

EXECUTION VERSION

**EXPORT CREDIT INSURANCE
FINANCIAL CREDIT – SPECIFIC ACCOUNT
COVER
POLICY OF INSURANCE
NO FP [TBA]**

between

**EXPORT CREDIT INSURANCE CORPORATION OF SOUTH AFRICA SOC LTD.
(the Insurer)**

and

FINANCIAL INSTITUTION

(as Insured)

and

FINANCIAL INSTITUTION

(as Commercial Bank Facility Agent)

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WHEREBY THE PARTIES AGREE AS FOLLOWS –

1 INTERPRETATION

1.1 In this Policy -

1.1.1 clause headings are for convenience only and are not to be used in its interpretation;

1.1.2 an expression which denotes –

1.1.2.1 any gender includes the other genders;

1.1.2.2 a natural person includes a juristic person and *vice versa*; and

1.1.2.3 the singular includes the plural and *vice versa*.

1.2 In this Policy, unless the context indicates a contrary intention, the following words and expressions bear the meanings assigned to them and cognate expressions bear corresponding meanings –

1.2.1 "**Acceptance Certificates**" means the acceptance certificates issued by the Insured Debtor acknowledging receipt of the Delivery of the Goods and/or the rendering of the Services pursuant to which the Insured Debtor requests a Drawdown as envisaged in the Insured Contract;

1.2.2 "**Act**" means the Export Credit and Foreign Investments Insurance Act, No 78 of 1957, as amended;

1.2.3 "**Amount of Loss**" means monetary loss not exceeding the Maximum Liability directly or indirectly suffered by the Insured limited to non-receipt of the Insured Debt or any part thereof or, having received any amount, the failure by the Insured to retain such amount as a consequence of the operation of applicable law, after deduction of the following amounts and/or benefits without duplication –

- 1.2.3.1 any amount and/or benefit which can easily be converted into money which has been received and retained (unless by reason for the operation of applicable law such amount and/or benefit has not been retained by the Insured, in which case this deduction shall not be applicable) by the Insured or applied for its benefit in any way whatsoever which amount and/or benefit was received directly or indirectly pursuant to the Insured's Insured Loss having occurred and which amount and/or benefit in substance is intended to directly or indirectly reduce the Insured Loss, including but not limited to the proceeds of any securities, indemnities, guarantees and/or suretyships realised by the Insured pursuant to the Insured Loss having occurred as well as any allowance, rebate or refund obtained pursuant to the occurrence of a Cause of Loss and which amount, in each case, in substance is intended to directly or indirectly reduce the Insured Loss;
- 1.2.3.2 any amount recovered by the Insured in respect of the Insured Loss (whether pursuant to a counterclaim or not) which amount in substance is intended to directly or indirectly reduce the Insured Loss or any amount set off against the Insured Loss by the Insured; and
- 1.2.3.3 any amount received by the Insured and retained (unless by reason of the operation of applicable law such amount has not been retained by the Insured, in which case this deduction shall not be applicable) or applied for its benefit which has the effect of reducing the amount of the Insured Loss;
- 1.2.4 **"Annexure(s)"** means the Annexure(s) attached to this Policy setting out the salient information of this Policy, as initialled by the Parties;
- 1.2.5 **"Authorised Officer"** means -
- 1.2.5.1 in relation to the Insurer, the Chief Executive Officer or any other person authorised in writing by the Insurer; and
- 1.2.5.2 in relation to the Insured, any person nominated in writing by the Insured;

