

## DISTRIBUTION PROTOCOL

### Aviva Business Interruption Class Action Settlement

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## A. INTRODUCTION

1. On July 3, 2020, a proposed class action was commenced against Aviva Insurance Company of Canada (“**Aviva**”) concerning the denial of business interruption coverage during the COVID-19 pandemic - *Nordik Windows et al v. Aviva Insurance Company of Canada*, CV-20-00643386-00CP (the “**Action**”).
2. On March 22, 2023, the Ontario Superior Court of Justice (the “**Court**”) certified the action as a class proceeding on behalf of the following individuals (together the “**Class**” and “**Class Members**”, each a “**Class Member**”):

All persons, corporations, or other entities carrying on business in Canada who purchased any of the following business interruption insurance policies from the Defendants that was in force for some or all of the period from March 1, 2020, through August 31, 2021, whether Aviva Enterprise, Aviva Commercial, or any other policy (collectively, the “**Policies**”):

- (i) Business Income Actual Loss Insurance Form 912000-01, Form 912000-01, Form 921005-001 [912005-01], Form 402014-02, Form H-001803, Form H2; and/or
  - (ii) such other policies as may contain “Negative Publicity” or “Restricted Access” coverage; and/or
  - (iii) such other policies issued by the Defendant as may contain coverage for suspension of the insured’s business caused by damage to the insured’s or contributing/neighbouring premises; and/or
  - (iv) such other policies as may provide substantially similar coverage.
3. For greater certainty, the Class includes any persons, corporations, or other entities carrying on business that are members of the certified class in *9391-2186 Quebec Inc. (DBA Restaurant L’Academie Crescent) v. Aviva Insurance Company of Canada et al*, Court File No. 500-06-001091-202 (“**L’Academie Class Action**”), members of the putative class in *Fritzworks Printing Services Inc. v. Aviva Insurance Company of Canada*, Court File No. VLC-S-S-209189 (“**Fritzworks Class Action**”), or members of the putative class in any other proposed class actions against Aviva relating to the matters that are the subject of this Action.
4. For even greater certainty, the Class does not include any persons, corporations, or other entities carrying on business that are members of the certified classes in *Matt McCallum et al v Aviva Insurance Company of Canada*, CV-20-0000981-00CP (“**Denturists Action**”) and *The Royal Canadian Legion, Victory Branch #317 v Aviva Insurance Company of Canada*, CV-20-00001041-00CP (“**Legion Action**”).

5. Notice of certification was disseminated to the Class and their brokers on March 19, 2024, and the opt-out deadline was May 19, 2024.
6. Aviva has agreed to pay a lump sum of \$150 million to settle the claims of all members of the Class (the “**Settlement Amount**”). The Settlement, including this Distribution Protocol, is subject to approval of the Court.
7. Court approval will also be requested for the payment of legal fees, disbursements including expert fees, Class Proceedings Funds’ fees, honoraria for the Plaintiffs, administration and notice costs, and applicable taxes. The Settlement Amount less these deductions (the “**Settlement Funds**”) will be distributed to eligible Class Members.
8. Class Counsel has provided this Distribution Protocol, subject to approval of the Court, for the allocation of the Settlement Funds to Class Members who submit an Approved Claim (as defined below) within the Claim Period and meet the eligibility requirements, as described below.

## **B. DEFINITIONS**

- (a) **Action** means the action filed in the Ontario Superior Court of Justice with the title of proceedings *Nordik Windows Inc et al v Aviva Insurance Company of Canada*, bearing Court File No. CV-20-00643386-00CP and then CV-24-00728023-00CL.
- (b) **Administration Expenses** means all fees, disbursements, expenses, costs, taxes, and any other amounts incurred or payable by the Plaintiffs, Class Counsel or otherwise for the approval, implementation, administration, and operation of the Settlement Agreement, including in relation to translation, the Pre-Approval Notice Plan and Settlement Approval Notice Plan and providing the Pre-Approval Notice and Settlement Approval Notice, administering the Trust Account, and the Settlement Administrators’ expenses in implementing and administering the Pre-Approval Notice Plan, the Settlement Approval Notice Plan, the Distribution Protocol, and the claims process as provided in this Distribution Protocol.
- (c) **Appeal Decision** means a letter or notice sent by the Settlement Administrator to the Claimant, setting out the Administrator’s determination of the Claimant’s Appeal Submission, which is to be provided within forty-five (45) days of receiving the Claimant’s Appeal Submission. The Appeal Decision is to be sent either to the Claimant’s email address, if provided, or via the Portal.
- (d) **Appeal Period** means the period that is thirty (30) days following the Claimant’s receipt of the Claim Determination Decision from the Settlement

Administrator. For better certainty, the Appeal Period expires at 5:00 p.m. Eastern Standard Time (EST) on the thirtieth (30<sup>th</sup>) day.

- (e) **Applicable Coverage** means Restricted Access or Negative Publicity Coverage included in the Class Member's Policy, providing the following or similar language:
  - (i) **Restricted Access Coverage:** insures actual business income loss caused by the interruption of business when ingress to or egress from the premises is restricted, in whole or in part, by order of civil authority resulting from an outbreak of a contagious or infectious disease that is required by law to be reported to government authorities; and
  - (ii) **Negative Publicity Coverage:** insures actual business income loss caused by an outbreak of a contagious or infectious disease within a specified distance (typically 25 kilometres) of the premises that is required by law to be reported to government authorities.
- (f) **Appeal Submission** means the submission by a Claimant to the Settlement Administrator via the Portal setting out the basis for their appeal, which must be provided within the Appeal Period. Any Appeal Submission provided after the Appeal Period has expired will be deemed invalid.
- (g) **Approved Claim** means a Claim submitted by a Claimant within the Claim Period, which is approved by the Settlement Administrator as eligible to receive compensation out of the net Settlement Fund.
- (h) **BC Class Members** means Class Members with Policies in respect of business premises in British Columbia.
- (i) **Business Income Loss Calculation** means the calculation of a Claimant's business income loss over the Indemnity Period using the Business Income Loss Formula. The Business Income Loss Calculation will be applied to every Approved Claim, unless the Claimant elects to submit a Claim pursuant to the Simplified Claims Process.
- (j) **Business Income Loss Formula** means the difference between the Claimant's 2020 annual business income and 2019 annual business income, adjusted to thirty (30) days and/or reflecting the Claimant's business income loss from March 18, 2020 to April 17, 2020, based on the information available in the Claimant's Required Financial Loss Data, including tax filings, annual financial statements, and monthly financial statements, as applicable. "Business income" will be calculated based on the definition in the Policies, an example of which is enclosed as **Appendix "C"**. Where a Claimant has a subscription Policy that is underwritten by

multiple insurers, the Claimant's business income loss will be further adjusted to reflect Aviva's proportional risk under the Policy.

- (k) **Business Income Loss Payment** means either: (i) the proportionate calculated amount of the Claimant's loss over the Indemnity Period using the Business Income Loss Formula, subject only to monetary limits under their Policy; or (ii) the Simplified Claims Amount if the Claimant elects to submit a Claim pursuant to the Simplified Claims Process.
- (l) **Certification Order** means the Order of Morgan J. dated March 22, 2023, certifying the Action as a class proceeding.
- (m) **Claim** means a claim submitted by a Claimant to the Settlement Administrator through the Portal pursuant to this Distribution Protocol.
- (n) **Claimant** means a Class Member who submits a Claim to the Settlement Administrator through the Portal within the Claim Period pursuant to this Distribution Protocol.
- (o) **Claim Determination Decision** means a written decision from the Settlement Administrator, delivered electronically (*i.e.*, via electronic mail or the Portal), providing: (i) whether the Claimant is eligible for compensation pursuant to the Settlement; (ii) if the Claimant is eligible, identifying whether the Claimant has elected to submit a claim pursuant to the Simplified Claims Process; and (iii) if the Claimant is eligible, providing either the Claimant's Business Income Loss Calculation and estimated proportionate Business Income Loss Payment or, if the Claimant has elected to submit a claim pursuant to the Simplified Claims Process, confirming the Claimant's Simplified Claim Amount.
- (p) **Claim Form** means the form attached as **Appendix "B"** which must be completed and submitted by each Claimant, via the Portal, to the Settlement Administrator within the Claim Period.
- (q) **Claim Period** means the period in which a Claim must be submitted by a Class Member to the Settlement Administrator for the Claim to be valid, which will run from a date to be ordered by the Court for sixty (60) days. Any Claim submitted after the Claim Period has expired will be deemed invalid. For greater certainty, the Claim Period expires at 5:00 p.m. Eastern Standard Time (EST) on the sixtieth (60<sup>th</sup>) day.
- (r) **Claims Process** means the procedure described in this Distribution Protocol for: (i) Claimants to submit a Claim; (ii) the Settlement Administrator to assess the Claim and issue a Claim Determination Decision; (iii) Claimants to submit an Appeal Submission, if applicable; (iv) the Settlement Administrator to assess the Appeal Submission and issue

an Appeal Decision, if applicable; and (v) the Settlement Administrator to distribute the Settlement Funds.

