

**Swiss Re**



# Swiss Re Engineering Project Insurance Policy

Project Insurance Policy 2007

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**Principal Operative Clauses**

On basis of the underwriting information submitted by the Insured, the Insurers hereby severally agree, each for their proportion set out herein, to indemnify the Insured in the manner and to the extent hereinafter stated against loss, damage or liability occurring during the Period of Insurance or any subsequent Period as may be mutually agreed between the Insured and the Insurers, provided that:

- (a) the amount payable by the Insurers shall not exceed the Sums Insured and Limits of Liability set down in the Schedule and any Endorsement; and
- (b) the amount payable by each of the Insurers individually shall be limited to the proportion set against its name below; and
- (c) the Insured shall bear, for their own account, the amounts set forth in the Schedule or any Endorsement as the Deductibles.

In witness whereof, the undersigned, acting on behalf of and under the authority of each of the Insurers respectively, have subscribed their names.

**The Insurers**

Name and Address of Insurer	Reference Number	Percentage Share of Policy	Date	Signature
.....	.....	..... %	.....	.....
.....	.....	..... %	.....	.....
.....	.....	..... %	.....	.....
.....	.....	..... %	.....	.....
.....	.....	..... %	.....	.....
		100.00 %		



**Premium Payment Warranty**

The Insured warrant that the Premium stated below and any Premium as may be agreed by Endorsement will be paid and received by Insurers on or before midnight of the respective Due Date. If this warranty is not complied with, this Policy shall be terminated at such Due Date.

<b>Premium Payment</b>	<b>Due Date</b>	<b>Amount</b>
		Currency: .....
100% or first instalment (as applicable)	Inception Date	.....
..... instalment	.....	.....
..... instalment	.....	.....
..... instalment	.....	.....
..... instalment	.....	.....
Total Premium Sections 1, 2 and 3 (as applicable)		.....

## **Schedule**

### **A. Insured**

#### **For Sections 1, 2 and 3**

Principal: .....

#### **For Sections 1 and 2**

Contractors: .....

Others: .....

#### **For Section 3**

Lenders: .....

### **B. Project**

Contract: .....

Description of the Project: .....

Project Site: .....

Business of the Principal: .....

**C. Territorial Limits**

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**D. Period of Insurance**

Construction Period from ..... being the Inception Date, to  
..... being the Termination Date,  
inclusive of Cold Testing (if any), and  
inclusive of Hot Testing and Commissioning Period (if any) not exceeding .....weeks,  
followed by ..... months Maintenance Period (if any).

The Construction Period is inclusive of both Inception and Termination Dates.

The scheduled Date of Handover of the Insured Property to the Principal and the Anticipated Date of Commencement of the Business shall occur on the Termination Date of the Construction Period.

**E. Sums Insured Section 1, Material Damage**

Currency: \_\_\_\_\_

**Insured Property**

(a) Total Contract Value \_\_\_\_\_

(b) Materials, services and labour supplied by the Principal \_\_\_\_\_

(a) + (b) Total Sum Insured at Inception Date \_\_\_\_\_

Automatic Escalation, in accordance with Condition 1.3.9: ..... %

**Additional covers**

Removal of Debris, in accordance with Condition 1.3.3:  
Sum Insured in respect of each and every Loss \_\_\_\_\_

Professional Fees, in accordance with Condition 1.3.4:  
Sum Insured in respect of each and every Loss \_\_\_\_\_

Inland Transits, in accordance with Condition 1.3.5:  
Sum Insured in respect of each and every Loss \_\_\_\_\_

Off-site Storage, in accordance with Condition 1.3.6:  
Sum Insured in respect of each and every Loss \_\_\_\_\_

Expediting Expenses, in accordance with Condition 1.3.11: ..... %



**F. Limits of Liability Section 2, Third Party Liability**

Currency: \_\_\_\_\_

Limit of Liability payable to any one claimant or any number of claimants consequent upon or attributable to one source or original cause

.....

Limit of Liability in the aggregate during the Period of Insurance

.....

**G. Sums Insured Section 3, Delay in Start-up**

Currency: \_\_\_\_\_

(a) Debt Servicing Costs, i.e. the interest, scheduled principal payments, fees and the like in respect of advances made or monies borrowed by the Principal: Annual Sum Insured

.....

(b) Fixed Costs, i.e. the fixed operation and management costs and fees and costs for essential services: Annual Sum Insured

.....

(c) Net Profit: Annual Sum Insured

.....

(a) + (b) + (c) Total Annual Sum Insured

.....

Maximum Period of Indemnity: ..... months

Sum Insured for the Maximum Period of Indemnity

.....

**H. Deductibles**

Currency: \_\_\_\_\_

**Section 1, Material Damage**

In respect of each and every Loss:

- from storm, tempest, hurricane, cyclone, flood, water damage, subsidence, landslip, avalanche  
.....
- from earthquake, volcanic activity and tsunami  
.....
- from all other perils other than during Hot Testing and Commissioning and during Maintenance Period  
.....
- from all other perils during Hot Testing and Commissioning  
.....
- during Maintenance Period  
.....

