

- 3.1 Any product of a competitor which is similar to an **Insured Product(s)**.
- 3.2 Any changes in population, customer tastes, economic conditions, seasonal sales variations, or competitive environment.
- 3.3 Any gradual deterioration, decomposition or transformation of the chemical structure of the **Insured Products(s)**, including but not limited to any combination or interaction among ingredients, components or packaging. Notwithstanding, this exclusion will not apply if the deterioration, decomposition or transformation is a direct result of an **Insured Event**.
- 3.4 Any Illegal act(s) of any of the **Insured(s)** directors, officers, members, partners or trustees.
- 3.5 Any **Bodily Injury** or **Property Damage** claim made by a third party arising out of or in connection with the use of the **Insured Product(s)**, including any defense costs related to a third party lawsuit.
- 3.6 Any intentional violation by the **Insured** of any governmental regulation in connection with the manufacture, sale or distribution of any **Insured Product(s)** or from the use of materials or substances in the manufacturing process which have been banned or declared unsafe by any governmental entity.
- 3.7 Any nuclear reaction or nuclear radiation or radioactive contamination (except a radioactive tampering specifically aimed at the **Insured Product(s)**), all whether controlled or uncontrolled or resulting from any act or condition incident to any of foregoing.
- 3.8 War, invasion, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, or military or usurped power.
- 3.9 Any costs or expenses of any litigation or any proceedings before any governmental body as a result of an **Insured Event** or otherwise.
- 3.10 Any failure by any party to adhere to procedures prescribed by the Insured regarding the storage, consumption, or use of any **Insured Product(s)**. This exclusion only applies to **Food Borne Illness**.
- 3.11 Any **Food Borne Illness** or arising out of:
- i. Bioengineering, genetic engineering or genetic modification of any Insured Product(s)
 - ii. Hormone treatment of any Insured Product(s)
 - iii. Irradiation of any Insured Product(s)
 - iv. Transmissible Spongiform Encephalopathy (TSE)

- 3.12 Any **Food Borne Illness** arising out of carcinogens, regardless of whether such carcinogens are shown to have other non-carcinogens effects.
- 3.13 Any **Food Borne Illness** that occurs after the **Insured** has knowledge of a defect or deviation in the production, preparation or manufacture of the **Insured Product(s)**, or circumstance(s) which have or are likely to result in such deviation or defect, and fails to take corrective action.
- 3.14 Any **Food Borne Illness** where **Loss** arises out of a change in governmental regulations or public perceptions with respect to the safety of any **Insured Product(s)** or intended ingredients.
- 3.15 Any loss or diminution in value of land (including land on which property is located), water, growing crops or lawns, crop failure due to weather, pest or other cause or contamination of livestock.
- 3.16 Any costs associated with the expense to design or redesign, engineer or re-engineer any **Insured Product(s)**
- 3.17 Any **Insured Event** which occurred, or which the **Insured(s)** was aware or should have been aware of, prior to the inception of this Policy
- 3.18 Any pre-existing conditions, circumstances or situations the **Insured(s)**, prior to the inception of this Policy, knew of or should have known could reasonably be expected to cause, lead to or result in an **Insured Event**.
- 3.19 Any dishonest, willful, wanton, fraudulent, criminal or malicious act, error or omission from the **Insured(s)**.
- 3.20 Any fines or penalties imposed by third parties, courts or governmental organizations or agencies.
- 3.21 Any **Food Borne Illness** that occurs where the Insured is or ought to be aware that the **Insured** is in violation of the corporate mandated food handling or food procurement procedures and has not taken action to rectify the violation.
- 3.22 Any **Food Borne Illness** that occurs at a location where at the time of the **Insured Event** no person or individual at the **Insured Location(s)** holds a recognized current food safety certification where required by law or similar corporate supplied food safety training.
- 3.23 Any expense or costs incurred by the **Franchisee** of the **Insured(s)** as a result of an **Insured Event**.
- 3.24 Any actual or alleged act of **Terrorism** except where the **Insured** or an **Insured Product(s)** is the direct target of the act or alleged act of **Terrorism**.

4. GENERAL CONDITIONS

- 4.1. ACTION AGAINST THE INSURER: No suit, action, or proceedings for recovery of any **Loss** under this Policy will be sustainable in any court of law, equity, or other tribunal unless all the requirements of this Policy are complied with and is commenced within twenty four (24) months after a final statement of **Loss** has been submitted to the **Insurer** by the **Insured(s)**.

