

SWAN

Policy Document

Protect Contractors' All Risks and Public Liability Insurance

CONTRACTORS' ALL RISKS AND PUBLIC LIABILITY INSURANCE

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1. OPERATIVE CLAUSE

This Policy is governed by "Livre III Titre Douzième Chapitre 3ème of the Mauritius Civil Code" except to the extent the articles mentioned in Article 1983 – 12 are varied by terms and conditions herein.

Whereas the Insured named in the Schedule hereto has made to the **SWAN GENERAL LTD** (hereinafter called "the Company") a written proposal by completing a questionnaire which, together with any other statements made in writing by the Insured for the purpose of this Policy, is deemed to be incorporated herein and shall form the basis of the contract,

Now this Policy of Insurance witnesses that, subject to the Insured having paid or agreed to pay to the Company the premium mentioned in the Schedule and subject to the terms, exclusions, conditions and provisions contained herein or endorsed hereon the Company will indemnify the Insured in the manner and to the extent hereinafter provided.

PERIOD OF COVER

The liability of the Company shall commence, at the date specified in the Schedule.

The Company's liability expires for parts of the insured contract works taken over or put into service.

At the latest the insurance shall expire on the date specified in the Schedule. Any extensions of the period of insurance are subject to the prior consent of the Company.

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2. GENERAL EXCLUSIONS

The Company will not indemnify the Insured in respect of loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any of the following occurrences regardless of any other cause or event contributing concurrently or in any other sequence of the loss:

2.1 WAR RISKS

- (1) War, invasion, act of foreign enemy, hostilities or warlike operations (whether war be declared or not), civil war;
- (2) Riot, strike, lock-out;
- (3) Abandonment and/or permanent or temporary dispossession resulting from detention, confiscation, seizure, restraint, commandeering, nationalisation, appropriation, destruction or requisition by any lawfully constituted authority; or destruction of or damage to property by order of any government de jure or de facto by any public authority;
- (4) Mutiny, civil commotion assuming the proportions of or amounting to a popular or military uprising, insurrection, rebellion, revolution, military or usurped power, martial law or state of siege or any of the events or causes which determine the proclamation or maintenance of martial law or state of siege;

This Policy also excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to the above.

In any action, suit or other proceeding where the Company alleges that by reason of the provisions of Exclusion 2.1 above any loss, destruction, damage or liability is not covered by this insurance the burden of proving that such loss, destruction, damage or liability is covered shall be upon the Insured.

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2.2 TERRORISM

Terrorist Activity as defined herein

A. 'Terrorist Activity' shall mean any deliberate, unlawful act that:

- (1) is declared by any authorised governmental official to be or to involve terrorism, terrorist activity or acts of terrorism; or**
- (2) includes, involves, or is associated with the use or threatened use of force, violence or harm against any person, tangible or intangible property, the environment, or any natural resources, where the act or threatened act is intended, in whole or in part, to**
 - (a) promote or further any political, ideological, philosophical, racial, ethnic, social or religious cause or objective of the perpetrator or any organization, association or group affiliated with the perpetrator;**
 - (b) influence, disrupt or interfere with any government related operations, activities or policies;**
 - (c) intimidate, coerce or frighten the general public or any segment of the general public; or**
 - (d) disrupt or interfere with a national economy or any segment of a national economy; or**
- (3) includes, involves, or is associated with, in whole or in part, any of the following activities, or the threat thereof:**
 - (a) hijacking or sabotage of any form of transportation or conveyance, including but not limited to spacecraft, satellite, aircraft, train, vessel, or motor vehicle;**
 - (b) hostage taking or kidnapping;**
 - (c) the use of any biological or chemical agent, material, device or weapon including biological or chemical contamination as defined herein;**

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For the purpose of (c) "contamination" means the contamination, poisoning, or prevention and/or limitation of the use of objects due to the effects of chemical and/or biological substances.

- (d) the use of radioactive or nuclear agent, material, device or weapon;
 - (e) the use of any missile, bomb, incendiary device, grenade, explosive or firearm;
 - (f) the interference with or disruption of basic public or commercial services and systems, including but not limited to the following services or systems: electricity, natural gas, power, postal, communications, telecommunications, information, public transportation, water, fuel, sewer or waste disposal;
 - (g) the injuring or assassination of any elected or appointed government official or any government employee;
 - (h) the seizure, blockage, interference with, disruption of, or damage to any government buildings, institutions, functions, events, tangible or intangible property or other assets; or
 - (i) the seizure, blockage, interference with, disruption of, or damage to tunnels, roads, streets, highways or other places of public transportation or conveyance.
- B. Any of the activities listed in Section A (3) above shall be considered Terrorist Activity except where the Insured can conclusively demonstrate to the Company that the foregoing activities or threats thereof were motivated solely by personal objectives of the perpetrator that are unrelated, in whole or in part, to any intention to**
- (1) promote or further any political, ideological, philosophical, racial, ethnic, social or religious cause or objective of the perpetrator or any organization, association or group affiliated with the perpetrator;**

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- (2) influence, disrupt or interfere with any government related operations, activities or policies;
- (3) intimidate, coerce or frighten the general public or any segment of the general public; or
- (4) disrupt or interfere with a national economy or any segment of a national economy.