In the event that more than one Deductible applies the single largest shall apply.

**Section 2, Third Party Liability**

In respect of bodily injury or illness or death consequent upon or attributable to one source or original cause  
.....

In respect of loss of or damage to physical property consequent upon or attributable to one source or original cause  
.....

**Section 3, Delay in Start-up**

Time Deductible in the aggregate \_\_\_\_\_ days



**K. Premium and Taxes**

Currency: \_\_\_\_\_

Section 1, Material Damage \_\_\_\_\_

Section 2, Third Party Liability \_\_\_\_\_

Section 3, Delay in Start-up \_\_\_\_\_

Sections 1, 2 and 3 \_\_\_\_\_

Taxes ..... % \_\_\_\_\_

Total Premium including Taxes \_\_\_\_\_

The Total Premium is adjustable in accordance with the terms of Special Condition 5.3. Further Premium may be due by Endorsement.

**L. Applicable Law**

Applicable Law in accordance with General Condition 6.11:

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**M. Claims Notification**

In accordance with General Condition 6.6, all potential claims under this Policy should be notified to: \_\_\_\_\_

Telephone no.: \_\_\_\_\_

Fax no.: \_\_\_\_\_

E-mail: \_\_\_\_\_

## **1 Section 1, Material Damage**

### **1.1 Insuring Clause**

Insurers hereby agree subject to the terms and conditions contained herein or attached hereto or endorsed hereon that Insurers shall indemnify the Insured for accidental physical loss or accidental material damage to the Insured Property, hereafter termed Loss, which occurs during the Period of Insurance specified in the Schedule or any subsequent Period as may be agreed by Endorsement.

### **1.2 Exclusions to Section 1**

Insurers shall not be liable for:

- (a) all costs rendered necessary by defects of material, workmanship, design, plan or specification, being understood and agreed that:
  - (i) should Loss occur to any portion of the Insured Property containing any of the said defects, the cost of replacement or rectification which is hereby excluded is that cost which would have been incurred if replacement or rectification of the Insured Property had been put in hand immediately prior to the said Loss; and
  - (ii) for the purpose of this Policy and not merely this Exclusion, any portion of the Insured Property shall not be regarded as lost or damaged solely by virtue of the existence of any defect of material, workmanship, design, plan or specification;
- (b) any costs of replacing, repairing or rectifying any portion of the Insured Property rendered necessary by wear and tear, corrosion, oxidation or deterioration, but this exclusion shall not apply to insured Loss of other portions of the Insured Property which is a result of such wear and tear, corrosion, oxidation or deterioration;
- (c) penalties or guarantees of performance and/or efficiency;
- (d) consequential financial losses of any kind, loss of use;



- (e) any loss of accounts, bills, cash, currency, stamps, banknotes, evidences of debt, deeds or securities;
- (f) loss of any Insured Property arising from disappearance or shortage, discovered only at the time of taking an inventory, unless such inventory is taken to confirm an otherwise indemnifiable Loss hereunder;
- (g) loss of or damage to any constructional plant and equipment used for the execution of the Project, including machinery, tools, temporary buildings and their contents;
- (h) loss of or damage to any mechanically driven vehicle, licensed for use on a public road;
- (i) loss of or damage to any marine vessel or craft or aircraft;
- (j) normal making good, normal upkeep;
- (k) any loss of or damage to consumables, chemicals and feedstock;
- (l) any loss of or damage to linings, including but not limited to refractory linings, due to or arising from the direct application of heat;
- (m) loss of or damage to any used or second hand machinery;
- (n) loss of or damage to any offshore work;
- (o) any loss resulting from directional drilling operations or other trenchless pipe installation;
- (p) any loss of or damage to material and equipment while in storage, due to or arising directly or indirectly from water (other than flood or inundation), unless material and equipment are stored in a waterproof building, or are protected by a secure waterproof covering.

## **1.3 Conditions to Section 1**

### **1.3.1 Basis of Indemnity**

In the event of insured Loss, the basis of indemnity shall be as follows:

- a) in respect of Loss which can be repaired, the cost of repairs necessary to restore the Insured Property to its condition immediately before the occurrence of the Loss, less the value of any salvage;
- b) in respect of total loss or destruction, the cost of reconstruction or replacement of the Insured Property by property substantially the same as, but not better or more extensive than that which was lost or destroyed, less the value of any salvage.

If the anticipated cost of repairs equals or exceeds the cost of reconstruction or replacement, the indemnity shall be as described in (b) above. The cost of any temporary repairs will be borne by Insurers, provided such repairs do not increase the total repair costs which would otherwise have been incurred.

Subject to General Condition 6.6, all repairs, reconstruction or replacement shall take place with reasonable dispatch, and the costs recoverable shall be those actually incurred, which shall be confirmed by the production of settled invoices, accounts or other documents as may be required by the Insurers, together with justifiable contributions towards overheads and net profit, both of which must be directly relevant in the circumstances and agreed by the Insurers.