4.2. ADDITIONAL EXPOSURES: The **Insured(s)** will give the **Insurer** written notice within ninety (90) days of any additional exposure arising from:

- i. consolidation or merger with
- ii. acquisition of the majority stock ownership
- iii. acquisition of the assets
- iv. creation

of any other entity whose gross revenues are in excess of 10% of the gross revenue of the **Insured(s)** as of the date of consolidation, merger or acquisition.

The **Insurer** may elect to accept or reject such additional exposure. If the additional exposure is rejected, it will remain covered only until the **Insured(s)** is notified in writing of the rejection. If the **Insurer** accepts the additional exposure, the **Insured(s)** will pay the **Insurer** additional premium as may be required, computed from the date of consolidation, merger or acquisition to the end of the current period unless otherwise specifically requested.

No **Loss** arising out of the additional exposure will be covered unless the **Insured(s)**, at the time it gave notice thereof to the **Insurer**, did not know nor could reasonably have been expected to know of the **Insured Event** giving rise to the **Loss**.

4.3. APPRAISAL: If the **Insured(s)** and the **Insurer** fail to agree on the amount of **Loss**, then, on the written demand of either, made within sixty (60) days after rejection of the final statement of loss by the **Insurer**, the **Insurer** shall select a competent and disinterested appraiser and notify the other of the appraiser selected within twenty (20) days of such demand. The appraisers shall first select a competent and disinterested umpire and failing for fifteen (15) days to agree on such umpire, then upon the request of the **Insured(s)** or the **Insurer** such umpire will be selected by the current President of the Chartered Institute of Loss Adjusters. The **Insured(s)** and the **Insurer** will submit their cases to the appraisers and the umpire within thirty (30) days of the appointment of the umpire. An award in writing, so itemized, of any two will determine the amount of

Loss. The **Insured(s)** and the **Insurer** will each pay its chosen appraiser and will bear equally the other expenses of the appraisal and umpire. The **Insurer** will not be held to have waived any of its rights by any act relating to an appraisal.

4.4. ASSISTANCE AND CO-OPERATION: The **Insured(s)** will cooperate with the **Insurer** in all matters relating to this Policy. This may include, but is not limited to, attending hearings and trials, securing and giving evidence, obtaining the attendance of witnesses, assisting in effecting settlements, and in conducting litigation, arbitration, or other proceedings.

4.5. ASSIGNMENT: This Policy and any rights hereunder cannot be assigned without written consent of the **Insurer**.

4.6. AUTHORIZATION CLAUSE: It is agreed that the first **Insured** listed on the Schedule acts on behalf of all **Insured(s)** with respect to the exercise of all their rights and the discharge of all their duties in respect of this Policy. All other **Insured(s)** agree that the first **Insured** listed on the Declaration will act on their behalf.

4.7. CANCELLATION: This Policy may be cancelled by the **Insured(s)** by the surrender of this Policy to the **Insurer** or by giving ten (10) days advance written notice to the **Insurer**, stating when thereafter such cancellation will be effective. This Policy may be cancelled by the **Insurer** by delivering to the **Insured** or by mailing to the **Insured** by registered or certified mail, at the **Insured(s)** address stated in the Declaration, written notice stating when, not less than sixty (60) days thereafter, the cancellation will be effective, except in the case of cancellation for non-payment of premium by the **Insured**, in which case the **Insurer** will provide at least ten (10) days written notice. The mailing of such notice will be sufficient proof of notice and this Policy will terminate at the date and hour specified in such notice.

If this Policy is cancelled by the *Insured*, the *Insurer* will retain or collect one hundred and ten percent (110%) of the pro rata earned premium, provided no *Loss* has been previously notified to the *Insurer*. However, if any *Loss* has been notified to the *Insurer* during the relevant *Policy Period* and prior to the date of cancellation, the *Insurer* will retain or collect one hundred percent (100%) of the total policy premium.

If this Policy is cancelled by the *Insurer*, the *Insurer* will retain the pro-rata portion of the premium hereon. Payment or tender of any unearned premium by the *Insurer* will not be a condition precedent to the effectiveness of cancellation, but such payment will be made as soon as practicable.