This Policy also excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to the above.

If the Company alleges that by reason of this exclusion, any loss, damage, cost or expense is not covered by this Policy the burden of proving the contrary shall be upon the Insured.

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

2.3 NUCLEAR ENERGY RISKS

This Policy excludes Nuclear Energy Risks as defined hereunder.

For all purposes of this Policy Nuclear Energy Risks shall mean all first party and/or third party insurances in respect of:-

- (i) **All property on the site of a nuclear power station.**
Nuclear Reactors, reactor buildings and plant and equipment therein on any site other than a nuclear power station.
- (ii) **All Property on any site (including but not limited to the sites referred to in (i) above) used or having been used for:-**
 - (a) **The generation of nuclear energy, or**
 - (b) **The Production, Use or Storage of Nuclear Material.**
- (iii) **Any other Property eligible for insurance by the relevant local Nuclear Insurance Pool and/or Association but only to the extent of the requirements of that local Pool and/or Association.**

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- (iv) **The supply of goods and services to any of the sites, described in (i) to (iii) above, unless such insurances shall exclude the perils of irradiation and contamination by Nuclear Material.**

Except as undernoted, Nuclear Energy Risks shall not include:

- (i) **Any insurance in respect of the construction or erection or installation or replacement or repair or maintenance or decommissioning of Property as described in (i) to (iii) above (including contractors' plant and equipment) and/or;**
- (ii) **Any Machinery Breakdown or other Engineering insurance not coming within the scope of (i) above.**

Provided always that such insurance shall exclude the perils or irradiation and contamination by Nuclear Material.

However, the above exemption shall not extend to:-

- (1) **The provision of any insurance whatsoever in respect of:-**
 - (a) **Nuclear Material;**
 - (b) **Any Property in the High Radioactivity Zone or Area of any Nuclear Installation as from the introduction of Nuclear Material or – for reactor installations - as from fuel loading or first criticality where so agreed with the relevant local Nuclear Insurance Pool and/ or Association.**

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(2) The provision of any insurance for the undernoted perils:-

- **Fire, lightning, explosion;**
- **Earthquake;**
- **Aircraft and other aerial devices or articles dropped therefrom;**
- **Irradiation and radioactive contamination;**
- **Any other peril insured by the relevant local Nuclear Insurance Pool and/or Association;**

in respect of any other Property not specified in (1) above which directly involves the Production, Use or Storage of Nuclear Material as from the introduction of Nuclear Material into such Property.

Definitions

"Nuclear Material" means:

- (i) Nuclear fuel, other than natural uranium and depleted uranium, capable of producing energy by a self-sustaining chain process of nuclear fission outside a Nuclear Reactor, either alone or in combination with some other material; and**
- (ii) Radioactive Products or Waste.**

"Radioactive Products or Waste" means any radioactive material produced in, or any material made radioactive by exposure to the radiation incidental to the production or utilisation of nuclear fuel, but does not include radioisotopes which have reached the final stage of fabrication so as to be usable for any scientific, medical, agricultural, commercial or industrial purpose.

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"Nuclear Installation" means:

- (i) Any Nuclear Reactor;**
- (ii) Any factory using nuclear fuel for the production of Nuclear Material, or any factory for the processing of Nuclear Material, including any factory for the reprocessing of irradiated nuclear fuel; and**
- (iii) Any facility where Nuclear Material is stored, other than storage incidental to the carriage of such material.**

"Nuclear Reactor" means any structure containing nuclear fuel in such an arrangement that a self-sustaining chain process of nuclear fission can occur therein without an additional source of neutrons.

"Production, Use or Storage of Nuclear Material" means the production, manufacture, enrichment, conditioning, processing, reprocessing, use, storage, handling and disposal of Nuclear Material.

"Property" shall mean all land, buildings, structures, plant, equipment, vehicles, contents (including but not limited to liquids and gases) and all materials of whatever description whether fixed or not.

"High Radioactivity Zone or Area" means:

- (i) In respect of nuclear power stations and Nuclear Reactors, the vessel or structure which immediately contains the core (including its supports and shrouding) and all the contents thereof, the fuel elements, the control rods and the irradiated fuel store; and**
- (ii) In respect of non-reactor Nuclear Installations, any area where the level of radioactivity requires the provision of a biological shield.**

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2.4 ADDITIONAL NUCLEAR ENERGY RISKS

Unless specifically agreed in respect of an insured loss involving Nuclear Material under determined circumstances, this Policy does not cover legal liability, loss (including consequential loss) or damage, cost or expense caused directly or indirectly by any of the following, regardless of any other cause or event contributing concurrently or in any other sequence to the loss :

Nuclear Material, Nuclear Fission or Fusion, Nuclear Radiation, Nuclear Waste from the use of Nuclear Fuels, Nuclear Explosives or any Nuclear Weapon.