- 1.2.6 **"Availability Period"** means the availability period as defined in the Insured Contract, provided that it shall terminate on the earliest of the following dates –
- 1.2.6.1 the date falling 3 (three) Months after the Commercial Operations Date (as defined in the Insured Contract);
- 1.2.6.2 the date falling 3 (three) Months after the Scheduled Commercial Operations Date (as defined in the Insured Contract)
- 1.2.6.3 the date upon which the available commitment of the Insured Lenders have been cancelled or drawn down in full in terms of the Insured Contract; or
- 1.2.6.4 such later date as may be agreed to in writing by the Insurer;
- 1.2.7 **"Award"** means a final and binding decision rendered against the Host Government by a court of law or similar judicial forum or international arbitration tribunal recognised by the Insurer or any irrevocable and unconditional recognition or admission of liability by the Host Government in writing;
- 1.2.8 **"Base Rate"** means LIBOR;
- 1.2.9 **"Breach of Contract"** means the inability of the Security Trustee acting on behalf of the Insured or the Insured Debtor to enforce an Award rendered against the Host Government pursuant to a breach or repudiation by the Host Government of the material clauses of the agreement set out in **Annexure F** hereof, provided that –
- 1.2.9.1 the Award is for a monetary amount and has been rendered pursuant to a breach or repudiation of the material obligations of the Host Government under the relevant clauses which has directly resulted in an Insured Loss;
- 1.2.9.2 the Insured has made reasonable efforts to exhaust all remedies to enforce the Award against the Host Government for a period of 365 (three hundred and sixty five) consecutive days from the date of the Award;

- 1.2.9.3 the breach and/or repudiation materially adversely impacts upon the business operations of the Insured Debtor; and
- 1.2.9.4 the Host Government has failed to comply with the Award;
- 1.2.10 **"Breach of Sovereign Financial Obligations"** means the failure on the part of the Host Government to make a payment under the guarantee when such payment is due and payable or any other payment due and payable to the Insured Debtor under the guarantee which is not honoured and not disputed by either party or the Host Government, provided that –
- 1.2.10.1 for the avoidance of doubt an amount shall not be deemed to be due and payable under the guarantee unless -
- 1.2.10.1.1 that payment obligation of the Host Government is unconditional on the basis that, by way of clarification, the making of an Award is not the only way in which the Insured can prove that the payment obligation has become unconditional;
- 1.2.10.1.2 that payment obligation of the Host Government is not subject to any valid defences;
- 1.2.10.2 the Host Government has so failed to make payment of the amount so claimed for a period of 180 (one hundred and eighty) days after the date of written demand by the Insured;
- 1.2.10.3 the Insured Debtor has failed to make payment in terms of the Insured Contract after due demand by the Insured in writing,
- which amount payable by the Insurer in the event of a successful Claim hereunder shall not exceed the Amount of Loss;
- 1.2.11 **"Business Day"** means any day which is not a Saturday, Sunday or a proclaimed public holiday in South Africa and the Designated Country and in relation to any date for payment of US Dollars, the United States of America;

- 1.2.12 **"Cause(s) of Loss"** means Political Causes of Loss or Commercial Causes of Loss;
- 1.2.13 **"Change in Law"** means any change in law or promulgation of any new law, or revocation or issue of any order, decree or regulation having the force of law by the Host Government which prevents the Insured Debtor from making a Scheduled Payment under the Insured Contract or its effect directly results in the Insured Debtor being unable to honour the Scheduled Payment or prevents the Insured Debtor or the Insured, as the case may be, from receiving or having received any Scheduled Payment, the failure by the Insured Debtor or the Insured to retain a Scheduled Payment as a consequence of the operation of applicable law or from receiving the proceeds of its security relating to the Insured Contract, provided that it shall not be deemed to be a change in law if the relevant legal measure is a *bona fide* non-discriminatory measure of general application of the kind that governments normally take in the public interest for such purposes, for instance such as insuring public safety, raising revenues, protecting the environment or regulating economic activities unless:
- 1.2.13.1 it prohibits payment under the Insured Contract or revokes any existing consent, authorisation, licence or approval of government or public bodies or authorities of the Designated Country that has a material adverse impact on the conduct of the business of the Insured Debtor, provided that the Insured Debtor is not in breach of the conditions applicable to such consent, authorisation, licence or approval; or
- 1.2.13.2 it has a confiscatory or expropriatory effect (as described under the definition of Expropriation) or deprives the Insured Debtor of a substantial part of its assets and such deprivation or effect directly results in the Scheduled Payment not being made or the Security becoming invalid or unenforceable,

