



## Chung Kuo Third Party Liability Insurance

### Lender's Endorsement Clause

All direct policies in respect of the Construction Insurances as per Schedule 12, Exhibit A, Part 1 of the Common Terms Agreement and the Operating Period Insurances as per Schedule 12, Exhibit A, Part 2 of the Common Terms Agreement are to contain the following provisions or endorsements or any amendments agreed and approved in writing by the Finance Parties' Insurance Adviser or the Intercreditor Agent or is otherwise not materially prejudicial to the interests of the Finance Parties. For the purposes of clarification, insurance policy endorsements agreed with the Insurers at or prior to Financial Close are deemed to have been approved in writing by the Intercreditor Agent.

In this endorsement it is agreed that:

"**Borrower**" means XXXXXXXXXXXXXX

"**Borrower Onshore Security Assignment**" means the assignment agreement dated XXXXXXX and made between the Borrower and the Onshore Security Agent.

"**Common Terms Agreement**" means the common terms agreement dated XXXXXXX between, amongst others, the Borrower and the Finance Parties.

"**Finance Documents**" means the Finance Documents under and as defined in the Common Terms Agreement.

"**Finance Parties**" means the Finance Parties under and as defined in the Common Terms Agreement.

"**Insured Party**" means each "Insured Party" as set out in the schedule to the relevant insurance policy to which this endorsement is attached and "Insured Parties" means all of them.

"**Insurer(s)**" means the Insurer(s) under this policy of insurance.

"**Intercreditor Agent**" means XXXXXXXXXXXXXX as Intercreditor Agent in its capacity as Intercreditor Agent on behalf of the other Finance Parties.

"**Onshore Security Agent**" has the meaning given to that term in the Common Terms Agreement.

"**Security**" means a mortgage, charge (fixed or floating), pledge, lien, assignment, hypothecation, set-off or trust arrangement for the purpose of creating security, reservation of title or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect.

### 1 Composite Insured Status and Non-Invalidation Wording

Each of the Insurers notes and agrees that the Insured Parties described in this endorsement comprise more than one Insured Party each operating as a separate and distinct entity and cover hereunder shall apply in the same manner and to the extent as if individual policies had been issued to each such Insured Party in respect of its own insurable interests, **provided that** the total liability of the Insurers to all of the Insured Parties collectively shall not (unless the policy specifically permits otherwise) exceed the sums insured and limits of indemnity, including any inner limits set by memorandum or endorsement stated in the policy.

It is understood and agreed that any payment or payments by Insurers to any one or more of such Insured Parties in accordance with this policy shall reduce to the extent of such payment

the 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.

Without prejudice to the ability of the Finance Parties to grant waivers to, and agree amendments to the Finance Documents with, the Borrower, it is further understood that the Insured Parties will at all times preserve the contractual rights and agreements entered into by the Insured Parties and the contractual remedies of such parties in the event of loss or damage.

Subject to the three following paragraphs below, it is further understood and agreed that the Insurers shall be entitled to avoid liability to or (as may be appropriate) claim damages from any Insured Party in circumstances of that Insured Party's fraud, deliberate material misrepresentation, deliberate non-disclosure or deliberate breach of any warranty or condition of this policy (each referred to in this paragraph 1 as a "**Vitiating Act**"), **provided that** a material misrepresentation, deliberate non-disclosure or deliberate breach by a Finance Party will only constitute a Vitiating Act if it is made or done fraudulently or with the intent to deceive.

It is, however, understood and agreed that a Vitiating Act committed by an Insured Party shall not prejudice the right to indemnity of any other Insured Party which has not committed that Vitiating Act.

The Insurers hereby agree to waive all rights of subrogation or action which they may have or acquire against any Insured Party except where the rights of subrogation or recourse are acquired in consequence of or otherwise following a Vitiating Act in which circumstances the Insurers may enforce such rights notwithstanding the continuing or former status of the vitiating party as an Insured Party.

Notwithstanding the provisions of the paragraph above, the Insurers waive any rights against the Borrower they may acquire through subrogation to the rights of any Finance Party or its directors, officers, employees and agents or any rights in competition with the interests of the Finance Parties.