- (s) **Class Counsel** means Lax O'Sullivan Lisus Gottlieb LLP, Thomson Rogers LLP, and Miller Thomson LLP, as appointed by the court in paragraph 6 of the Certification Order.
- (t) **Class Counsel Fees and Disbursements** means all legal fees, costs, disbursements, and interest plus applicable taxes incurred by Class Counsel in the Action, including in respect of the Settlement Approval Hearing and any related appeals in respect of this Settlement as well as the oversight of the appointment of the Settlement Administrator and implementation of the pre- and post-approval notice plans, the Distribution Protocol, and Claims Process as provided in this Distribution Protocol.
- (u) **Class or Class Members** means the class or individual class member as defined at paragraph 2 of the Certification Order: All persons, corporations, or other entities carrying on business in Canada who purchased any of the Policies that were in force for some or all of the period from March 1, 2020 through August 31, 2021. For better certainty, the Class or Class Members includes class members and putative class members of the L'Academie Class Action, the Fritzworks Class Action, and any other proposed class action against Aviva relating to the matters that are the subject of this Action. For even greater certainty, the Class or Class Members does not include any persons, corporations, or other entities carrying on business that are members of the certified classes in the Denturists and Legions Actions.
- (v) **CPF Entitlement** means the amount payable, if any, as a result of the litigation funding provided by the Class Proceedings Fund to the Plaintiffs for the Action, including the amount of 10% of the net settlement amount to which one or more Class Members is entitled plus the amount of any outstanding disbursements awarded to the Plaintiffs which have not been repaid to the Class Proceedings Fund, in accordance with section 10 of O. Reg 771/92: Class Proceedings.
- (w) **Deficiency Letter** means a letter sent by the Settlement Administrator to the Claimant advising of any deficiencies in their Claim Package. The Deficiency Letter is to be sent within twenty (20) business days of receiving the Claimant's Claim Form.
- (x) **Effective Date** means the date when the Settlement Approval Order receives approval by the Court and becomes a Final Order and any rights to terminate the Settlement Agreement under section 11.1 of the Settlement Agreement have expired.

- (y) **Final Order** means a final order, judgment, or equivalent decree entered by the Court once the time to appeal such order, judgment, or decree has expired without an appeal being taken, if an appeal lies or once there has been affirmation of the order, judgment, or decree upon a final disposition of all appeals.
- (z) **Final Report** means the report issued by the Settlement Administrator to Class Counsel and Aviva within sixty (60) days of the completion of payments from the Trust Account, which Class Counsel will report to the Court if necessary.
- (aa) **Gallagher Hotel Program** means policies issued under the hotel program provided by the insurance broker Arthur J. Gallagher Canada, AJG Canada, or Gallagher Insurance, Risk Management & Consulting, which had a \$500,000 annual policy limit for the Applicable Coverage.
- (bb) **Honoraria** means the amount paid to the Plaintiffs in recognition of their contribution to the Action, subject to approval by the Court.
- (cc) **Indemnity Period** means the period during which the Business Income Loss Payment is calculated for thirty (30) days from March 18, 2020, to April 17, 2020, except where annual coverage is provided under the Policy, in which case the Indemnity Period is 365 days from the effective date of the Policy in-force as of March 18, 2020.
- (dd) **Parties** mean the Plaintiffs and Aviva.
- (ee) **Plaintiffs** means the representative plaintiffs, Nordik Windows Inc., Cash & Carry Inc., Hangar9 Studio Inc., and Real Food for Real Kids Inc., as appointed by the court at paragraph 5 of the Certification Order.
- (ff) **Policy or Policies** means any of the following Aviva Enterprise, Aviva Commercial, or any other policy purchased from Aviva as follows:
  - (i) Business Income Actual Loss Insurance Form 912000-01, Form 912000-01, Form 921005-01 [912005-001], Form 402014-02, Form H-001803, Form H2; and/or
  - (ii) such other policies as may contain the Applicable Coverage; and/or
  - (iii) such other policies issued by Aviva as may contain coverage for suspension of the insured's business caused by damage to the insured's or contributing/neighbouring premises; and/or
  - (iv) such other policies as may provide substantially similar coverage.

A copy of an example Business Income Actual Loss Insurance Form is enclosed as **Appendix "C"**.

- (gg) **Portal** means the dedicated claims portal established by the Settlement Administrator, a site map of which is enclosed as **Appendix “A”** to this Distribution Protocol.
- (hh) **Quebec Class Members** means Class Members with Policies in respect of business premises in Quebec.
- (ii) **Required Financial Loss Data** means, at minimum, the Class Member’s following financial information in order of preference:
- (i) the Class Member’s corporate tax filings (all forms including General Index of Financial Information (“**GIFI**”)) for the years ending in 2019, 2020, and 2021 for incorporated entities and personal tax filings for unincorporated businesses (all forms including Statement of Business or Professional Activities);
  - (ii) the Class Member’s monthly profit and loss statements in 2019, 2020, and 2021, if available; and
  - (iii) the Class Member’s annual financial statements, externally prepared and audited if available, for the years ending 2019, 2020, and 2021.
- (jj) **Settlement Administrator or Administrator** means the third-party administrator appointed by the Court to implement and administer the Settlement Agreement, the Distribution Protocol, and the Claims Process as provided in this Distribution Protocol, and any of the appointed Settlement Administrator’s employees or representatives.
- (kk) **Settlement Amount** means the all-inclusive sum of one hundred and fifty million Canadian dollars (CAD\$150,000,000). For better certainty, the Settlement Amount includes all amounts referenced in subsection 3.1(3) of the Settlement Agreement.
- (ll) **Settlement Approval Order** means the order issued by the Court: (i) approving the Settlement Agreement, (ii) approving the settlement approval notice plan, (iii) approving the settlement approval notice, and (iv) dismissing the Action as of the Effective Date.
- (mm) **Settlement Funds** means the Settlement Amount, less the approved CPF Entitlement and/or *any amounts due to the Fonds d’aide aux actions collectives pursuant to the Act respecting the Fonds d’aide aux actions collectives*, Class Counsel Fees and Disbursements, the Honoraria, and Administration Expenses.
- (nn) **Simplified Claims Amount** means the lump-sum payment of fifteen-thousand dollars (\$15,000), which is not subject to pro-rata adjustment or appeal.

- (oo) ***Simplified Claims Process*** means the process by which Claimants are eligible to receive the Simplified Claims Amount as the Business Income Loss Payment upon verification of an eligible Policy without submitting the Required Financial Loss Data or undergoing a Business Income Loss Calculation using the Business Income Loss Formula. No appeal is permitted under the Simplified Claims Process.
- (pp) ***Trust Account*** means a segregated interest-bearing trust account at a Canadian Schedule I bank under the control of the Settlement Administrator for the benefit of the Class.