For the sake of clarity, the above exclusion does not cover legal liability, loss (including consequential loss) or damage, cost or expense caused directly or indirectly by or contributed to by or arising from ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel.

Definitions :

"Nuclear material" as defined under NUCLEAR ENERGY RISKS at 2.3 above.

"Nuclear fission" means a nuclear reaction in which a heavy nucleus splits spontaneously or on impact with another particle with the release of energy.

"Nuclear fusion" means a nuclear reaction in which atomic nuclei of low atomic number fuse to form a heavier nucleus with the release of energy.

"Nuclear radiation" means the absorption of electro-magnetic radiation by a nucleus having a magnetic moment when in an external magnetic field.

"Nuclear waste" as defined under NUCLEAR ENERGY RISKS at 2.3 above.

"Nuclear fuels" means a substance that will sustain a fission chain reaction so that it can be used as a source of nuclear energy.

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"Nuclear explosives" means an explosive involving the release of energy by nuclear fission or fusion or both.

"Nuclear weapon" means a nuclear device designed, used or capable of being used for the inflicting of bodily harm or property damage.

2.5 COMPUTER LOSS GENERAL EXCLUSION AS DEFINED HEREUNDER

Notwithstanding any provision of this Policy including any special exclusion, exception or extension or other provision not included herein which would otherwise override a general exclusion, this Policy does not cover:

- (a) loss or destruction of or damage to any property whatsoever (including a computer) or any loss or expense whatsoever resulting or arising therefrom;**
- (b) any legal liability of whatsoever nature;**
- (c) any consequential loss;**

directly or indirectly caused by or contributed to by or consisting of or arising from the incapacity or failure of any computer, correctly or at all

- (i) to treat any date as the correct date or true calendar date, or correctly or appropriately to recognise, manipulate, interpret, process, store, receive or to respond to any data or information, or to carry out any command or instruction, in regard to or in connection with any such date, or**
- (ii) to capture, save, or to process any information or code as a result of the operation of any command which has been programmed into any computer, being a command which causes the loss of data or the inability to capture, save, retain or correctly to process such data in regard to or in connection with any such date, or**
- (iii) to capture, save, retain or to process any information or code due to programme errors, incorrect entry or the inadvertent cancellation or corruption of data and/or programmes, or**

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- (iv) to capture, save, retain or to process any data as a result of the action of any computer virus, or other corrupting, harmful or otherwise unauthorised code or instruction including any Trojan horse, time or logic bomb or worm or any other destructive or disruptive code, media or programme or interference.

A computer includes any computer, data processing equipment, microchip, integrated circuit or similar device in computer or non-computer equipment or any computer software, tools, operating system or any computer hardware or peripherals and the information or data electronically or otherwise stored in or on any of the above, whether the property of the insured or not.

Special Extension to the above General Exclusion

- A. Loss or destruction of or damage to the insured property by fire, explosion, lightning, earthquake or by the special perils referred to in B below shall not be excluded by this General Exclusion.
- B. The special perils that are not excluded for the purpose of this special extension are damage caused by:
1. storm, wind, water, hail or snow excluding damage to property
 - (a) arising from its undergoing any process necessarily involving the use or application of water;
 - (b) caused by tidal wave originating from earthquake or volcanic eruption;
 - (c) in the underground workings of any mine;
 - (d) in the open (other than buildings structures and plant designed to exist or operate in the open)*;
 - (e) in any structure not completely roofed*;
 - (f) being retaining walls*;
- * Unless so described and specifically insured as a separated item

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2. aircraft and other aerial devices or articles dropped therefrom;
3. impact by animals, trees, aerials, satellite dishes or vehicles excluding damage to such animals, trees, aerials, satellite dishes or vehicles or property in or on such vehicles.

These special perils do not cover wear and tear or gradual deterioration.

- C. The above General Exclusion also does not apply to consequential loss as insured by any Business Interruption indemnity provided by this Policy to the extent that such consequential loss results from damage to insured property by the perils referred to A above.
- D. This Special Extension will not insure any loss, destruction, damage or consequential loss if it would not have been insured in the absence of this Computer Losses General Exclusion and this Special Extension.
- E. This Special Extension shall not apply to any Public Liability indemnity.

2.6 POLITICAL RISKS

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

1. Any act, including but not limited to labour disturbance which is calculated or directed to bring about loss or damage in order to further any political aim, objective or cause, or to bring about any social or economic change, or in protest against any state or government, or any political or local authority, or for the purpose of imposing fear in the public or any section thereof.
2. The act of any lawfully established authority in controlling, preventing, suppressing or in any other way dealing with any occurrence referred to in Item 1.
3. Plundering, looting, war, pillage.