## **2 Acknowledgement of Security Interest**

The Insurers are hereby notified by the Borrower that on or about the date hereof the Borrower has, pursuant to the Borrower Onshore Security Assignment, granted Security in favour of the Onshore Security Agent over all existing and future rights in, and to the proceeds of, all insurances entered into by or on behalf of the Borrower, and the Insurers hereby acknowledge receipt of such notice and agree that the Insurance Proceeds shall be paid as set out in paragraph 8 below. The Insurers confirm that they consent to such Security and have not been notified of any other security over the Borrower's interest in this insurance.

## **3 Co-Insurance of the Finance Parties**

The Insurers acknowledge that the Finance Parties and (in respect of third party liabilities) their respective directors, officers, employees and assigns are each co-insured under this policy and that the premium specified in this policy provides consideration for their being co-insured parties. The Insurers waive any claim that they might otherwise have against any such co-insured party in respect of any premium payable in respect of this insurance. The Finance Parties shall in no circumstances be liable for the payment of any premium.

## **4 Scope of Disclosure**

The Insurers acknowledge that:

- (a) they have received adequate information in order to evaluate the risk of insuring the Borrower in respect of the risks hereby insured on the assumption that such information is not materially misleading;
- (b) there is no information which has been relied on or is required by Insurers in respect of their decision to co-insure the Finance Parties or their directors, officers, employees or agents; and
- (c) no person has been authorised to make any representation on behalf of any of the Finance Parties or their directors, officers, employees or agents in relation to their becoming or being co-insured under this policy. Non-disclosure or misrepresentation, negligence or breach by any one Insured Party (or its agent) shall not be attributable to any other Insured Party who did not directly and actively participate in that non-disclosure or misrepresentation knowing it to be such.

## **5 Waiver of Subrogation Rights**

The Insurers hereby waive all rights of subrogation or action howsoever arising which they may have or acquire arising out of any occurrence in respect of which any claim is admitted hereunder:

- (a) against any of the Finance Parties or their directors, officers, employees and agents;
- (b) against the Borrower until all financial indebtedness to the Finance Parties has been discharged; and/or
- (c) involving the exercise of rights or powers vested in the Borrower or any Finance Parties (acting in any capacity) under or by virtue of any agreement relating to the Project.

## **6 Offset**

The Insurers shall not be entitled to offset any sums payable to the Finance Parties against premium or other moneys owing by the Borrower, nor any sums owing to the Borrower under this policy against any moneys owing by the Borrower under any other policy or contract.

## **7 Loss Payments**

For the benefit of the Onshore Security Agent, the Finance Parties and the Insured Parties irrevocably authorise and instruct the Insurer to pay, and the Insurer agrees to pay, all claims, return premiums, *ex gratia* settlements and any other moneys payable to any of them, other than the Finance Parties, under or in relation to this contract:

- (a) in respect of the Insurance Proceeds (other than Business Interruption Insurance Proceeds, Third Party Liability Insurance Proceeds or Employer's Liability Insurance Proceeds), to the relevant denominated Insurance and Compensation Account of the Borrower at the relevant account number set out in item 1 of the table below, as such account may be renewed, re-designated, recoded or renumbered;
- (b) in respect of Business Interruption Insurance Proceeds, Third Party Liability Insurance Proceeds or Employer's Liability Insurance Proceeds:
  - (i) if received on or prior to the Commercial Operations Date, to the Construction Account of the Borrower at the relevant account number set out in item 2 of the table below, as such account may be renewed, re-designated, recoded or renumbered;

- (ii) if received after the Commercial Operations Date, to the Proceeds Account of the Borrower at the relevant account number set out in item 3 of the table below, as such account may be renewed, re-designated, recoded or renumbered;

or, in each case, to such other account as the Onshore Security Agent as loss payee may specify in writing, and that no instruction, whether by the Borrower or by any person other than the Onshore Security Agent, to make any payment to any other person or account shall be honoured by the Insurer unless given or countersigned by the Onshore Security Agent, or such other person as that Onshore Security Agent may notify to the Insurer in writing. All such payments shall be made by the Insurer without any deduction or set-off on any account or of any kind. A payment to the loss payee in accordance with this paragraph 8 shall, to the extent of that payment, discharge the liability of the Insurer to pay the Borrower or other claimant Insured Party. The Onshore Security Agent may authorise the payment by the Insurer to a third party of a claim where it is applied directly to discharge fully and finally an insured liability of the Borrower to that third party.