The cost of any alterations, additions or improvements shall not be recoverable under this Policy.

### **1.3.2 Maintenance Period**

This Policy does not cover loss of or damage to Insured Property, occurring or arising during the Maintenance Period, except when insured Loss is:

- (a) arising from a cause occurring on the Project Site during the Construction Period; or
- (b) caused by an insured Contractor in the course of any operations carried out by him for the purpose of complying with his obligations under the defects liability clauses of the Contract.



However, the cover provided by this Policy shall not include loss or damage caused by or arising out of actions or omissions of an insured Contractor in connection with training, supervision, instruction or normal upkeep and plant management duties during the operation of the Business of the Principal.

**1.3.3 Removal of Debris**

This Section will indemnify the Insured, up to the Sum Insured specified in the Schedule, for the costs and expenses necessarily and reasonably incurred in the removal and disposal of the debris of Insured Property provided such debris are resulting from an insured Loss.

**1.3.4 Professional Fees**

This Section will indemnify the Insured, up to the Sum Insured specified in the Schedule, in respect of architects, surveyors, consulting engineers and other professional fees, necessarily and reasonably incurred in the repair, reconstruction or replacement consequent to insured Loss, provided that:

- (a) fees for preparing any claim under this Policy are excluded hereby; and
- (b) the amount payable under the terms of this Section shall not exceed the scale of fees in normal use by such professions.





**1.3.5 Inland Transits**

This Section will indemnify the Insured, up to the Sum Insured specified in the Schedule, in respect of insured Loss, while Insured Property is being transported on any vehicle (including loading and unloading) to the Project Site or to temporary off-site facilities, provided that:

- (a) said Insured Property is owned, or is in the custody, care or control of the Insured; and
- (b) the transits insurance hereunder shall only indemnify the Insured to the extent that the Loss is not recoverable under any other insurance; and
- (c) such transits take place within the Territorial Limits.

Such cover does not apply during marine or air transit but shall include transits by roll-on roll-off ferry when a bill of lading is not issued.

**1.3.6 Off-site Storage**

This Section will indemnify the Insured, up to the Sum Insured specified in the Schedule, in respect of insured Loss, while Insured Property is in temporary storage off the Project Site, except while at any manufacturers or suppliers premises prior to delivery to the Project Site, provided that:

- (a) said Insured Property is owned, or is in the custody, care or control of the Insured; and
- (b) the storage area is fenced and guarded; and
- (c) the off-site storage insurance hereunder shall only indemnify the Insured to the extent that such Loss is not recoverable under any other insurance; and
- (d) such off-site storage takes place within the Territorial Limits.

**1.3.7 50/50 Sharing**

In the event of loss or damage being discovered after the cover provided for any item of Insured Property under any marine or transit policy of insurance has terminated and if after proper investigation it is not possible to ascertain whether such loss or damage happened prior to termination of such policy, Insurers shall indemnify the Insured in respect of insured Loss, provided that:

- (a) immediately upon delivery to the Project Site Insured Property shall be externally inspected for any damage; and
- (b) the indemnity under this condition shall not exceed 50% of the properly adjusted claim, such payment to be without prejudice to any subsequent final claim apportionment which may be mutually agreed between the respective Insurers; and
- (c) the Deductible stated in the Schedule shall be applied in the same way as the indemnity provided.

**1.3.8 Plans and Documents**

In the event of insured Loss to plans, drawings, files, documents, manuscripts, or computer system records forming part of the Insured Property, this Section shall indemnify the Insured in respect of the cost of labour and computer time expended in reproducing such plans, drawings, files, documents, manuscripts, or computer system records, including any expenses incurred in producing the information contained thereon, provided that:

- (a) the Insured shall keep up to date backup records of such plans, drawings, documents, manuscripts or computer system records in a remote and secure location; and
- (b) the insurance hereunder shall not include any loss or damage suffered by the Insured due to the distortion or non availability of such information; and
- (c) the indemnity hereunder shall not exceed in respect of any one Loss and in the aggregate 1 percent of the Total Sum Insured specified in the Schedule.

**1.3.9 Escalation**

If during the Construction Period the actual value of the Insured Property shall exceed the Total Sum Insured as specified in the Schedule, the Total Sum Insured shall be increased automatically so that it is equal to such actual value, subject, however, to the increase not exceeding in any case the automatic escalation percentage indicated in the Schedule. Where it is apparent, or should be reasonably apparent, to the Insured that the automatic escalation percentage will be exceeded, the Insured must advise Insurers immediately so that Insurers can concur with such revisions at terms and conditions to be agreed, subject to General Condition 6.3.

**1.3.10 72 Hours Clause**

Any Loss arising during any one period of 72 hours caused by storm, tempest, flood, water or cyclone shall be deemed to be one Loss.

The Insured shall select the time from which any such period shall commence but no two selected periods shall overlap.