## C. CLAIMS PROCESS

### *Appointment and Role of Settlement Administrator*

9. The Settlement Administrator, including its employees and representatives, shall be proposed by Class Counsel and appointed by the Court to implement and administer the Settlement Agreement and Distribution Protocol, including the Claims Process.
10. The Settlement Administrator shall be responsible for:
- (a) providing notice(s) to the Class Members as may be required;
  - (b) receiving information from Aviva and Class Counsel, including information regarding Class Members' Policies, Applicable Coverage, eligibility, and contact information;
  - (c) receiving, reviewing, creating, and storing electronic copies of every submitted Claim;
  - (d) establishing, maintaining, and controlling the Trust Account;
  - (e) confirming whether a Claimant is eligible to be compensated pursuant to the Settlement Agreement;
  - (f) evaluating all Approved Claims and quantifying all Approved Claims submitted under the Business Income Loss Formula;
  - (g) administering the Settlement Agreement, issuing Claim Determination Decisions, issuing Appeal Decisions, distributing the Settlement Funds, and maintaining and issuing related documentation to implement and administer the Settlement Agreement, the Distribution Protocol, and the Claims Process as provided in this Distribution Protocol;
  - (h) establishing a dedicated e-mail account for Class Members and their representatives to direct inquiries about the Claims Process;

- (i) periodically preparing reports to be provided to Class Counsel, upon request, summarizing the number of Claims received for each province/territory on an anonymous basis;
- (j) confirming receipt via email or Portal of Claims and Appeal Submissions received during the Claim Period and the Appeal Period, respectively;
- (k) advising Class Members and/or Claimants if their Claim or Appeal Submission was submitted after the expiry of the Claim Period or Appeal Period, respectively, and their Claim or Appeal Submission is deemed invalid;
- (l) preparing and sending Deficiency Letters, Claim Determination Decisions, and Appeal Decisions to Claimants within the time period prescribed in this Distribution Protocol;
- (m) preparing lists of each Claimant for each province/territory with an Approved Claim authorized for a Business Income Loss Payment and any other necessary correspondence or communications to, from, or between Class Members, Claimants, Class Counsel, and Counsel for Aviva, as required by, or incidental to, the implementation and administration of the Settlement Agreement, Distribution Protocol, and Claims Process as provided in this Distribution Protocol;
- (n) reporting the total number of Claims and Approved Claims received for each province/territory and calculating any necessary *pro rata* adjustments and allocating the Settlement Funds to distribute Business Income Loss Payments to Claimants and any other amounts required to implement and administer the Settlement Agreement, Distribution Protocol, and Claims Process as provided in this Distribution Protocol;
- (o) distributing Administration Expenses, Class Counsel Fees and Disbursements, Honoraria, and CPF Entitlement from the Settlement Amount, in accordance with the Settlement Agreement, Distribution Protocol and any relevant order of the Court;
- (p) distributing the Settlement Funds to Claimants with an Approved Claim and any other amounts required to implement and administer the Settlement Agreement and Distribution Protocol; and
- (q) anything that is required by, or incidental to, the duties of the Settlement Administrator, as described in the Settlement Agreement and this Distribution Protocol, including but not limited to a representative of the Settlement Administrator swearing or affirming an affidavit to provide the Court with evidence of the Claims Process.

*ii. Settlement Approval Hearing – Notice*

11. Following appointment by the Court as Settlement Administrator and Court approval of the settlement approval hearing notice program (or the “**Pre-Approval Notice**”), the Settlement Administrator shall disseminate the settlement approval hearing notice, as described in the Settlement Agreement and approved by the Court, advising Class Members of the date of the settlement approval hearing, the objection filing deadline, and providing a summary of the Settlement.

*iii. Claims Process - Notice*

12. Upon the Effective Date, the Settlement Administrator shall disseminate the settlement approval notice, as described in the Settlement Agreement and approved by the Court, advising Class Members of the process for submitting a Claim, including the Claim Period, eligibility requirements, and Required Financial Loss Data.

*iv. Claims Process – Submitting a Claim*

13. As a condition precedent to receiving a Business Income Loss Payment pursuant to this Distribution Protocol, a Claimant must:
- (a) submit a Claim to the Portal during the Claim Period;
  - (b) be eligible to receive compensation pursuant to the Settlement Agreement, as described below at paragraph 20, which requires:
    - (i) confirmation that the Claimant had a Policy in force as of March 17, 2020, either by the Claimant providing a copy of their Policy, or by Aviva confirming the Claimant’s Policy;
    - (ii) confirmation that the Claimant had the Applicable Coverage in their Policy that was in force as of March 17, 2020; and
    - (iii) confirmation that the Claimant provided notice of their claim to Aviva, Epiq Class Action & Claims Solutions, Inc. (“**Epiq**”) or to Class Counsel prior to August 26, 2025.
  - (c) provide the Required Financial Loss Data unless they elect to proceed with their Claim pursuant to the Simplified Claims Process; and
  - (d) if the Claimant is unable to provide the Required Financial Loss Data and/or does not provide adequate information in response to a Deficiency Letter sent by the Settlement Administrator, the Claimant will be deemed to elect the Simplified Claims Process.

14. All Claimants will be required to submit a completed Claim, including a completed Claim Form and the Required Financial Loss Data, if applicable, to the Portal before the expiry of the Claim Period to be eligible to receive any benefits under the Settlement Agreement.
15. Every Claim will indicate whether the Claimant is submitting their Claim under the Business Income Loss Formula or electing to submit their Claim under the Simplified Claims Process. If the Claim does not indicate whether the Claim is being submitted under the Business Income Loss Formula or the Simplified Claims Process, it will be presumed to be under the Business Income Loss Formula, subject to paragraph 13(d) as noted above.
16. All Claims submitted under the Business Income Loss Formula must include the Required Financial Loss Data and be accompanied by a signed declaration by a representative of the Claimant that the information contained in the Required Financial Loss Data is accurate and true.
17. All Claims must be received by the Settlement Administrator by 5:00 p.m. Eastern Standard Time (EST) on the last day of the Claim Period. The Settlement Administrator shall deny any Claim received after that date and time.
18. The Settlement Administrator will confirm receipt of the Claim within seven (7) business days by email to the Claimant's email address, if provided, or by regular mail to the Claimant's mailing address.
19. If the Settlement Administrator receives a Claim after the Claim Period has expired, the Settlement Administrator will advise the Claimant that their Claim was untimely and is deemed invalid. For greater clarity, any Claims submitted after the Claim Period has expired will not be assessed by the Settlement Administrator and cannot be appealed.

v. Claims Process – Assessment of Claims

20. The Settlement Administrator will assess each Claim submitted by a Claimant within the Claim Period to determine whether they are eligible to receive compensation pursuant to the Settlement Agreement. A Claimant will be eligible if they:
  - (a) have the Applicable Coverage under their Policy as of March 17, 2020; and
  - (b) provided notice of their claim to Aviva, Epiq Class Action & Claims Solutions, Inc. ("**Epiq**"), or Class Counsel prior to August 26, 2025.
21. The Settlement Administrator will have a list of all eligible Class Members based on information provided by Aviva and Epiq, which the Settlement Administrator will use to confirm their eligibility. If the Settlement Administrator determines that

the Claimant is eligible, they will have an Approved Claim under either the Business Income Loss Formula or Simplified Claims Process.