The arrangements in this paragraph 8 shall continue to apply notwithstanding the liquidation or insolvency of the Borrower or the Insurer.

### **Project Accounts**

<b>No</b>	<b>Name of Project Account</b>	<b>Currency</b>	<b>Account No.</b>
1			
2			
3			

## **8 Primary Insurance**

The Insurers agree that this insurance shall be primary to and not excess to (except in respect of layers of (i) marine cargo insurance where the relevant conditions of contract require the relevant supplier's marine cargo insurance to respond as the primary cover; and (ii) Contractor's Third Party Liability Insurances and specific excess layers of insurance effected specifically for the Project) or contributing with any other insurance maintained by any Insured Party. Each Insurer waives all rights of contribution or average against any other insurance effected by any Insured Party or their directors, officers or employees (except in respect of layers of third party cover applicable to the Project).

## **9 Notices by Insurers**

The Insurers shall give to the Onshore Security Agent:

- (a) at least forty-five (45) days' notice in writing:
  - (i) before any Insurer cancels or suspends this insurance or any cover under this insurance for any reason; or
  - (ii) before avoiding for non-payment of any overdue premium in order to give an opportunity for that premium to be paid within the notice period;
- (b) as soon as becoming aware of any act or omission or of any event of which the Insurer has knowledge and which the Insurer considers may invalidate or render unenforceable in whole or in part this insurance or any claim under it or which might entitle the Insurer to terminate, rescind or repudiate this policy in whole or part, or treat it as avoided, terminated or suspended, against any Insured Party; and
- (c) at least thirty (30) days prior to the expiry date if they have not agreed to renew this Insurance at its next expiry date (or been invited to do so).

## **10 Service of Notices**

All notices or other communications under or in connection with this policy will be given by e-mail or post. Any such notice will be deemed to be given as follows:

- (a) if by post, when delivered; or
- (b) if by email, on the date on which it is sent but only if the date on which it is sent is a normal business day in the country of the recipient and if it is recorded as received before 5.00 pm on that date in the recipient's time zone, failing which it shall be deemed to be given on the next normal business day in the recipient's country.

The address and e-mail address of the Onshore Security Agent for all notices under or in connection with this policy are those notified from time to time by the Onshore Security Agent for this purpose to the Borrower. The initial address and fax number of the Onshore Security Agent are as follows:

Onshore Security Agent

Taiwan Cooperative Bank, Ltd.

## **11 Role of Onshore Security Agent**

The Onshore Security Agent is not trustee of any party other than the Finance Parties for receipt of any notice or any other purpose in relation to this insurance.

## **12 Enforceability**

Each Insurer agrees:

- (a) that each provision of this endorsement as applicable to it is reasonable;
- (b) not to contest the enforceability of any such provision in any proceeding arising out of or in connection with this contract or its purported repudiation, avoidance or termination;
- (c) not to rely on any finding that any wider duty (including any pre-contractual or other non-contractual duty) was owed to Insurers than is expressed in this contract to be owed and that any such duty owed was breached (whether by any Insured Party or any agent of an Insured Party or any other person) to decline any claim or to repudiate, avoid or terminate this contract even where such breach of duty was negligent;
- (d) that each provision of this endorsement is severable from every other provision of this endorsement and is intended by it to be valid, binding and enforceable in accordance with its terms notwithstanding any purported repudiation, avoidance or termination; and
- (e) that the provisions of this specifically negotiated endorsement override any inconsistent or incompatible provision elsewhere in the contract.

**13 Amendments to this Endorsement**

The provisions of this endorsement may only be amended by written agreement between the Borrower, the Insurers and the Onshore Security Agent, such amendment to be endorsed on the contracts of insurance.

**14 Notice of Claims**

Notice of claim by the Onshore Security Agent or any party entitled to indemnity under the insurance policy shall, in the absence of manifest error, be accepted by the Insurers as being on behalf of all other Insured Parties subject to the full terms of the insurance policy.

**15 No Step In**

Nothing in this endorsement shall entitle the Insurers to step in to or take over any of the Project's finance documents or finance arrangements.

**16 Third Party Rights**

No rights are conferred on any person to enforce any term of this policy other than any Insured Party under this policy and the Finance Parties.

**17 Override**

This endorsement overrides any conflicting provision in any policy of insurance to which it applies.