**1.3.11 Expediting Expenses**

This Section will indemnify the Insured, in respect of the difference in costs between those calculated at normal or standard rates of reimbursement, and those actually incurred including costs for overtime, work on public holidays and weekends, shift working and express freight provided that such costs:

- (a) are necessarily and reasonably incurred by the Insured for the purpose of preventing or minimising any delay in completion of the Project solely due to insured Loss; and
- (b) shall not include any costs for air freight; and
- (c) shall not exceed the percentage, as specified in the Schedule, of the costs which would have been indemnified had this Condition not applied.



**1.3.12 Insured Property Taken Over or Taken Into Use**

In the event of any part of the Insured Property being taken over by the Principal or taken into use, the Construction Period, in respect of such part of Insured Property, will be deemed to have come to an end and the Maintenance Period (if applicable) to have commenced on the date of such taking over or taking into use.

This condition shall not apply to any part of Insured Property whilst being used by any Contractor as a facility for the execution of any other part of the Project, always provided that it is not operated or used for commercial purposes.

**1.3.13 Breach of Professional Duty**

In the event of a claim being brought by any Insured in respect of Loss resulting from any breach of professional duty by professional consultants, the Insurers will indemnify the Insured, in accordance with Condition 1.1. However, the Insurers retain all rights of subrogation against the professional consultants in respect of such Loss.

**1.3.14 Error in Design and Manufacture**

In the event of a claim being brought by any Insured in respect of Loss resulting from neglect, error or omission in the design or manufacture of component products by any supplier, the Insurers will indemnify the Insured in accordance with Condition 1.1. However, the Insurers retain all rights of subrogation against the supplier in respect of such Loss.

For the purpose of this exclusion, the term component products shall mean items manufactured or assembled at a factory location away from the Project Site.

## **2 Section 2, Third Party Liability**

### **2.1 Insuring Clause**

Insurers hereby agree, subject to the terms and conditions contained herein or attached hereto or endorsed hereon, that Insurers shall indemnify the Insured against all sums which the Insured shall become legally liable to pay for damages, hereafter termed Liability, in respect of:

- (a) accidental bodily injury or illness or death of a third party; or
- (b) accidental loss or damage to property belonging to third parties,

arising out of the execution of the Project and occurring at the Project Site during the Period of Insurance specified in the Schedule or any subsequent Period as may be agreed by Endorsement.

Insurers will also pay, in respect of any claim which may be the subject of indemnity under this Section:

- (i) all legal costs and expenses recovered by any claimant from the Insured but only where the handling of the claim has been agreed in written form by the Insurers; and
- (ii) all legal costs and expenses incurred by the Insured with the written consent of Insurers.

Insurers may, at any time, pay to the Insured the applicable Limit of Liability (after deduction of any sum already paid) or any lesser amount for which any claim or claims can be settled. Upon such payment, Insurers shall relinquish the conduct and control of and be under no further liability under this Section in connection with such claim or claims except for legal costs and expenses recoverable from the Insured by any claimant or costs and expenses incurred with the written consent of Insurers in respect of matters prior to the date of such payment.

The total liability of Insurers under this Section, inclusive of legal costs and expenses, shall not exceed the Limits of Liability stated in the Schedule.



## **2.2 Exclusions to Section 2**

Insurers will not indemnify the Insured in respect of:

- (a) any liability resulting from bodily injury, illness or death of an individual arising from or in the course of their employment by the Insured under a contract of labour, service or apprenticeship;
- (b) any liability insurable under Employer's Liability insurance or liability for accidents insurable under Workmen Compensation insurance;
- (c) any liability compulsorily insurable under any legislation governing the use of motor vehicles;
- (d) any liability resulting from, attributable to or caused by the ownership or possession of or use by or on behalf of the Insured of:
  - (i) any mechanically driven vehicle except when such vehicle is on the Project Site and is not insured under a specific motor vehicle or any other insurance policy; or
  - (ii) any water-borne vessel or craft or any aircraft;
- (e) any liability caused by or arising from pollution or contamination of buildings, other property, water, land or the atmosphere, unless the pollution or contamination is caused by a sudden identifiable unintended and unexpected accident which takes place in its entirety at a specific moment during the Period of Insurance;
- (f) any liability for the cost of repairing, replacing or making good any loss of or damage to:
  - (i) the Insured Property;
  - (ii) mobile and stationary constructional plant, machinery, equipment, tools, temporary buildings and their contents;
  - (iii) any property belonging to or in the care, custody or control of any of the insured parties;



- (g) liability for any consequential financial loss directly or indirectly sustained by any party, irrespective of whether or not insured hereunder, due to or arising from loss or damage to:
  - (i) the Insured Property;
  - (ii) mobile and stationary constructional plant, machinery, equipment, tools, temporary buildings and their contents;
- (h) any liability arising under penalty or liquidated damages clauses in any contract, or any punitive or exemplary damages;
- (i) any liability assumed under contract which imposes upon the Insured liability which would not otherwise have been incurred by the Insured;
- (j) any liability arising out of technical or professional advice given by the Insured or by any person acting on behalf of the Insured;
- (k) any liability (other than accidental bodily injury or death of any person) due to or arising from loss of or damage to property caused by subsidence, vibration or the weakening or removal of support;
- (l) any liability insurable under Product Liability insurance;
- (m) any actual or alleged liability whatsoever for any claim in respect of loss directly or indirectly arising out of, resulting from or in consequence of asbestos, in whatever form or quantity.