- 4.8. **CHANGES:** This Policy contains all the agreements between the *Insured* and the *Insurer* concerning this insurance. Notice to any of the *Insurer's* representatives or knowledge possessed by any the *Insurer's* representative(s) or by any other person will not effect a waiver or a change in any part of the Policy or prevent the *Insurer* from asserting any right under the terms of this Policy, nor can the terms of this Policy be waived or changed unless agreed to in writing by the *Insurer* or the *Insurer's* authorized representative.
- 4.9. **CHOICE OF LAW AND FORUM:** The construction, validity and performance of this Policy will be governed by the laws of the United States of America. The *Insurer* and the *Insured* hereby expressly agree that all *Claim, Loss* and disputes will be litigated in the State of New York.
- 4.10. **CO-INSURANCE:** The *Insured* will bear the *Co-Insurance* amount stated in the Declaration for each *Loss* in excess of and in addition to the *Self Insured Retention* applicable to each *Insured Event*. The *Co-Insurance* amount will be calculated by multiplying the covered *Loss* in excess of the *Self Insured Retention* by the *Co-Insurance* amount. The *Insurer* will pay covered *Loss* in excess of the *Self Insured Retention* subject to the Limit of Liability stated in the Declaration after deduction of the *Co-Insurance* amount from the *Loss*.
- 4.11. **CONCEALMENT, MISREPRESENTATION, NON-DISCLOSURE, OR FRAUD:** Without prejudice to the *Insurer's* other rights, however arising, this Policy is null and void in case of concealment, misrepresentation, non-disclosure, or fraud by any *Insured* of a material fact concerning:
- i. this insurance or the procurement thereof; or
 - ii. the *Insured Product(s)*, or the *Insured's* interest in the *Insured Product(s)*; or
 - iii. any *Insured Event*, or any *Loss* or claim under this Policy.
- 4.12. **CONFIDENTIALITY:** The *Insured* will use all reasonable efforts not to disclose the existence of this Policy, except insofar as it is required in order to comply with the terms of the policy or by law.
- 4.13. **COMPUTATION OF LOSS:**
- i. In the event of any *Loss*, detailed claims for payment by the *Insurers* shall be made by the *Insured(s)* as soon as practicable and shall be accompanied by a computation of loss, which sets out in detail how the loss has been calculated and what assumptions have been made. The *Insured(s)* shall produce any documentary evidence, books of account, bill, invoices and other vouchers and copies of the same which *Insurers* or their representatives, including forensic accountants, may require and the *Insured(s)* shall afford them every assistance in their investigations including reasonable access to the *Insured(s)* premises, personnel and necessary documents for the purpose of the computation of loss.
 - ii. The *Insurer* shall determine the amount of any *Loss*, taking into account any savings or recoveries or offsetting or make-up of losses which have been made or which the *Insured(s)* could reasonably have been expected to make and the ability of the *Insured(s)* to resume operations.

- iii. Loss of Gross Profit shall be assessed by the Insurer based on an analysis of the profits generated by the affected Insured Product(s) and other Insured Product(s) which lost sales as a direct result of the Insured Event, during each month of the twelve (12) months prior to the Insured Event and taking into account:
 - a) The future profitability of such product(s) had no Insured Event occurred and
 - b) All material changes in the market conditions of any nature whatsoever would have affected the future marketing of and profits generated by the Insured Product(s) or other affected Insured Product(s).
- iv. In determining the amount of any **Loss**, **Insurers** shall apply standard accounting principles as recognized by the relevant regulatory authorities in the **Insured(s)** jurisdiction. Where an **Insured** is present in more than one jurisdiction the relevant principles to be applied will be those of the jurisdiction in which the entity that has suffered the loss is based
- v. Where **Losses** are paid by the Insurer in currency other than the currency in which the premium is paid, the rate of exchange for payment of loss shall be based on the published wholesale exchange rate on the date written notice of the **Insured Event** is received by the **Insurer**.
- vi. Whether or not any partial payments have been made, a final statement of loss with respect to all items of **Loss** must be submitted to the **Insurer** in writing no earlier than twelve (12) months and no later than twenty (24) months after an **Insured Event** becomes known to the **Insured(s)**.

Nothing in the clause shall be deemed to override the provisions of the Notice of Loss clause.