22. If a Claimant meets the eligibility requirement, the Settlement Administrator will review their Claim to determine whether they have elected to submit a claim pursuant to the Business Income Loss Formula or Simplified Claims Process.
23. If the Claimant meets the eligibility requirements and has elected to proceed under the Business Income Loss Formula, the Settlement Administrator will provide a Business Income Loss Calculation for the Claimant.
24. Where a Claim is incomplete or deficient, the Settlement Administrator shall send a Deficiency Letter within fifteen (15) business days of receiving the Claim by email or regular mail, as applicable. The Claimant shall have fifteen business (15) days from the date of the Deficiency Letter to amend or supplement their Claim, or to otherwise re-elect to submit their Claim under the Simplified Claims Process. If this fifteen (15) business day period concludes after the expiry of the Claim Period, the Claimant remains entitled to amend or supplement their Claim until the expiry of the fifteen (15) business days and they will not be barred from responding to a Deficiency Letter because the Claim Period expired.
25. The Claimant will be deemed to have re-elected to submit a Claim pursuant to the Simplified Claims Process where the Claimant does not respond to a Deficiency Letter within fifteen (15) business days and:
  - (a) their Claim is incomplete, deficient, inconsistent, or discrepant; or
  - (b) they did not submit some or all the Required Financial Loss Data.
26. A Claimant who is deemed to have re-elected to submit a Claim pursuant to the Simplified Claims Process, as described in the preceding paragraph, will only be eligible to receive the Simplified Claims Amount if the Settlement Administrator has received sufficient information to confirm that the Claimant is an eligible class member as described above at paragraph 20.
27. If the Settlement Administrator has the requisite information and the Claimant has not elected to submit a Claim pursuant to the Simplified Claims Process, the Settlement Administrator will complete a Business Income Loss Calculation for each Approved Claim.
28. The Settlement Administrator must determine the Business Income Loss Calculation pursuant to the Business Income Loss Formula and shall use the best available evidence, as provided by the Claimant, in completing the Business Income Loss Calculation. The Settlement Administrator's decision in applying the Business Income Loss Formula is subject to the Appeal provisions contained in this Distribution Protocol. For greater clarity, the Appeal provisions do not apply if

a Claimant elects or re-elects to submit a Claim pursuant to the Simplified Claims Process or if the Claim is submitted after the expiry of the Claim Period.

29. Within sixty (60) days following the expiry of the Claim Period, the Settlement Administrator will issue a Claim Determination Decision to each Claimant, which shall include the following information:
- (a) if the Claim is not approved, a brief explanation of the reason;
  - (b) if the Claim is approved:
    - (i) the Business Income Loss Calculation for the Claimant, subject to Appeals and final determination of the *pro rata* distribution; or
    - (ii) confirmation that the Claimant has elected to proceed with their Claim under the Simplified Claims Process, and will be receiving the Simplified Claims Amount; and
  - (c) if applicable, a brief explanation of the appeal process, including that the Appeal Period is thirty (30) days from the date of the Claim Determination Decision and that all Appeal Submissions must be received by the Settlement Administrator before 5:00 p.m. Eastern Standard Time (EST) on the last day of the Appeal Period.

vi. Claims Process - Appeals

30. A Claimant may challenge their Business Income Loss Calculation by submitting an Appeal Submission to the Settlement Administrator within the Appeal Period. Any Appeal Submission that is submitted after the Appeal Period has expired will be deemed invalid.
31. The Appeal Submission must:
- (a) identify any error or proposed adjustment to the Business Income Loss Calculation;
  - (b) provide supporting documentation or information, as applicable; and
  - (c) include a sworn or affirmed declaration that the Appeal Submission is true.
32. The Settlement Administrator will confirm receipt of the Appeal Submission within seven (7) business days by email to the Claimant's email address, if provided, or by regular mail to the Claimant's mailing address.
33. If the Settlement Administrator receives an Appeal Submission after the Appeal Period has expired, the Settlement Administrator will advise the Claimant that their Appeal Submission was untimely and is deemed invalid.

34. The Settlement Administrator will review the Claimant's Appeal Submission and issue an Appeal Decision within forty-five (45) days of receiving the Appeal Submission. The Appeal Decision will advise the Claimant if their Business Income Loss Calculation has been adjusted and the amount of adjustment, if applicable.
35. The Appeal Decision is final and is not subject to appeal.

*vii. Claims Process - Payments from the Trust Account*

36. The Settlement Administrator will deposit the Settlement Amount in an interest-bearing Trust Account, to be maintained and under the control of the Settlement Administrator.
37. Payments made from the Trust Account shall be made in accordance with the following procedure:
  - (a) Within fifteen (15) days of issuing the final Appeal Decision, the Settlement Administrator will deliver a report to Class Counsel providing:
    - (i) the total number of Claims received for each province/territory;
    - (ii) the total number of Approved Claims for each province/territory;
    - (iii) the total number of Appeal Submissions and Appeal Decisions for each province/territory;
    - (iv) the total number of Approved Claims for Claimants that elected to submit a claim pursuant to the Simplified Claim Process for each province/territory;
    - (v) the total number of Approved Claims under the Gallagher Hotel Program for each province/territory;
    - (vi) the total number of Approved Claims subject to a policy limit for each province/territory;
    - (vii) the minimum and maximum Business Income Loss Payment for each province/territory; and
    - (viii) the Settlement Funds to be distributed to Claimants with Approved Claims for each province/territory, after adjusting for any excess or shortfall funds required at paragraphs 49-52 below.
  - (b) Within thirty (30) days of the report to Class Counsel described in the preceding paragraph, the Settlement Administrator shall distribute the Settlement Amount as follows:

- (i) the Settlement Administrator shall issue the Business Income Loss Payment by cheque or electronic transfer to each Claimant with an Approved Claim, subject to paragraph 37(b)(iii) below. The Business Income Loss Payment will be:
  - a. the *pro rata* distribution of the Claimant's Business Income Loss Calculation; or
  - b. the Simplified Claims Amount if the Claimant elected to submit a claim pursuant to the Simplified Claims Process.
- (ii) on the same day that the Business Income Loss Payment is issued to a Claimant, the Settlement Administrator shall send a letter to each Claimant to either the Claimant's email address, if provided, or alternatively by regular mail to the Claimant's mailing address, providing:
  - a. the Claimant's Business Income Loss Calculation, if applicable;
  - b. the Claimant's Business Income Loss Payment after consideration of all appeals and *pro rata* adjustments pursuant to this Distribution Protocol, if applicable;
  - c. confirmation that the Claimant elected to submit a claim pursuant to the Simplified Claim Process, if applicable; and
  - d. confirmation that the Claims Process is now closed and complete.
- (iii) Notwithstanding the above provisions, the Settlement Administrator shall not distribute any funds:
  - a. to any Class Members until the Class Proceedings Committee has had an opportunity to review and confirm the calculation of the CPF Entitlement and, if there is any dispute or question as to the calculation of the CPF Entitlement, pending any appearance before the Honourable Justice Morgan to resolve the issues in accordance with the Settlement Approval Order; and
  - b. to BC or Quebec Class Members until the requirements under paragraph 3.1(7) of the Settlement Agreement are satisfied.

*viii. Claims Process - Final Report*

38. Within sixty (60) days of the completion of payments from the Trust Account, the Settlement Administrator will issue a Final Report to Class Counsel and Aviva on the results of the administration and distribution, which Class Counsel will report to the Court if necessary. The Final Report will include the information provided by the Settlement Administrator to Class Counsel at paragraph 37(a) above, as well as any other information regarding the administration and distribution of the Claims Process.

*ix. Claims Process – Directions from the Court*

39. The Settlement Administrator will be at liberty to apply to the Court for directions if any issues or concerns arise during the Claims Process which the Settlement Administrator and Class Counsel are unable to resolve.
40. Class Counsel shall perform a supervisory role over the Claims Process and provide advice and assistance to the Settlement Administrator regarding the implementation and administration of the Distribution Protocol, as requested or required.
41. If during the Claims Process, Class Counsel have reasonable and material concerns that the Claims Process and Distribution Protocol is producing an unjust result on the whole or to any material segment of the Class Members, or that a modification is required or recommended, Class Counsel shall move to the Court for approval of a reasonable modification to the Claims Process or Distribution Protocol or for further directions with respect to the distribution of the Settlement Funds.
42. In arriving at a determination that an unjust result is occurring or that a modification to the Claims Process or Distribution Protocol is required or recommended, and in considering what modification may be required, Class Counsel shall seek comment and input from the Settlement Administrator.