## **2.3 Conditions to Section 2**

### **2.3.1 Maintenance Period**

This Policy does not cover bodily injury, illness, death or loss or damage, occurring or arising during the Maintenance Period, except Liability caused by an insured Contractor in the course of any operations carried out by him for the purpose of complying with his obligations under the defects liability clauses of the Contract.

However, the cover provided by this Condition shall not include any liability arising out of actions or omissions of an insured Contractor in connection with training, supervision, instruction or normal upkeep and plant management duties during the operation of the Business of the Principal.

### **3 Section 3, Delay in Start-up**

#### **3.1 Insuring Clause**

Insurers hereby agree, subject to the terms and conditions contained herein or attached hereto or endorsed hereon that Insurers shall indemnify the Insured for the actual loss sustained as a result of delay beyond the Anticipated Date of Commencement of the Business, hereafter termed Delay in Start-up, provided that the Delay in Start-up is solely caused by one or more interference(s) with the progress of the Project caused by Loss occurring during the Construction Period and insured under Section 1, Material Damage.

#### **3.2 Exclusions to Section 3**

Insurers shall not be liable for:

- (a) any delay caused by or resulting from:
  - (i) loss of or damage to mobile and stationary constructional plant, machinery, equipment, tools, temporary buildings and their contents;
  - (ii) damage to Existing Property;
  - (iii) loss of or damage to property held in the care, custody or control of the Insured;
  - (iv) loss of operating media or feedstock;
  - (v) shortage, destruction, deterioration of or damage to any materials necessary for the Business of the Principal;
  - (vi) any condition or restriction imposed by a public authority;
  - (vii) loss of or damage to Insured Property or any part thereof taken over by the Principal;
  - (viii) non-availability of funds;
  - (ix) alterations, additions, improvements, rectification of defects or faults or elimination of any deficiencies;





- (b) loss of business due to suspension, lapse or cancellation of lease, licence or order, unless
  - (i) it occurs before the date of actual commencement of the Business of the Principal; and
  - (ii) it is the direct consequence of the Delay in Start-up;
- (c) penalties or damages of whatever nature for breach of contract or for late or non-completion of orders;
- (d) from Third Party Liability claims.

### **3.3 Conditions to Section 3**

#### **3.3.1 Basis of Indemnity**

The amount payable as indemnity under Section 3 shall be:

- (a) the amount obtained by multiplying the percentage by which the actual turnover during the Period of Indemnity falls short of the turnover which would have been achieved had the Delay in Start-up not occurred, by the amount of the Debt Servicing Costs and/or the Fixed Costs that would have been payable and/or the Net Profit that would have been earned out of the revenue had the Delay in Start-up not occurred; and/or
- (b) the Increased Cost of Working being defined as any additional expenditures necessarily and reasonably incurred with the prior consent of Insurers, by the Insured or any other party on his behalf, for the sole purpose of avoiding or diminishing the amount which Insurers would have been liable to pay under (a) above, but not exceeding the sum by which the amount otherwise payable is reduced;
- (c) less any amount contractually or legally recoverable by the Insured under the form of liquidated damages or penalties or any other sum saved during the Period of Indemnity in consequence of the Delay in Start-up.

The amount payable shall be deemed, as the lowest amount corresponding to (a) or (b) or a combination thereof, after application of (c) and shall not exceed the Annual Sum Insured specified in the Schedule calculated pro rata temporis for the Period of Indemnity.

### **3.3.2 Period of Indemnity**

The Period of Indemnity begins with the date upon which, had the Delay in Start-up not occurred, the Business of the Principal would have commenced, but not prior to the Anticipated Commencement Date of the Business, and ends with the actual date the Business commences.

The Period of Indemnity shall not exceed the length of time it takes with the exercise of due diligence and dispatch to repair, reconstruct or replace such part of the Insured Property which has been lost or damaged or the Maximum Period of Indemnity stated in the Schedule, whichever shall be shorter.

The Business of the Principal shall be deemed to have commenced on the date of the Certificate of Practical Completion, or upon handover to the Principal, or the taking over by the Principal of the Project or of any part thereof which shall be capable (at that date) of earning revenues, whichever shall occur first.

### **3.3.3 Time Deductible**

The monetary amount corresponding to the Time Deductible shall be calculated by multiplying the average daily value of loss sustained during the Period of Indemnity by the number of days agreed upon as the Time Deductible and shall be deducted from the amount payable.

### **3.3.4 Progress Reports**

The Insured shall submit Progress Reports to the Insurers at the intervals stated in the Schedule. Each such report shall be submitted within 14 days of the end of the period which it relates to. Reasons for any delay that has occurred since the last report shall be advised, together with the latest revised construction programme.