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Notwithstanding the foregoing, for the purposes of items 1 & 3, any loss or damage occasioned directly by a labour disturbance or in order to bring about any social or economic change which is not politically motivated as envisaged in clause 1 shall not be excluded.

If the Company alleges that, by reason of this exclusion, loss, damage, costs or expense is not covered by this Policy, the burden of proving the contrary shall rest on the Insured.

2.7 RADIOACTIVE RISKS

Unless specifically agreed for an insured loss involving nuclear material under determined circumstances, this Policy does not cover loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with nuclear energy or radioactivity or any kind including but not limited to any of the following regardless of any other cause or event contributing concurrently or in any other sequence to the loss:

1. ionising radiations from or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel.
2. the radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear installation, reactor or other nuclear assembly or nuclear component thereof.
3. any weapon of war employing atomic or nuclear fission and/ or fusion or other like reaction or radioactive force or matter.

2.8 ASBESTOS RISKS

This Policy shall not apply to, and does not cover, any actual or alleged liability whatsoever for any claim or claims in respect of loss or losses directly or indirectly caused by, arising out of, resulting from, in consequence of, in any way involving, or to the extent contributed to by, by the hazardous nature of asbestos in whatever form or quantity.

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2.9 POLLUTION/CONTAMINATION RISKS

1. This Policy shall not cover any loss or damage due to contamination, pollution, soot, deposition, impairment with dust, chemical precipitation, adulteration, poisoning, impurity, epidemic and disease or due to any limitation or prevention of the use of objects because of hazards to health.
2. This exclusion does not apply if such loss or damage arises as a direct consequence of
 - a) the perils
 - fire, lightning, explosion, impact of aircraft
 - vehicle impact, sonic boom
 - accidental escape of water from any tank apparatus or pipe
 - riot, civil commotion, malicious damage
 - storm, hail
 - flood, inundation
 - earthquake
 - landslide, subsidence
 - snow pressure, avalanche
 - volcanic eruption
 - Or
 - b) a physical damage of the type insured by the original policy which occurred on the insured premises.

If a peril not excluded from the original policy arises directly from pollution and/or contamination any loss or damage arising directly from that peril shall be covered.

However, it is understood and agreed that this exclusion shall not apply to any other Loss Events which are not listed in 2(a) and 2(b) and which are not otherwise specifically excluded under this Policy.

2.10 Wilful act or wilful negligence of the Insured or of his representatives;

2.11 Cessation of work whether total or partial.

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3. GENERAL CONDITIONS

3.1 OBSERVANCE OF POLICY TERMS

The due observance and fulfilment of the terms of this Policy in so far as they relate to anything to be done or complied with by the Insured and the truth of the statements and answers in the questionnaire and proposal made by the Insured shall be a condition precedent to any liability of the Company.

3.2 MISCELLANEOUS

The Schedule and the Section(s) shall be deemed to be incorporated in and form part of this Policy and the expression "this Policy" wherever used in this contract shall be read as including the Schedule and the Section(s). Any word or expression to which a specific meaning has been attached in any part of this Policy or of the Schedule or of the Section(s) shall bear such meaning wherever it may appear.

3.3 DUTY TO TAKE PRECAUTIONS

The Insured shall under pain of losing all rights to be compensated under this Policy, take at his own expense all reasonable precautions and comply with all reasonable recommendations of the Company to prevent loss, damage or liability and comply with statutory requirements and manufacturers' recommendations.

The Insured shall also immediately notify the Company, by registered letter, of any material change in the risk and cause at his own expense such additional precautions to be taken as circumstances may require, and the scope of cover and/or premium shall, if necessary, be adjusted accordingly.

3.4 INSURER'S RIGHTS

Representatives of the Company shall at any reasonable time have the right to inspect and examine the risk and the Insured shall provide the representatives of the Company with all details and information necessary for the assessment of the risk.

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3.5 DUTY OF FULL DISCLOSURE

In accordance with Article 1983 – 30 of the Mauritius Civil Code any withholding of facts “(Reticence)” or false declaration wilfully made by the Insured shall entail the nullity of the contract, when such withholding or false declaration alters the nature “(objet)” of the risk or makes it appear less hazardous to the Company, even though the fact omitted or distorted or misrepresented has been without influence on the loss; and in such a case the Company shall retain the premium paid and shall be entitled to claim as damages all premiums remaining due to be paid.

Where the omission or incorrect declaration was not made in bad faith, the Company shall be entitled:

- (A) If the establishment of such a fact is made before the loss:
 - (i) to maintain the contract subject to the Insured agreeing to pay an increased premium,
 - or
 - (ii) to cancel the Policy after giving 14 days notice to that effect to the Insured and refunding a proportionate part of the premium paid.
- (B) If the establishment of such a fact is made after the loss, to reduce the indemnity payable in the proportion that the rate of the premiums paid bears to the rate of the premiums that would have been payable had the risk been completely and exactly declared.