and in the case of a failure to make payment of a Scheduled Payment, such payment default continues for a period of 180 (one hundred and eighty) consecutive days in the case of first default, provided that no waiting period shall be required in respect of any subsequent payment default that is caused by a Change in Law if such Change in Law occurs within the existing 180 (one hundred and eighty) day waiting period or prior to the resolution of the existing Change in Law event, it being recorded that the events as contemplated herein are limited to conduct by the Host Government in relation to the Insured Debtor and the obligations of the Insured Debtor;

- 1.2.14 **"Claim(s)"** means a request for indemnity made in accordance with the terms of this Policy on the applicable claim form provided by the Insurer and signed by an Authorised Officer of the Insured;
- 1.2.15 **"Closing Date"** means Financial Close as defined in the Common Terms Agreement;
- 1.2.16 **"Commercial Bank Facility Agent"** means financial institution, a bank duly incorporated in terms of the laws applicable in the Republic of South Africa, with registration number [tba];
- 1.2.17 **"Commercial Causes of Loss"** means –
- 1.2.17.1 Insolvency; or
- 1.2.17.2 Protracted Default;
- 1.2.18 **"Common Terms Agreement"** means the Common Terms Agreement dated [tba] that has been concluded between amongst others the Insured Lenders and the Insured Debtor;
- 1.2.19 **"Contract Price"** means an amount equal to [tba], excluding VAT;
- 1.2.20 **"Corrupt Practices"** means the offering, promising or giving of any undue pecuniary or other advantage, whether directly or through intermediaries, to a

public official, for that official or for a third party, to influence the official to act or refrain from acting in relation to the performance of official duties, with the purpose of obtaining or retaining business or other improper advantage in the conduct of international business, including any unlawful act as envisaged in the Financial Intelligence Centre Act, No 38 of 2001 and the Prevention and Combating of Corrupt Activities Act No 12 of 2004;

- 1.2.21 **"Date of Loss"** means in respect of a Scheduled Payment, the first day after the expiry of the applicable waiting period as set out in the relevant definitions of a Cause of Loss, whichever is relevant or, in the event of an Insured having to repay any amount so received as a consequence of the operation of law, the date upon which such repayment is due to be made or the first day after the occurrence of the relevant event in respect of an Insolvency;
- 1.2.22 **"Delivery"** means, with reference to the Goods and the Services, that it shall have been delivered or to be delivered or rendered or to be rendered ultimately to the Insured Debtor, which Delivery shall be evidenced by the following documentation (if applicable) –
- 1.2.22.1 copies of commercial invoices of the Export Contractor evidencing the amount invoiced by the Export Contractor in respect of the relevant Goods and the Services in terms of the Export Contract;
- 1.2.22.2 the invoices and/or relevant bills of lading (if applicable) for the Goods being delivered or a progress certificate or a contractor's invoice detailing the value of works completed in the context of the rendering of Services under the Export Contract;
- 1.2.22.3 Export Contractor's declarations signed by at least 2 (two) directors or Authorised Officers of the Export Contractor;
- 1.2.22.4 written Acceptance Certificates issued by the Insured Debtor acknowledging the receipt of Goods or Services, as the case may be;