### **3.3.5 Changes of the Principal's Interest**

This Section shall be voided if the Business of the Principal be wound up or carried on by a liquidator or receiver or be permanently discontinued or the Principal's interest ceases.

## **4 General Exclusions**

### **4.1 War and Allied Perils**

This Policy does not cover any loss, damage or liability occasioned by or through or in consequence, directly or indirectly, of any of the following events, namely:

- (a) war, invasion, act of foreign enemy, hostilities or warlike operations (whether war is declared or not), civil war;
- (b) mutiny, military rising, insurrection, rebellion, revolution, military or usurped power, martial law or state of siege, nationalisation, confiscation, requisition, seizure or loss of or damage to property by order of the government or by any public authority;
- (c) strike, riot, civil commotion and popular rising.

In any action, suit or other proceedings where Insurers allege that, by reasons of the provisions of this Exclusion, any loss, damage or liability are not covered by this Policy, the burden of proving that such loss, damage or liability are covered shall be upon the Insured.

### **4.2 Extended Nuclear Risks**

This Policy does not cover any loss, damage or liability occasioned by or through or in consequence, directly or indirectly, of any of the following events, namely:

- (a) ionising radiations from or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel;
- (b) the radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear installation, reactor or other nuclear assembly or nuclear component thereof;
- (c) any weapon or device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter;
- (d) the radioactive, toxic, explosive or other hazardous or contaminating properties of any radioactive matter, but the exclusion in this subclause does not extend to radioactive isotopes, other than nuclear fuel, when such isotopes are being prepared, carried, stored, or used for commercial, agricultural, medical,



scientific or other similar peaceful purposes;

- (e) any nuclear reaction, nuclear radiation or radioactive contamination regardless of any other cause contributing concurrently or in any other sequence to any loss, damage or liability;
- (f) any chemical, biological, bio-chemical or electromagnetic weapon.

### **4.3 Willful Acts and Gross Negligence**

This Policy does not cover any loss, damage or liability directly or indirectly caused by or arising from or aggravated by any wilful act or omission or gross negligence of the Insured or their management, including but not limited to the Project manager and the Project Site manager.

### **4.4 Terrorism**

This policy does not cover any loss, damage or liability of whatsoever nature directly or indirectly caused by, resulting from, happening through, arising out of or in connection with any act of terrorism, regardless of any other cause contributing concurrently or in any other sequence to the loss, damage or liability.

For the purpose of this exclusion, terrorism means an act or threat of violence or an act harmful to human life, tangible or intangible property or infrastructure with the intention or effect of influencing any government or of putting the public or any section of the public in fear.

In any action suit or other proceedings where the Insurers allege that by reason of this definition a loss, damage or liability is not covered by this Policy, the burden of proving that such loss, damage or liability is covered shall be upon the Insured.

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

## **5 Special Conditions**

### **5.1 Full Insurance**

If it is found, in the event of Loss or Delay in Start-up, that any actual Sum Insured is less than the Sum Insured which would correspond to the definition provided in the Schedule, in any Condition and/or Endorsement, then the amount recoverable by the Insured shall be reduced in such proportion as the actual Sum Insured bears to the respective Sum Insured which would correspond to the definition. Each item specified in the Schedule or any Endorsement is separately subject to this condition.

### **5.2 Suspension or Cessation of Work**

In the event of any partial or total unscheduled suspension or cessation of work, the Insured shall give immediate notice in writing to Insurers if such a suspension or cessation is anticipated to exceed 30 calendar days. Any such suspension or cessation shall be considered as a Material Change as per General Condition

### **5.3 Premium Adjustment**

The Premium charged for Section 1, Material Damage and Section 2, Third Party Liability is the Premium based upon the Total Sum Insured at Inception Date as stated in the Schedule under Insured Property.

If at any time during the Construction Period, the value of Insured Property, which would correspond to the definition provided in the Schedule, is higher than the Total Sum Insured stated in the Schedule, increased by the provisions of Condition 1.3.9, the Insured shall declare the amount of such value to Insurers and shall supply any other information that Insurers may reasonably require so that, subject to Condition 6.3, the Premium hereon shall be appropriately adjusted.

At the termination of the Construction Period, the Insured shall declare the amount of the final Total Contract Value to Insurers, plus (if applicable) the final value of the materials, services and labour supplied by the Principal, such value being the Final Total Value of Insured Property, and shall supply any other information that Insurers may reasonably require. Should the Final Total Value be higher than the Total Sum Insured at Inception Date, the Premium due for Sections 1 and 2 shall be increased proportionally and the Insured shall pay the difference between such Premium and the Premium already paid.



## **6 General Conditions**

### **6.1 Unity of Policy**

The Schedule, Sections, Special Conditions, General Exclusions, General Conditions, Endorsements and any other terms herein are deemed to be integral parts of this Policy, and any word or expression to which a specific meaning has been attached in any part shall bear such meaning wherever it may appear.

### **6.2 Due Observance of Policy Terms**

The due observance and fulfilment of the terms of this Policy insofar as they relate to anything to be done or complied with by the Insured shall be a condition precedent to any liability of Insurers.