3.6 AGGRAVATION OF RISK

During the currency of the contract, the Insured must report to the Company, by registered letter, any modification likely to aggravate the risk insured and which, had the new state of affairs existed at the writing of the contract, the Company would not have contracted or would only have done so against a higher premium.

Such report must be made prior to the aggravation if it is caused by the Insured's own doing and in other cases, within eight days from the time it has come to the Insured's knowledge.

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In either case it shall be open to the Company:

- (a) to cancel the contract, or
- (b) to claim an increased premium in which case if the Insured does not accept the new rate of premium the contract shall be cancelled.

In the event of the aggravation of the risk being due to an act of the Insured, the Company will be entitled in addition to claim damages.

3.7 CLAIMS

In the event of any occurrence which might give rise to a claim under this Policy, the Insured shall

- (a) as soon as possible but not later than 5 days notify the Company of such occurrence by providing particulars relating to the nature and extent of the loss or damage;
- (b) where appropriate and particularly in the case of loss or damage by malicious persons, theft or by burglary or any attempt thereat, give immediate notice to the Police Authorities and to the Company, but not later than 24 hours of such occurrence and provide all reasonable assistance in discovering any guilty person and in tracing and recovering the property lost;
- (c) take all steps within his power to minimize the extent of the loss or damage;
- (d) preserve the parts affected and make them available for inspection by a representative or surveyor of the Company;
- (e) furnish all such information and documentary evidence as the Company may require;
- (f) deliver to the Company at his own expense within thirty (30) days (or within such time as the Company may in writing allow) a claim in writing with such detailed particulars and proofs as may be required;

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- (g) send to the Company immediately on receipt any writ, summons or other proceedings which may be commenced against the Insured;
- (h) give to the Company all information and assistance to enable the Company to settle or resist any claim or institute proceedings.

Upon notification being given to the Company under this condition, the Insured may carry out the repairs or replacement of any minor damage; in all other cases a representative of the Company shall have the opportunity of inspecting the loss or damage before any repairs or alterations are effected.

The liability of the Company under this Policy in respect of any item sustaining damage shall cease if said item is not repaired properly without delay.

The Insured shall not be entitled to abandon any property to the Company whether taken possession of by the Company or not. In the event of any or all of the property being recovered, the Insured shall refund to the Company such a proportion of the sum allowed by way of compensation as the amount recovered bears to the value of the property lost.

3.8 INSURER'S RIGHTS AFTER A LOSS OR DAMAGE

The Insured shall be required by the Company to produce or give access to any property alleged to be damaged and the Insured shall be bound to satisfy the Company by such reasonable evidence as the Company may require that the loss or damage in respect of which a claim is made has actually arisen from one of the risks insured against.

3.9 SUBROGATION

The Insured shall at the expense of the Company do and concur in doing and permit to be done all such acts and things as may be necessary or required by the Company in the interest of any rights or remedies, or of obtaining relief or indemnity from parties (other than those insured under this Policy) to which the Company are or would become entitled or which is or would be subrogated to it upon their paying for or making good any loss or damage under this Policy, whether such acts and things are or become necessary or required before or after the Insured's indemnification by the Company.

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Upon payment of the indemnity the Company shall be subrogated in all the rights, actions and privileges of the Insured as provided for in Article 1983 – 50 of the Mauritius Civil Code and all the provisions of the said article shall apply thereto.

3.10 ARBITRATION

If any difference arises as to the amount to be paid under this Policy (liability being otherwise admitted), such difference shall be referred to the decision of an arbitrator to be appointed in writing by the parties in difference or, if they cannot agree upon a single arbitrator, to the decision of two arbitrators, one to be appointed in writing by each of the parties within one calendar month after having been required in writing so to do by either of the parties, or, in case the arbitrators do not agree, of an umpire to be appointed in writing by the arbitrators before the latter enter upon the reference. The umpire shall sit with the arbitrators and preside at their meetings. The making of an award shall be a condition precedent to any right of action against the Company.

3.11 FRAUDULENT CLAIMS

If a claim is in any respect fraudulent, or if any false declaration is made or used in support thereof, or if any fraudulent means or devices are used by the Insured or anyone acting on his behalf to obtain any benefit under this Policy, all benefit under this Policy shall be forfeited.

3.12 OTHER INSURANCES

The Insured shall under pain of nullity of the present contract disclose to the Company every other insurances he has taken in respect of the risk presently insured. The disclosure shall amongst other things state the name of the insurer(s) and the sum(s) insured.

If several insurances contracted without fraudulent intent insure a total sum exceeding the value of the insured risk, each insurance will pay in proportion to the sum for which it is liable, up to the entire value of the insured risk.

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3.13 CONTRIBUTION & AVERAGE

If at the time any claim arises under the Policy there is any other insurance covering the same loss, damage or liability, the Company shall not be liable to pay or contribute more than its rateable proportion of any claim for such loss, damage or liability.

If any such other insurance shall be subject to any average (underinsurance) condition this Policy if not already subject to any such condition of average shall be subject to average in like manner.