- 4.14. DUE DILIGENCE: The **Insured** will exercise due diligence to do all things reasonable and practical to avoid any happening or circumstances covered by this Policy and to make all reasonable efforts to mitigate any **Loss** arising as a result of an **Insured Event**.
- 4.15. FRAUDULENT CLAIMS: If any **Loss** under this Policy is in any respect fraudulent or intentionally concealed or misrepresented a material fact concerning an **Insured Event** all benefit under this Policy shall become void.
- 4.16. EXCESS INSURANCE: The **Insured** may purchase other insurance over the Limit of Liability set forth in this Policy without prejudice to this Policy, provided that the **Insurer** is notified in writing of the details of such other excess insurance at the time such other insurance is acquired. The existence of such other insurance, if any, will not reduce the **Insurer's** liability under this Policy.
- 4.17. INSPECTION AND AUDIT: The **Insurer** may examine and audit the **Insured(s)** business documents relating to the subject matter of this insurance until three (3) years after this policy has expired or has been cancelled. Any premium due for exposure which exist but were not reported will be determined through audit by **the Insurer**.
- 4.18. LIMITS OF INSURANCE: The **Insurer(s)** liability hereunder will be limited to the amounts stated in the Declaration of this Policy.
- 4.19. NON-ACCUMULATION OF LIABILITY: Regardless of the number of years this Policy may continue in force, and of the number of premiums which may be payable or paid, or of any other circumstances whatsoever, the aggregate liability of the **Insurer** under this Policy with respect to any **Insured Event(s)** will not be cumulative from year to year or period to period. When there is more than one **Insured**, the aggregate Limit of Liability of the **Insurer** for **Loss(es)** sustained by any or all of them will not exceed the amount for which the **Insurer** would be liable if all **Loss(es)** were sustained by any one of them.

- 4.20. NOTICE OF LOSS: In the event of an incident that may be covered under the terms of this Policy, the **Insured** will as a condition precedent to the obligations of the **Insurer** under this Policy:
- i. provide written notice to the **Insurer**, or any of the **Insurer(s)** authorized representatives as soon as practicable containing particulars sufficient to identify the Insured(s), and information with respect to the time, place and circumstances of the **Insured Event** and estimated **Loss** damages. The **Insured(s)** will promptly take all reasonable steps to minimize any expense or damages involved.
 - ii. cooperate with the **Insurer** and, at the **Insurer(s)** request, assist the **Insurer** in enforcing any right of contribution or indemnity against any person or organization other than a named insured under this Policy who may be liable to the **Insured(s)** because of **Loss** damages incurred.

4.21. NOTICES: Except as indicated to the contrary herein, all notices, applications, demands or requests provided for in this Policy will be in writing and will be given to or made upon either party at its address shown in the Declaration.

4.22. OTHER INSURANCE: The **Insured** may purchase other insurance written on the same terms and conditions as this Policy provided the **Self Insured Retention** and **Co-Insurance** as described herein remains uninsured. The insurance provided under this Policy will be primary in all instances except where a policy issued by a NON-Crum & Forster insurer exists, covering similar exposures. The insurance will co-insure all **Loss(es)** where coverage is also provided by such other insurer.

4.23. SALVAGE: Any salvage or other recovery, after expenses incurred in salvage or recovery is deducted, will accrue entirely to the benefit of the **Insurer** until the sum paid by the **Insurer** has been recovered. In case of damage to property bearing a brand or trademark, or which in any way carries or implies the guarantee or the responsibility of the **Insured**, the salvage value of such damaged property will be determined after removal in the customary manner of all such brands or trademarks or other identifying characteristics, the costs of which will be borne by the **Insured**.

The goodwill and public image of the **Insured** will be considered in determining whether any **Insured Product(s)** should be involved in salvage recovery. The **Insurer's** right to salvage will not be unreasonably restricted by the **Insured**. The **Insured** will have full right to the possession of all goods involved in any **Loss** under this Policy and will retain control of all damaged goods. There can be no abandonment of any property to the **Insurer**.

4.24. SELF INSURED RETENTION: The **Self Insured Retention** stated in the Declaration will apply separately to each and every **Loss**. The **Self Insured Retention** is to be borne by the **Insured** and remain uninsured.

4.25. SEVERABILITY, CONSTRUCTION AND CONFORMANCE TO STATUTE:

If any provision contained in this Policy is, for any reason, held to be invalid, illegal or unenforceable in any respect, it is deemed to be severed and to have no effect on any other valid legal and enforceable provision of this Policy.

If any provision contained in this Policy can be construed as being invalid, illegal or unenforceable for any reason, it will be construed by limiting it so as to be valid, legal, and enforceable to the extent compatible with applicable law.

Any provisions of this Policy which are in conflict with the statutes or regulations of the state or country wherein this Policy is issued are hereby amended to conform to such statutes or regulations.

4.26. SUBROGATION: In the event of any payment under the Policy, the **Insurer** will be subrogated to the extent of such payment to all the **Insured's** rights of recovery. In such case the **Insured** will execute all documents required and will do everything necessary to secure and preserve such rights including the executions of such documents necessary to enable the **Insurer** effectively to bring suit in the name of the **Insured**.

- 4.27. TERRITORY: This Policy applies to an *Insured Event* anywhere in the world with the exception of any country or jurisdiction which is subject to trade or other economic sanction or embargo by the United States of America.