### **6.3 Material Change**

If at any time any change shall occur materially varying any of the facts relating to the Project, the Contract, this Policy or the degree of risk assumed hereunder, the Insured shall immediately give notice in writing of such Material Change in risk to the Insurers, supplying, as soon as possible thereafter, any further particulars as the Insurers may reasonably require.

In the event of a Material Change in risk, the continuance of this insurance shall be at terms and conditions to be agreed, in writing, between the Insured and the Insurers, but should the parties be unable to agree to the new terms and conditions within 30 days of the Insurers initially advising the Insured of their requirements, any indemnifiable Loss, Liability or Delay in Start-up shall be covered only to the extent it would have been covered had the Material Change not occurred.



## **6.4 Reasonable Precautions**

The Insured shall take and cause to be taken at his own expense for the full Period of Insurance all reasonable precautions for the safety of persons and property and the prevention of loss or damage, delay, bodily injury, illness and death, which might give rise to a claim under this Policy. The Insured shall, in particular, take care in the selection of labour, comply with best industry practice, statutory requirements and manufacturers' recommendations and take action to maintain all plant and equipment in good working condition.

## **6.5 Access and Inspection**

Representatives of Insurers shall, at any reasonable time, have the right to inspect and examine all or any part of the Insured Property on the Project Site or in any off-site storage insured hereunder. In addition, the representatives shall be provided by the Insured with any other information or document pertaining to the Project, including independent engineering reports, as may be reasonably requested by Insurers.

## **6.6 Claims**

In the event of any loss or damage, delay, or third party claim, which might give rise to a claim under this Policy, the Insured shall:

- (a) immediately notify Insurers by telephone or email via the address specified in the Schedule, giving an indication as to the nature and extent of the loss or damage, delay or third party claim and confirm such advice in writing as soon as possible;
- (b) supply as soon as possible all such information and documentary evidence in relation to the claim as Insurers may require;
- (c) preserve anything that might prove necessary or useful by way of evidence in connection with any claim and make it available for inspection by a representative of Insurers;
- (d) send to Insurers, immediately after receipt, any writ, summons or other proceedings which may be commenced against the Insured;



- (e) inform the police authorities promptly in the event of loss or damage by theft, burglary or any malicious person;
- (f) take at his own expense such immediate action, do and concur in doing and permit to be done all things which may be reasonably practicable to minimise or to avoid or diminish any claim, and to prevent any repetition in that or any other part of the Insured Property;
- (g) give to Insurers every assistance to enable the Insurers to adjust, settle or resist any claim against the Insured, or institute any proceedings;
- (h) advise Insurers of any other insurance which may cover any loss or damage, delay or third party claim, or any part thereof, which has been notified under this Policy;

In the event of any delay giving rise or likely to give rise to a claim under Section 3, Delay in Start-up, the Insured shall:

- (i) comply with condition (c) above as far as may be reasonably practicable without causing any increase in the period of interruption or interference;
- (ii) allow Insurers and every person authorised by Insurers to contact directly any Insured under Section 1, Material Damage in order to establish the cause and probable extent of the interruption or interference and its effect and, if necessary, to make any reasonable recommendations for the avoidance or minimisation of the Delay in Start-up.

The Insured shall not be entitled to abandon any property to the Insurers.

In respect of claims under Sections 1, Material Damage and Section 3, Delay in Start-up, Insurers shall not be liable for any loss or damage for which no notice has been received by Insurers within 14 days of the occurrence of Loss.





In respect of claims under Section 2, Third Party Liability, Insurers will not indemnify the Insured for liability for which no notice has been received by Insurers within 6 months of the expiry of the Insurance Period.

If a claim is made and rejected, which means that the liability under this Policy is declined in writing by the Insurers, and no reference to mediation is commenced by the Insured within three months after such rejection, then, for all purposes, the claim shall be regarded as having been abandoned and shall not be recoverable under this Policy.

## **6.7 Subrogation**

The Insured shall, at the expense of Insurers, do and concur in doing and permit to be done, all such acts and things as may be necessary or reasonably required by the Insurers for the purpose of enforcing any rights and remedies or of obtaining relief or indemnity from other parties to which Insurers shall be or would become entitled or subrogated, upon their paying for or making good any Loss, Delay in Start-up or Liability, whether such acts and things shall be or become necessary or required before or after the Insured's indemnification by Insurers.

## **6.8 Mediation**

If any dispute or difference of whatsoever nature arises out of or in connection with this Policy, including any question regarding its existence, validity or termination, hereafter termed as Dispute, the parties undertake that, prior to a reference to arbitration in accordance with Condition 6.9, they will seek to have the Dispute resolved amicably by mediation.

All rights of the parties in respect of the Dispute are and shall remain fully reserved and the entire mediation including all documents produced or to which reference is made, discussions and oral presentations shall be strictly confidential to the parties and shall be conducted on the same basis as without prejudice negotiations, privileged, inadmissible, not subject to disclosure in any other proceedings whatsoever and shall not constitute any waiver of privilege whether between the parties or between either of them and a third party.