**D. SETTLEMENT BENEFITS**

*i. Applicable Currency*

43. All dollar amounts set forth in this Distribution Protocol are expressed in Canadian currency.

*ii. Distribution of the Settlement Amount*

44. Pursuant to the terms and conditions of the Settlement Agreement and this Distribution Protocol, the Settlement Administrator shall pay the following from the Settlement Amount on the Effective Date or immediately upon receiving the

Settlement Amount from Aviva if received after the Effective Date, which are all subject to approval by the Court:

- (a) Class Counsel's Fees and Disbursements;
  - (b) Honoraria to each of the Plaintiffs; and
  - (c) CPF Entitlement collected on behalf of the Claimants with Approved Claims, to be transmitted to the Law Foundation of Ontario at regular intervals; and,
45. Pursuant to the terms and conditions of the Settlement Agreement and this Distribution Protocol, the Settlement Administrator shall also pay the following from the Settlement Amount, which are also subject to approval by the Court:
- (a) Administration Expenses, which are to be paid out of the Trust Account, as incurred by the Settlement Administrator and approved by Class Counsel; and
  - (b) Settlement Funds to be disbursed as Business Income Loss Payments to Claimants with Approved Claims in accordance with the Claims Process in this Distribution Protocol.
- iii. Business Income Loss Calculation*
46. For Claimants with an Approved Claim who have not elected or re-elected to proceed with their Claim under the Simplified Claims Process, the Settlement Administrator shall perform the Business Income Loss Calculation as follows:
- (a) the Settlement Administrator will prepare a Business Income Loss Calculation for each Claimant based on the Business Income Loss Formula over the Indemnity Period;
  - (b) in determining the Business Income Loss Calculation and applying the Business Income Loss Formula, the Settlement Administrator will consider the Claimant's financial information in the years preceding and following the Indemnity Period, as applicable, as comparators of the Claimant's revenue, profits, losses, and business income losses. Preference will be given to the Claimant's financial information in the years preceding the Indemnity Period, and the Claimant's financial information in the years following the Indemnity Period will only be considered if necessary;
  - (c) where monthly financial information is available, the Business Income Loss Calculation will be determined by applying the Business Income Loss Formula to the Claimant's monthly financial information during the Indemnity Period, subject to corroboration with all other financial information submitted;

- (d) where monthly financial information is not available, the Business Income Loss Calculation will be determined by applying the Business Income Loss Formula to the Claimant's annual financial information for the year including the Indemnity Period, which will then be divided by one-twelfth (1/12) to determine the Class Member's monthly Business Income Loss Calculation during the Indemnity Period, subject to corroboration with all other financial information submitted; and
- (e) where the Claimant's Policy contains annual coverage with a monetary cap, the Business Income Loss Calculation shall be calculated based on the applicable Indemnity Period under the Policy and shall not exceed the monetary cap under the Policy.

iv. Simplified Loss Calculation

47. A Claimant may elect to submit their Claim under the Simplified Claims Process:
- (a) by indicating their election on their Claims Form when they submit their Claim to the Settlement Administrator; or
  - (b) by written notice to the Settlement Administrator within seven (7) business days of receiving a Deficiency Letter.
48. Any Claimant that elects to submit their Claim under the Simplified Claims Process will receive the Simplified Claims Amount as their Business Income Loss Payment without providing the Required Financial Loss Data. This amount is all-inclusive, cannot be appealed, and will not be adjusted on a *pro rata* basis. Once a Claimant elects to submit their claim under the Simplified Claims Process, the Claimant cannot revert to and/or request a Business Income Loss Payment.

v. Excess or Shortfall Funds

49. The aggregate amount payable to Claimants with Approved Claims is the Settlement Funds, equal to the Settlement Amount, less the Court-approved CPF Entitlement, Class Counsel Fees and Disbursements, the Honoraria to the Plaintiffs, and Administration Expenses.
50. The Settlement Funds shall be adjusted on a *pro rata* basis as follows:
- (a) if the total quantum of the net Business Income Loss Payments under this section exceeds the Settlement Funds then each individual Business Income Loss Payment, after all Appeal Periods have expired and all Appeal Decisions have been issued, shall be reduced on a *pro rata* basis such that the total of all final Business Income Loss Payments in respect of such Approved Claims shall not exceed the Settlement Funds; or

- (b) if the full amount of the net Settlement Funds is not allocated through the proposed net Business Income Loss Payments after the expiry of the Appeal periods and all Appeal Decisions being issued, the remainder shall be distributed by the Settlement Administrator on a *pro rata* basis to all Claimants who proceeded with their Approved Claim under the Business Income Loss Formula, up to the applicable limits of the Claimant's policy.
- 51. For greater clarity, Claimants who elect or re-elect to proceed with their Claim under the Simplified Claims Process will not be subject to a *pro rata* increase or decrease in their proportional share of the Settlement Funds and will receive the Simplified Claims Amount irrespective of the number or value of Approved Claims.
- 52. The Business Income Loss Payment for each Claimant with an Approved Claim shall not exceed the lesser of:
  - (a) the Simplified Claims Amount if they elected to proceed with their claim under the Simplified Claims Process; or
  - (b) the applicable monetary limits under the Claimant's Policy, whether the limit under the Applicable Coverage or the total monetary limit on the Policy, as applicable.
- vi. Confidentiality
- 53. Any information provided by or regarding Class Members, or otherwise obtained pursuant to the Settlement Agreement, shall be kept strictly confidential and shall not be disclosed except to appropriate persons, and only to the extent necessary to process a Claim or to implement or administer the Settlement Agreement, the Distribution Protocol, and the Claims Process as provided in this Distribution Protocol.
- 54. The Settlement Administrator shall institute and maintain strict internal procedures to reasonably protect the identity of all Claimants and all information regarding their Claim. In particular, Claims shall be kept strictly confidential and shall not be provided to any person or entity unless provided for in the Settlement Agreement or as required by law.
- 55. The Settlement Administrator will implement internal ethical dividers to maintain independence throughout the Claims and Settlement Processes including the following:
  - (a) a dedicated Settlement Administrator team will carry out this mandate;
  - (b) all access and communication will be restricted only to the Settlement Administrator team;

- (c) no personnel on the Settlement Administrator team will be part of other service delivery teams that may deliver professional services to Class Members; and
- (d) firm-wide notice of prohibition from providing Claims preparation services in connection with this Distribution Protocol.

vii. Access to Information

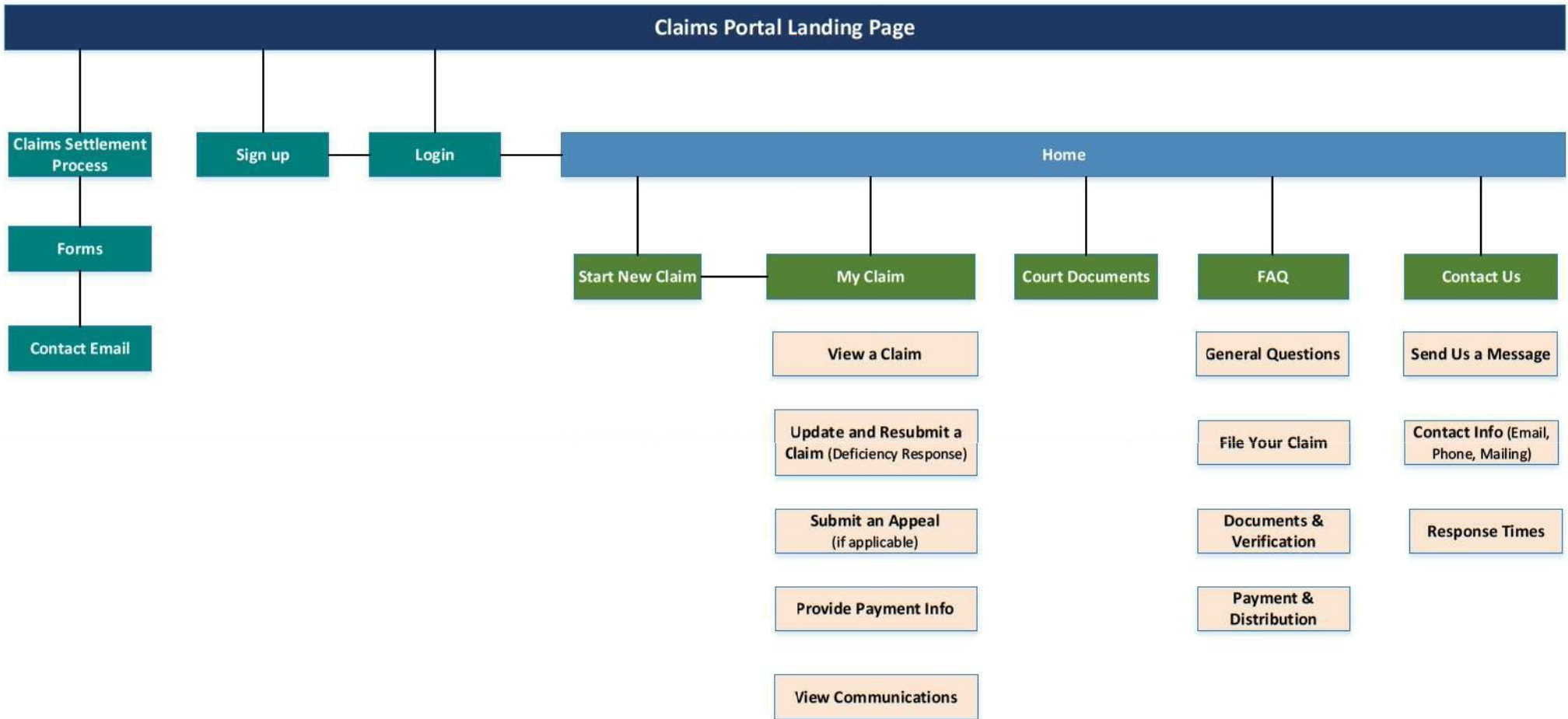
56. Class Counsel shall have access to all information maintained by the Settlement Administrator regarding each Claimant and the processing and payment of a Claim, upon request.