If any such other insurance is subject to any provision whereby it is precluded from ranking concurrently with this Policy either in whole or in part or from contributing rateably the liability of the Company under this Policy shall be limited to that proportion of the loss, damage or liability which the Sum Insured under this Policy bears to the value of the property.

3.14 DURATION OF THE CONTRACT

- (a) Subject to the provisions of paragraphs (b), (c) and (d) of the present Condition the duration of the contract shall be for the period expressed in the Schedule attached to the present Policy.
- (b) The Company and the Insured shall be at liberty to terminate the contract at any time prior to the expiry date mentioned in the Schedule to the Policy on the party so desiring giving 30 days notice in writing to that effect to the other party.
- (c) In cases where the Policy covers several risks or several properties, it shall be permissible to either the Company or the Insured to terminate by anticipation in the manner set out in paragraph (b) above the contract in respect of any one or more of the several risks and/or properties insured.
- (d) In the event of a cancellation by anticipation as provided in paragraphs (b) and (c) above the Company shall:
 - (i) when such cancellation is made at the request of the Insured, have the right to claim or retain either the customary short term premium or the premium on a pro-rata basis.

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- (ii) when such cancellation is made by the Company, refund or retain the premium on a pro-rata basis.

3.15 ADJUSTMENT

Within three months from the expiry of the Period of Insurance the Insured shall supply the Company with a Declaration of the actual total Contract Value and if such Contract Value shall differ from the Contract Value shown in the Schedule on which premium has been paid, the difference in premium shall be met by a further proportionate payment to the Company or by a proportionate refund by the Company subject to any minimum premium imposed.

3.16 CONDUCT OF THE CLAIM

The Company shall be entitled at any time to:

- (a) take over and conduct in the name of the Insured the defence of any claim;
- (b) prosecute in the Insured's name for the Company's benefit any claim for indemnity or damage or otherwise against any third party;
- (c) conduct any negotiations and proceedings and settlement of any claim.

The Insured shall give to the Company such information and assistance as the Company may reasonably require.

If having taken over the legal proceedings on behalf of the Insured, the Company later discovers that:

- (a) the Insured has failed to disclose to it a material fact either at the time of the making of the contract or during its currency;
- (b) the Insured has breached a condition or a warranty of the Policy; or
- (c) any one of the exclusions applies to the Policy;

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the Company will be entitled to withdraw from the said proceedings whereupon the Company shall be under no further liability towards the Insured in respect of such proceedings.

3.17 APPLICABLE LAW AND JURISDICTION

This Policy shall be governed by the Laws of Mauritius whose Courts shall have valid and exclusive jurisdiction in any dispute, difference, claim, doubt or question.

The liability of the Company to indemnify the Insured shall always be limited to judgements delivered or obtained by a court of competent jurisdiction within Mauritius and shall be solely in respect of:

- (i) Judgements, orders, declarations, awards or settlements, inclusive of interest, defence costs and expenses, in respect of claims, actions or demands lodged or entered before a court of competent jurisdiction within Mauritius.
- (ii) Awards delivered following a Mauritian arbitration made within the jurisdiction of Mauritius, inclusive of interest, costs and expenses.

This Policy shall, however, exclude:

- (a) judgements, orders, awards, pronouncement, interpretation or declaration given or delivered by any court, tribunal, arbitrator or other authority in any foreign jurisdiction;
- (b) the cost of taking up of the defence in any case before any foreign court;
- (c) the enforcement, registration, recognition, exequatur or other similar procedures in connection with a foreign judgement or foreign pronouncement or foreign interpretation or foreign declaration or foreign award in Mauritius.

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3.18 INTERPRETATION

This Policy (including its terms, exclusions, limitations and conditions) shall be construed in accordance with and governed in all respects by the Laws of the Republic of Mauritius (including without limitation any issues arising out of or in connection with the validity or enforceability of the policy) and in accordance with express definitions/interpretations provisions (if any) set out and incorporated in the Policy.

3.19 SEVERABILITY

If a provision or condition or section or sub-section of the Policy is found to be legally prohibited or unenforceable or inapplicable or invalid in the circumstances, the offending provision or condition or section or sub-section shall be severed from the rest of the Policy which otherwise continues to operate as originally written.

3.20 INTEGRATION

The Policy and the Proposal Form and/or any Endorsement shall constitute the entire and exclusive agreement between the Insured and the Company with respect to its subject matter. The parties to this insurance Policy formally agree that no evidence can be introduced to demonstrate that the parties intended something different from what the Policy and/or Proposal Form and/or Endorsements provide.

3.21 SANCTION LIMITATION

The Company shall not be liable to pay any claim or provide any benefit hereunder to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose the Company to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America.

3.22 RIGHT TO OFFSET OUTSTANDING PREMIUM DUE

The Company shall have the right to offset any premium the Insured has not yet paid from any claims payment due to the Insured.