The mediation may be terminated should any party so wish by written notice to the appointed mediator and to the other party to that effect. Notice to terminate may be served at any time after the first meeting or discussion has taken place in the mediation.

If the Dispute has not been resolved to the satisfaction of either party within 90 days of service of the notice initiating mediation, or if either party fails or refuses to participate in the mediation, or if either party serves written notice terminating the mediation under this clause, then either party may refer the Dispute to arbitration in accordance with Condition 6.9.

Unless the parties otherwise agree, the fees and expenses of the mediator and all other costs of the mediation shall be borne equally by the parties and each party shall bear their own respective costs incurred in the mediation regardless of the outcome of the mediation.

## **6.9 Arbitration**

Subject to Condition 6.8, any Dispute shall be referred to an arbitrator appointed by the parties.

In the absence of any such statutory provisions, and unless the parties agree upon a single arbitrator within thirty days of one receiving a written request from the other for arbitration, the claimant shall appoint his arbitrator and give written notice thereof to the respondent. Within thirty days of receiving such notice, the respondent shall appoint his arbitrator and give written notice thereof to the claimant, failing which, the claimant may apply to the appointer, hereinafter named, to nominate an arbitrator on behalf of the respondent.

Before entering upon the reference, the two arbitrators shall appoint a third arbitrator, but should they fail to do so within thirty days of the appointment of the respondent's arbitrator, then either of them, or either of the parties, may apply to the appointer for the appointment of the third arbitrator. The appointer shall be the Chairman, for the time being, of AIDA Reinsurance and Insurance Arbitration Society of the UK (ARIAS), c/o The International Underwriting Association, 3 Minster Court, London EC3R 7DD. The three arbitrators shall decide by a majority, but if no majority can be reached, the verdict of the third arbitrator shall prevail. The third arbitrator shall also act as the chairman.



Unless the parties agree otherwise, the arbitration tribunal shall consist of persons with no less than ten years experience in international insurance business, having been engaged in such business or in advising on such business in a professional capacity.

The arbitrator(s) shall have power to set all procedural rules for the holding of the arbitration, and all costs of the arbitration shall be paid by the parties and in the manner as directed by the arbitrator(s). The award of the arbitrator(s) shall be given in writing, with reasons, and both parties hereby agree to be bound by the award given in accordance with the above provisions.

The seat of the arbitration shall be in the capital city of the country or state of the Law specified in the Schedule.

This condition remains valid, should the Policy become void.

## **6.10 Contribution**

This Policy is not to be called upon in contribution and is only to pay any Loss, Delay in Start-up or Liability if and so far as not recoverable under any other insurance policy.

## **6.11 Applicable Law**

The construction validity and performance of this Policy shall be in all respects governed exclusively by and interpreted in accordance with the Law specified in the Schedule.

## **6.12 Multiple Insured Cover**

- (a) It is noticed and agreed that if the Insured described in the Schedule comprises more than one insured party each operating as a separate and distinct entity, then (save as provided in this Multiple Insured Clause) cover hereunder shall apply in the same manner and to the same extent as if individual policies had been issued to each such insured party provided that the total liability of the Insurers to all of the insured parties collectively shall not exceed the Sums Insured and Limits of Indemnity including any inner limits set by Condition or



Endorsement stated in the Policy.

- (b) It is understood and agreed that any payment or payments by Insurers to any one or more such insured parties shall reduce, to the extent of that payment, Insurers' liability to all such parties arising from any one event, giving rise to a claim under this Policy and (if applicable) in the aggregate.
- (c) It is further understood that the insured parties will at all times preserve the various contractual rights and agreements entered into by the insured parties and the contractual remedies of such parties in the event of Loss, Liability or Delay in Start-up.
- (d) It is further understood and agreed that Insurers shall be entitled to avoid liability to or (as may be appropriate) claim damages from any of the insured parties in circumstances of fraud, material misrepresentation, material non-disclosure or breach of any warranty or condition of this Policy by such insured party each referred to in this clause as a Vitiating Act. In circumstances of fraud, material mis-representation, material non-disclosure or breach of any warranty of this Policy, it shall be void ab initio but only for the insured party who has committed the aforementioned act.
- (e) It is however agreed that (save as provided in this Multiple Insured clause), a Vitiating Act committed by one insured party shall not prejudice the right to indemnity of any other insured party who has an insurable interest and who has not committed a Vitiating Act.
- (f) Insurers hereby agree to waive all rights of subrogation, which they may have or acquire, against any insured party, except where such rights are either expressly provided for in this Policy or by Endorsement or are acquired in consequence of or otherwise following a Vitiating Act, in which circumstances Insurers may enforce such rights notwithstanding the continuing or former status of the vitiating party as an Insured.
- (g) In the event that the Lenders to the Project are included in the Schedule, they shall not be entitled to any indemnity under this Policy for or arising from Loss, Liability or Delay in Start-up in respect of which Insurers are, by reason of a Vitiating Act, no longer liable to indemnify any one or more other insured party.