viii. Communications

57. All written communications between the Settlement Administrator and each Claimant shall be provided by e-mail if the Claimant's email address was provided, through the Portal, or by regular mail if expressly required pursuant to this Distribution Protocol. Each Claimant shall provide the Settlement Administrator with their current contact information, and it will be the responsibility of the Claimant to notify the Settlement Administrator of any change to their email or mailing address.
58. If, for any reason, the Settlement Administrator becomes unable or unwilling to continue to act in this role, the Parties may choose an alternate third-party administrator, subject to the approval of the Court.

# **APPENDIX A**

# Claims Portal Site Map



Please note that this may be subject to change while the distribution protocol is finalized.

# **APPENDIX B**

# Example Claim Form

## Step 1: Claimant Information

### Aviva Business Interruption Class Action Claim Submission

Please complete all sections to submit your claim. Fields marked with an asterisk (\*) are required.



Page 1 of 4

#### Step 1: Claimant Information

1. **Unique Class Member ID \***

This is your unique identifier for the class action claim.

2. **Are you a Legal Representative submitting on behalf of this Claimant? \***

- Yes, I am a Legal Representative
- No, I am the Claimant (Self-Submitting)

3. **Are you submitting this claim for an Individual or a Business entity? \***

- Individual / Sole Proprietorship
- Business Entity (Corporation/Partnership)

Claimant Details (Business)

4. Business Legal Entity Name \*

5. Business Name (Trade Name) \*

Primary Business Address

Street Address \*

Apt/Suite #

City \*

Postal Code \*

Province/Territory \*

Country \*

6. Primary Contact Email (User ID) \*

7. Communication Acknowledgement \*

I acknowledge that all correspondence regarding this claim will occur via this portal or email only.

Next

## Step 2: Insurance Information

### Aviva Business Interruption Class Action Claim Submission

Please complete all sections to submit your claim. Fields marked with an asterisk (\*) are required.

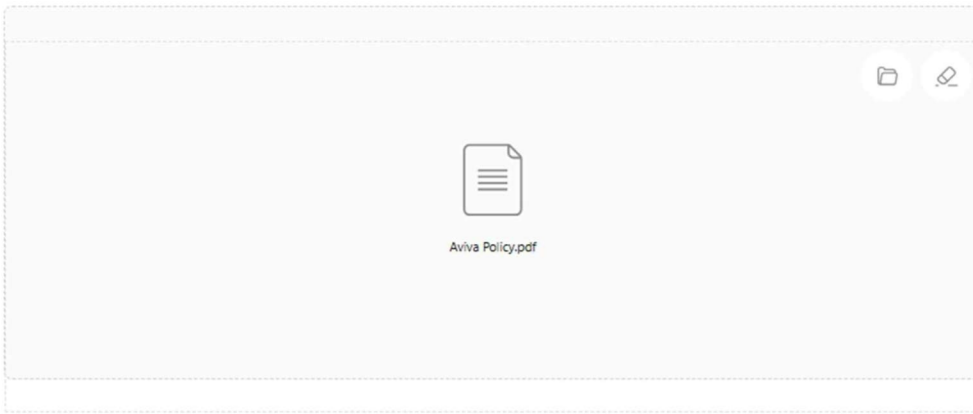
Page 2 of 4

#### Step 2: Insurance Information

8. Aviva Policy Number \*

AVA00001

9. Upload copy of applicable insurance policy



A file upload area with a dashed border. In the center is a document icon with the text "Aviva Policy.pdf" below it. In the top right corner of the area are two small icons: a document with a plus sign and a pencil.

Previous

Next

## Step 3: Settlement Selection

### Aviva Business Interruption Class Action Claim Submission

Please complete all sections to submit your claim. Fields marked with an asterisk (\*) are required.

Page 3 of 5

#### Step 3: Settlement Selection

10. Please select your settlement option: \*

- Simplified Claims Process (up to \$15,000 payout)
- Business Income Loss Claims Process (Calculated amount)
- Opt-out of Settlement

[Previous](#) [Next](#)

## Step 4: Lost Data Period Selection

### Aviva Business Interruption Class Action Claim Submission

Please complete all sections to submit your claim. Fields marked with an asterisk (\*) are required.

Page 4 of 6

#### Step 4: Lost Data Period Selection

11. Which year(s) are you submitting financial loss data for? \*

- 2019
- 2020
- 2021

[Previous](#) [Next](#)

Please note that this may be subject to change while the distribution protocol is finalized.

## Step 5: Required Financial Data (By Year)

### Aviva Business Interruption Class Action Claim Submission

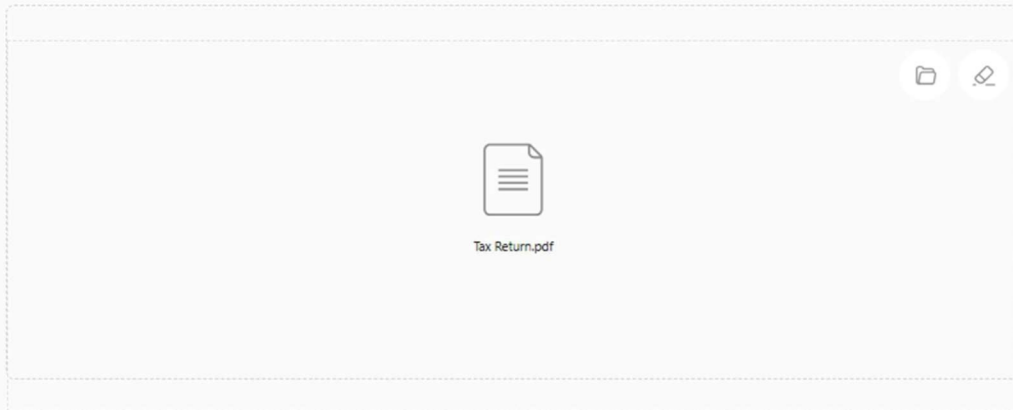
Please complete all sections to submit your claim. Fields marked with an asterisk (\*) are required.

Page 5 of 6

#### Step 5: Required Financial Data (2019)

2019 Tax Returns

##### 12. Upload 2019 Tax Filings \*

A large dashed-line rectangular area for file upload. In the center is a document icon with horizontal lines, labeled "Tax Return.pdf". In the top right corner of the area are two small icons: a folder and a pencil.

Not Available

2019 Financial Statements

13. Upload 2019 Audited Statements \*

File upload area for 2019 Audited Statements. The area contains a dashed border, a file icon, and the text "Financial Statement Audited.pdf". In the top right corner, there are two circular icons: a folder icon and a pencil icon.

Not Available

2019 P&L Statements

14. Upload 2019 P&L Statements \*

File upload area for 2019 P&L Statements. The area contains a dashed border, a file icon, and the text "P&L Statement.pdf". In the top right corner, there are two circular icons: a folder icon and a pencil icon.