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3.23 ACCEPTANCE OF POLICY TERMS

Subject to any special term to the contrary, this Policy shall commence and be effective as from the date specified in the Policy Schedule and any subsequent Endorsement shall be effective as from the date mentioned in the relevant Endorsement.

The Insured should take care in reading the terms and conditions of this insurance cover and more particularly the exclusions, limitations and warranties. The Insured should carefully peruse the Policy document and/or any Endorsement attaching to it to precisely ascertain that the type and extent of coverage provided and the other terms stipulated thereon correctly describe and meet entirely the Insured's insurance request.

If any Policy term and/or Schedule or other detail or information is found missing, incorrect, incomplete or defective, kindly inform the Company of the matter without delay and in any event not later than 30 days after receipt of the said Policy document, Schedule and/or Endorsement.

Should the Insured, within a period not exceeding thirty (30) days as from receipt of the relevant Policy documentation, Schedule and/or Endorsement not make any written

- (a) Request for correction or rectification of the said Policy documentation, Schedule and/or Endorsement; or
- (b) Objection or representation or reservation of the Insured's rights;
or
- (c) Request for Policy to be cancelled; **AND** thereby continue to have dealings with the Company in relation to the said policy and/or endorsement, either directly or through intermediaries, by exercising any right or fulfilling any obligation under the policy;

it shall be deemed that the Insured have affirmed the Policy and are in agreement with its terms as set out in the policy document, Schedule and/or any Endorsement attaching thereto and that the correctness, accuracy, completeness and admissibility of the said Policy terms, Schedule and/or Endorsement shall not thereafter be challenged or questioned in case of any claim, dispute, difference or litigation including arbitration between the parties.

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4. SECTION 1 - MATERIAL DAMAGE

The Company hereby agrees with the Insured that if at any time during the period of cover the items or any part thereof entered in the Schedule shall suffer any unforeseen and sudden physical loss or damage from any cause, other than those specifically excluded, in a manner necessitating repair or replacement, the Company will indemnify the Insured in respect of such loss or damage as hereinafter provided by payment in cash, replacement or repair (at its own option) up to an amount not exceeding in respect of each of the items specified in the Schedule the sum set opposite thereto and not exceeding in any one event the limit of indemnity where applicable and not exceeding in all the total sum expressed in the Schedule as insured hereby.

The Company will also reimburse the Insured for the cost of clearance of debris following upon any event giving rise to a claim under this Policy provided a separate sum therefore has been entered in the Schedule.

4.1 Special Exclusions to Section 1

The Company shall not, however, be liable for

- (a) the deductible stated in the Schedule to be borne by the Insured in any one occurrence;**
- (b) consequential loss of any kind or description whatsoever including penalties, losses due to delay, lack of performance, loss of contract;**
- (c) loss or damage due to faulty design;**
- (d) the cost of replacement, repair or rectification of defective material and/or workmanship, but this exclusion shall be limited to the items immediately affected and shall not be deemed to exclude loss of or damage to correctly executed items resulting from an accident due to such defective material and/or workmanship;**
- (e) wear and tear, corrosion, oxidation, deterioration due to lack of use and normal atmospheric conditions;**

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- (f) **loss or damage to construction plant, equipment and construction machinery due to electrical or mechanical breakdown, failure, breakage or derangement, freezing of coolant or other fluid, defective lubrication or lack of oil or coolant, but if as a consequence of such breakdown or derangement an accident occurs causing external damage, such consequential damage shall be indemnifiable;**
- (g) **loss of or damage to vehicles licensed for general road use or waterborne vessels or aircraft;**
- (h) **loss of or damage to accounts, bills, currency, stamps, deeds, evidences of debt, notes, securities, cheques;**
- (i) **loss or damage discovered only at the time of taking an inventory.**

4.2 Provisions applying to Section 1

4.2.1 Memo 1 – Sums insured

It is a requirement of this insurance that the sums insured stated in the Schedule shall not be less than

For item 1 : the full value of the contract works at the completion of the construction, inclusive of all materials, wages, freight, customs duties, dues, and materials or items supplied by the Principal;

For items 2 and 3 : the replacement value of construction plant, equipment and machinery; which shall mean the cost of replacement of the insured items by new items of the same kind and capacity;

and the Insured undertakes to increase or decrease the amounts of insurance in the event of any material fluctuation in wages or prices provided always that such increase or decrease shall take effect only after the same has been recorded in the Policy by the Company.

If, in the event of loss or damage, it is found that the sums insured are less than the amounts required to be insured, then the amount recoverable by the Insured under this Policy shall be reduced in such proportion as the sums insured bear to the amounts required to be insured. Every object and cost item is subject to this condition separately.

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4.2.2 Memo 2 – Basis of loss settlement

In the event of any loss or damage the basis of any settlement under this Policy shall be

(a) in the case of damage which can be repaired – the cost of repairs necessary to restore the items to their condition immediately before the occurrence of the damage less salvage, or

(b) in the case of a total loss – the actual value of the items immediately before the occurrence of the loss less salvage,

however, only to the extent the costs claimed had to be borne by the Insured and to the extent they are included in the sums insured and provided always that the provisions and conditions have been complied with.