Not Available

[Previous](#)

[Next](#)

## Step 6: Review & Certification

### Aviva Business Interruption Class Action Claim Submission

Please complete all sections to submit your claim. Fields marked with an asterisk (\*) are required.

Page 6 of 6

#### Step 6: Review & Certification

15. **Additional Comments:**

16. **Final Legal Declaration \***



I certify that all of the information provided by me on this form is true, correct, and complete, and all documents I submitted are true and correct copies of what they purport to be. I understand that the personal information collected by BDO will be used exclusively for the purpose of processing and determining my entitlement to make a claim under the Aviva Class Action Settlement. The personal information provided in this claim form may also be disclosed to Class Counsel, Counsel for the Defendants, or an auditor, if applicable, for the purpose of validating identity; carrying out any lawful investigations to confirm that I am an eligible Class Member; processing of claims; development of payment strategy; and/or reporting obligations. BDO Canada may process applications using automation to support processing of decision-making. I understand that my personal information may be communicated to another jurisdiction within Canada and that any personal information collected, used or stored by BDO Canada as part of this process will be in accordance with BDO Canada's Privacy Policy.

[Previous](#)

[Preview Claim](#)

## Preview and Submission

Preview the complete form and either make edits if required or submit the claim

Not Available

Edit Claim

**Step 6: Review & Certification**

15. Additional Comments:

16. Final Legal Declaration \*

I certify that all of the information provided by me on this form is true, correct, and complete, and all documents I submitted are true and correct copies of what they purport to be. I understand that the personal information collected by BDO will be used exclusively for the purpose of processing and determining my entitlement to make a claim under the Aviva Class Action Settlement. The personal information provided in this claim form may also be disclosed to Class Counsel, Counsel for the Defendants, or an auditor, if applicable, for the purpose of validating identity; carrying out any lawful investigations to confirm that I am an eligible Class Member; processing of claims; development of payment strategy; and/or reporting obligations. BDO Canada may process applications using automation to support processing of decision-making. I understand that my personal information may be communicated to another jurisdiction within Canada and that any personal information collected, used or stored by BDO Canada as part of this process will be in accordance with BDO Canada's Privacy Policy.

Edit Claim

Submit Claim

Please note that this may be subject to change while the distribution protocol is finalized.

# **APPENDIX C**

## I. INDEMNITY AGREEMENT

The Insurer will indemnify the Insured for the actual loss of "business income" sustained by the Insured directly resulting from the necessary interruption of the "business" caused by "damage" occurring during the policy period.

## II. MEASURE OF RECOVERY

### A. COVERAGE

Recovery under this form is limited to the actual loss of "business income" sustained by the Insured during the "indemnity period" due to:

1. Reduction of "revenue", being the amount obtained by multiplying the "revenue shortfall" by the "business income percentage"; and
2. Extra expense, being the necessary additional cost to conduct the "business" over and above the cost that normally would have been incurred during the same period had no "damage" occurred. This additional cost will include:
  - a. the expense of obtaining and using other property or facilities of other concerns or other similar necessary emergency expenses;
  - b. the expense of obtaining property for temporary use that is necessarily required for the conduct of the Insured's "business".
3. The increase in actual loss of "business income" resulting from the enforcement of any by-law, regulation, ordinance or law which:
  - a. regulates zoning or the demolition, repair or construction of damaged buildings or structures; and
  - b. is in force at the time of "damage".

less the amount of those expenses that do not necessarily continue during the "indemnity period". Any of the Insured's ordinary "business" expenses, including "ordinary payroll expenses" will be considered necessary if:

- a. such expenses would have been covered by the Insured's "business income" before the loss, and
- b. such expenses are required so that the Insured's "business" can return to operations with the same quality of service as before the loss.

### B. EXCLUSIONS

1. In addition to the terms, conditions, exclusions and limitations of the property insurance form that insures "building(s)", "equipment" or "stock" belonging to:
  - a. the Insured;
  - b. others for which the Insured is obligated to insure or for which the Insured is legally liable, the Insurer is not liable for any loss of "business income" or extra expense:

#### i. Idle period

For any time during which "business" would not or could not have been carried on if "damage" had not occurred.

#### ii. Fines and damages

Due to fines or damages for:

- (a) breach of contract;
- (b) late or non completed orders; or
- (c) penalties of any kind;

except as provided in III. SUPPLEMENTARY COVERAGES.

#### iii. Cancellation of contract

Due to the suspension, lapse or cancellation of a contract following "damage" extending beyond the time "business" could have resumed if the contract had not lapsed, been suspended or cancelled..

#### iv. By-laws and zoning

Resulting from the enforcement of any by-law, regulation, ordinance or law that:

- (a) could have been enforced in the absence of "damage" at the "premises"; or
- (b) prohibits the Insured from rebuilding or repairing on the same site or on an adjacent site or prohibits continuance of like occupancy.

## 2. Terrorism

The Insurer is not liable for loss of "business income" or extra expense incurred resulting from loss or damage caused directly or indirectly, in whole or in part, by "terrorism" or by any activity or decision of a government agency or other entity to prevent, respond to or terminate "terrorism". This exclusion applies whether or not there are one or more other causes or events (whether covered or not) that contribute concurrently or in any sequence to the occasioning of the loss or damage.

If any portion of this exclusion is found to be invalid, unenforceable or contrary to statute, the remainder will remain in full force and effect.

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### III. SUPPLEMENTARY COVERAGES

#### A. GROUP ONE

The limit of insurance applicable to loss, costs or expenses covered by any or all coverages described in GROUP ONE is the blanket limit shown on the "Policy Declarations". The blanket limit of insurance is in addition to amounts payable under II. MEASURE OF RECOVERY.

##### 1. ACCOUNTANTS' FEES

This form insures the reasonable charges payable by the Insured to their professional accountants for producing particulars or details or other proofs, information or evidence as may be required by the Insurer for the purpose of investigating or verifying any claim under this form and reporting that such particulars or details are in accordance with the Insured's accounting records. There is no coverage for fees incurred for accounting services that are required in the normal course of the Insured's "business".

##### 2. FINES AND PENALTIES

This form insures the Insured's legal liability for fines, damages or penalties due to breach of contract for late or non-completion of orders, if such breach of contract is a consequence of "damage" at the "premises".

##### 3. LEASEHOLD INTEREST

- a. This form insures additional leasing costs incurred by the Insured if, as a result of "damage", the landlord terminates the "premises" lease in accordance with the conditions of that lease.
- b. Recovery is limited to the difference between current leasing costs at the "premises" and higher leasing costs at another location that are actually incurred by the Insured. There is no coverage for additional leasing costs that result from the Insured exercising an option to cancel a "premises" lease.

##### 4. NEWLY ACQUIRED LOCATIONS

- a. This form insures the actual loss of "business income" sustained by the Insured during the "indemnity period" resulting from the necessary interruption of Insured's business activities occurring at any location that is:
  - i. acquired by the Insured after the beginning of the current policy period,
  - ii. owned, leased, occupied or controlled by the Insured, and
  - iii. within the "territorial limits",if the interruption is caused by "damage" at such newly acquired location.
- b. This coverage will cease on the earliest of:
  - i. 90 days from the date of acquisition of such location;
  - ii. the date such location is reported to the Insurer; or
  - iii. the expiration date of this policy.
- c. Premium for this coverage is payable from the date of the acquisition of such newly acquired location.

#### B. GROUP TWO

Coverages listed in GROUP TWO are subject to the limit of insurance shown on the "Policy Declarations" for the particular coverage described. The limit of insurance for each coverage in GROUP TWO is in addition to any other limit of insurance applicable under this form.

##### 1. CONTINGENT BUSINESS INTERRUPTION

This form insures the actual loss of "business income" sustained by the Insured during the "indemnity period" resulting from the necessary interruption of the "business" occurring at the "premises" if the interruption is caused by direct physical loss or damage, directly caused by an insured peril, to property, except of the type that is Excluded Property, of a "contributing business" located within the "territorial limits" during the policy period.

Loss or damage to property of a "contributing business" will be deemed to be loss resulting from "damage" at the "premises".

##### 2. UTILITIES SERVICE INTERRUPTION

This form insures the actual loss of "business income" sustained by the Insured during the "indemnity period" as a result of damage to or destruction of "utility property" located within the number of kilometres as shown on the "Policy Declarations" from the "premises", provided such damage or destruction is caused directly by an insured peril. There is no coverage for loss of "business income" due to:

- a. the interruption of "utility services" for a duration of less than 24 consecutive hours;
- b. damage to or destruction of above ground electrical and telephone transmission lines or distribution lines or their supporting structures located away from the "premises";
- c. an intermittent signal;
- d. lack of sufficient capacity; or
- e. an intentional reduction in supply.

#### C. GROUP THREE

Coverages listed in GROUP THREE are subject to time or distance limitations.

##### 1. MORTGAGE RATE GUARANTEE

- a. This form insures additional mortgage costs incurred by the Insured if, as the result of "damage" to an insured "building", the Insured is required to close an existing mortgage, requiring a new mortgage at a higher interest rate.
- b. Monthly payments will be made for the difference in cost of the outstanding mortgage balance, between the current mortgage rate on the date of the loss and the new higher mortgage rate.
- c. Coverage ceases at the earliest of:

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- i. expiry of the mortgage term that was in force at the time of loss;
- ii. the termination of the Insured's interest; or
- iii. 60 months from the date of loss.

**2. NEGATIVE PUBLICITY COVERAGE**

- a. This form is extended to insure the actual loss of "business income" sustained by the Insured as a direct result of any of the following occurrences:
  - i. poisoning of any person directly caused by the consumption of food or drink provided by the Insured at the "premises";
  - ii. an outbreak of a contagious or infectious disease within 25 kilometres of the "premises" that is required by law to be reported to government authorities;
  - iii. violent acts occurring at the "premises" such as murder, suicide, sexual assault, aggravated assault or robbery;
  - iv. an illegal discharge of a firearm at the "premises"; or
  - v. an escape or release of any substance or odour produced by or originating from air quality or water control equipment that causes bodily injury or sickness.
- b. For the purpose of this coverage only, occurrences listed in a. i. through v. will be deemed loss resulting from "damage".
- c. This coverage is limited to the time period shown on the "Policy Declarations".

**3. ORDINARY PAYROLL EXPENSES**

At the option of the Insured, the Insurer will be liable for "ordinary payroll expenses" incurred by the Insured which must necessarily continue after "damage". Coverage is limited to the shorter of:

- a. the time period shown on the "Policy Declarations"; or
- b. the "indemnity period".

**4. RESTRICTED ACCESS**

- a. This form insures the actual loss of "business income" sustained by the Insured caused by the interruption of the "business" at the "premises" when ingress to or egress from the "premises" is restricted in whole or in part:
  - i. by direct physical loss or damage to any property in the vicinity of the "premises" and such loss or damage is directly caused by an insured peril;
  - ii. (a) by order of civil authority resulting from any of the following occurrences:
    - (1) food or drink poisoning;
    - (2) an outbreak of a contagious or infectious disease that is required by law to be reported to government authorities;
    - (3) defective sanitation or drains; or
    - (4) murder or suicide.
  - (b) There is no coverage for loss of "business income" during the first 24 consecutive hours of such interruption by order of civil authority.
- b. This coverage does not apply to loss of "business income" due directly or indirectly to any interruption of "utility services".
- c. This coverage is limited to the time period shown on the "Policy Declarations".

**IV. SPECIAL CONDITIONS**

**1. ALTERNATE TRADING**

If, during the "indemnity period", goods are sold or services are rendered for the benefit of the "business" elsewhere than at the "premises" by or on behalf of the Insured, the money paid or payable in respect of such sales or service will be brought into account in arriving at the "revenue" during the "indemnity period".

**2. MULTIPLE LOCATIONS OR DIVISIONS**

If the Insured operates multiple locations or divisions that contribute to the "revenue" of the "business", calculation of "revenue shortfall" will be based on the operations of the "business" as a whole and not strictly on the "revenue shortfall" of the location or division that sustains "damage".

**3. OBLIGATION TO MINIMIZE LOSS**

In the event of "damage" in consequence of which a claim is or may be made under this form, the Insured will cooperate with the Insurer to do all things that are reasonably practicable to minimize interruption of or interference with the "business" in order to avoid or diminish the loss payable.

**4. PROPERTY DAMAGE PROVISION**

It is a condition precedent to any payment under II. Measure of Recovery that, at the time of the occurrence of the "damage", there is in force commercial property insurance covering the interest of the Insured in the property at the "premises" against such "damage".

**5. WAITING PERIOD**

If a waiting period is shown on the "Policy Declarations", the "indemnity period" will not begin until the end of such specified waiting period.

**V. DEFINITIONS**

Whenever used in this form and its conditions and endorsements attached to this policy:

- 1. "business" means the operations of the Insured as shown on the "Policy Declarations".
- 2. "business income" means the amount by which:

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- a. the sum of:
    - i. the "revenue", plus
    - ii. the amounts of closing stock and work in progress exceeds
  - b. the sum of:
    - i. the amounts of opening stock and work in progress, plus
    - ii. the amount of the "variable operating expenses".
3. "business income percentage" means the percentage obtained by dividing the "business income" by the "revenue" generated in the financial year immediately prior to the date of the "damage". Adjustments will be made:
    - a. as may be necessary to provide for the trend of the "business"; and
    - b. for variations in the "business" or other circumstances which would have affected the "business income" had the "damage" not occurred, so that the adjusted figures will represent, as nearly as reasonably practicable, the results which, but for the "damage", would have been obtained during the comparable period after the "damage".
  4. "contributing business" is an enterprise which is not owned, rented or controlled in whole or in part by the Insured, and:
    - a. provides products, materials or services to the Insured or anyone else on the Insured's behalf;
    - b. receives products, materials or services that the Insured produces or sells; or
    - c. is in the vicinity of the "premises" and which attracts "revenue".
 "Contributing business" does not mean an enterprise that, directly or indirectly, provides to or receives from the Insured "utility services".
  5. "damage" means the direct physical loss of or damage to property at the "premises" from an insured peril.
  6. "expected revenue" means the "revenue" in the financial year immediately prior to the date of the "damage" during the period that corresponds with the "indemnity period". This "revenue" will be adjusted to represent as closely as possible the results which, but for the "damage", would have been obtained during the comparable period after the "damage". Adjustments will be made:
    - a. as may be necessary to provide for the trend of the "business"; and
    - b. for variations in the "business" or other circumstances which would have affected the "business income" had the "damage" not occurred, so that the adjusted figures will represent, as nearly as reasonably practicable, the results which, but for the "damage", would have been obtained during the comparable period after the "damage".
  7. "indemnity period" means the period beginning with the occurrence of the "damage" and ending not later than the number of months shown on the "Policy Declarations", during which the results of the "business" will be affected in consequence of the "damage".
  8. "ordinary payroll expenses" means the entire payroll expense for all employees of the Insured, other than:
    - a. officers, executives, department managers;
    - b. employees under contract; and
    - c. other important employees whose services would not be dispensed with in the event of "damage".
  9. "revenue" means the money paid or payable to the Insured for:
    - a. goods sold and delivered and for services rendered in course of the "business" after allowing for returns and discounts; and
    - b. gross rental income for real estate leased or rented to others.
  10. "revenue shortfall" means the amount by which the "revenue" during the "indemnity period" falls short of "expected revenue".
  11. "utility property" means communication equipment, satellite receivers, generating plants, transformer stations, switching stations, sub-stations, transformers, pumping stations, sewerage or other apparatus that supply "utility services" to the "premises".
  12. "utility services" means communications, electricity, gas, refrigeration, steam, water or outgoing sewerage service delivered to the "premises" through the use of "utility property".
  13. "variable operating expenses" means:
    - a. all purchases (less discounts received);
    - b. packing materials;
    - c. delivery and freight (other than by own vehicles); and
    - d. any item shown on the "Policy Declarations" as Additional Variable Operating Expenses.

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