The Company will make payments only after being satisfied by production of the necessary bills and documents that the repairs have been effected or replacement has taken place, as the case may be. All damage which can be repaired shall be repaired, but if the cost of repairing any damage equals or exceeds the value of the items immediately before the occurrence of the damage, the settlement shall be made on the basis provided for in (b) above.

The cost of any provisional repairs will be borne by the Company if such repairs constitute part of the final repairs and do not increase the total repair expenses.

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

4.2.3 Memo 3 – Extension of cover

Extra charges for overtime, nightwork, work on public holidays, express freight are covered by this insurance only if previously and specially agreed upon in writing.

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5. SECTION 2 - THIRD PARTY LIABILITY

The Company will indemnify the Insured up to but not exceeding the amounts specified in the Schedule against such sums which the Insured shall become legally liable to pay as damages consequent upon

- (a) accidental bodily injury to or illness of third parties (whether fatal or not),
- (b) accidental loss of or damage to property belonging to third parties

occurring in direct connection with the construction or erection of the items insured under Section 1 and happening on or in the immediate vicinity of the site during the period of cover.

In respect of a claim for compensation to which the indemnity provided herein applies, the Company will in addition indemnify the Insured against

- (a) all costs and expenses of litigation recovered by any claimant from the Insured, and
- (b) all costs and expenses incurred with the written consent of the Company,

provided always that the liability of the Company under this Section shall not exceed the limits of indemnity stated in the Schedule.

5.1 Special Exclusions to Section 2

The Company will not indemnify the Insured in respect of

- 1. the deductible stated in the Schedule to be borne by the Insured in any one occurrence;**
- 2. the expenditure incurred in doing or redoing or making good or repairing or replacing anything covered or coverable under Section 1 of this Policy;**
- 3. damage to any property or land or building caused by vibration or by the removal or weakening of support or injury or damage to any person or property occasioned by or resulting from any such damage (unless especially agreed upon by endorsement);**

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4. liability consequent upon

- (a) bodily injury to or illness of employees or workmen of the Contractor(s) or the Principal(s) or any other firm connected with the project which or part of which is insured under Section 1, or members of their families;**
- (b) loss of or damage to property belonging to or held in care, custody or control of the Contractor(s), the Principal(s) or any other firm connected with the project which or part of which is insured under Section 1, or an employee or workman of one of the aforesaid;**
- (c) any accident caused by vehicles licensed for general road use or by waterborne vessels or aircraft;**
- (d) any agreement by the Insured to pay any sum by way of indemnity or otherwise unless such liability would have attached also in the absence of such agreement.**

5.2 Special Conditions applying to Section 2

- 1. No admission, offer, promise, payment or indemnity shall be made or given by or on behalf of the Insured without the written consent of the Company who shall be entitled, if it so desires, to take over and conduct in the name of the Insured the defence or settlement of any claim or to prosecute for its own benefit in the name of the Insured any claim for indemnity or damages or otherwise and shall have full discretion in the conduct of any proceedings or in the settlement of any claim and the Insured shall give all such information and assistance as the Company may require.**

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- 2. The Company may so far as any accident is concerned pay to the Insured the limit of indemnity for any one accident (but deducting therefrom in such case any sum or sums already paid as compensation in respect thereof) or any lesser sum for which the claim or claims arising from such accident can be settled and the Company shall thereafter be under no further liability in respect of such accident under this Section.**
- 3. No avoidance of the Policy by reason of an act or omission of the Insured subsequent to the event giving rise to a claim shall be binding upon any Third Party or their rightful heirs to whom prejudice has been caused.**

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6. COMPLAINTS PROCEDURE

WHAT TO DO IN THE EVENT OF A COMPLAINT

- * **STEP 1**
Seek resolution by the Department dealing with your query/claim.
- * **STEP 2**
If you are disappointed with any aspect of our products/ services, please write or contact the Complaints Coordinator with full details including the Policy and/or claim number at the following address:

**The Complaints Coordinator
Swan General Ltd.
Swan Centre
10 Intendance Street
Port Louis
Tel: 207 3500
Email: complaints@swanforlife.com**

- * **STEP 3**
If you remain unhappy with the outcome, you may write to The Financial Services Commission.

Note: The Financial Services Commission will only entertain complaints to the extent that you have given us the opportunity to resolve the matter directly.

WHAT WILL HAPPEN IF YOU COMPLAIN

- * Your complaint will be acknowledged within 3 working days of receipt.
- * Once an assessment and full investigation of your query/claim has been made, we will respond with a decision, normally within a period not exceeding 30 days from when you first made your complaint.
- * Our final response letter shall indicate, where possible, the reasons and circumstances that have been taken into consideration to reach our decision.
- * If you make a complaint, it will not affect your right to take legal action against us.

Note: Our Company will address your complaints free of charge.