- 1.2.22.5 written Utilisation Request signed by the Insured Debtor;
- 1.2.22.6 directors' resolutions by the Export Contractor authorising selected directors to execute the Export Contractor's declaration/s and provide the export documentation as envisaged herein;
- 1.2.22.7 sworn affidavits from the Export Contractor pursuant to the exporter's declaration in relation to the supply of Goods and Services;
- 1.2.22.8 a director's certificate signed by at least 2 (two) directors of the Export Contractor;
- 1.2.22.9 (in the case of any reimbursement), proof of payment by the Insured Debtor to the Export Contractor of the invoiced amounts of the Goods and the Services;
- 1.2.22.10 individual summary sheets detailing certified South African Content in respect of each individual invoice issued for Goods and/or Services supplied under the Export Contract;
- 1.2.22.11 total summary sheets detailing certified South African Content in respect of all invoices issued up to the date of such total summary sheet for Goods and/or Services supplied under the Export Contract;
- 1.2.22.12 the most recent quarterly auditor certificates confirming South African Content from a South African auditor approved by the Insurer or the most recent quarterly directors' certificate of the Export Contractor on a quarterly basis,
- and such other documents as the Insurer may require in its reasonable discretion from time to time;
- 1.2.23 **"Designated Country"** means [tba];
- 1.2.24 **"Discounted Outstanding Premium"**

- 1.2.25 **Drawing/Drawdown**" means the amount drawn down by or advanced to the Insured Debtor by the Insured in terms of the Insured Contract;
- 1.2.26 **Effective Date**" means the date that the suspensive conditions referred to in clause 3 of this Policy have been fulfilled or waived in writing by the Insurer and/or the Effective Date Notice referred to in clause 3 has been issued;
- 1.2.27 **Environmental Laws**" means Environmental Law as defined in the Common Terms Agreement;
- 1.2.28 **Equator Principles**" means the framework by which banks manage environmental and social issues in project financing, published at www.equator-principles.com;
- 1.2.29 **Event of Default**" means an event of default as described in clause 21 of this Policy;
- 1.2.30 **Export Contract**" means the engineering, procurement and construction agreement dated [tba] between the Insured Debtor and the Export Contractor recording the terms on which Goods and Services will be provided by the Export Contractor to be utilised exclusively for the completion of the Project;
- 1.2.31 **Export Contractor**" means [tba], a limited-liability for profit company duly incorporated in accordance with the laws applicable in the Republic of South Africa, with registration number [tba];
- 1.2.32 **Expropriation**" means –
- 1.2.32.1 any measure taken, directed, authorized, ratified, or approved by the Host Government, which is expropriatory within the meaning of clause 1.2.32.2 and which constitutes -
- 1.2.32.1.1 an administrative action; or
- 1.2.32.1.2 a legislative action which requires no further legislation, regulation or

administrative action for its implementation;

1.2.32.2 subject to clause 1.2.32.5 below, a measure shall be "expropriatory" if the measure:

1.2.32.2.1 prevents the Insured from receiving a Scheduled Payment or Scheduled Payments;

1.2.32.2.2 results in nationalisation or confiscation of the assets of the Insured Debtor or land leases granted to the Insured Debtor which are relevant to the Project, provided that such property or land leases, as the case may be, is/are used principally in connection with the Project;

1.2.32.2.3 deprives the Insured of its rights as a creditor against Security in respect of a Scheduled Payment or Scheduled Payments; or

1.2.32.2.4 deprives the Insured and/or the Insured Debtor of the use and control of funds deposited by the Insured Debtor for the account of the Insured, with a financial institution in the Designated Country, and such funds constituted a Scheduled Payment or Scheduled Payments under the obligations of the Insured Debtor under the Insured Contract, as the case may be;

provided, however, that:

1.2.32.2.5 the deprivation directly results in the Scheduled Payment not being made, received or retained;

1.2.32.2.6 in the case of clauses 1.2.32.2.1 to 1.2.32.2.4 above, such measure results in a default under the Insured Contract that continues for a period of 180 (one hundred and eighty) consecutive days in the case of the first default or any subsequent but non-consecutive default. No waiting period shall be required in respect of any subsequent default that constitutes Expropriation if such Expropriation occurs within the existing 180 (one hundred and eighty) day waiting period or prior to the

resolution of the existing Expropriation event;

- 1.2.32.3 for the purpose of this clause, a series of measures by the Host Government shall be regarded as one measure, if their combined effect is "expropriatory" within the meaning of clause 1.2.32.2;
- 1.2.32.4 no measure shall be deemed to be expropriatory if it constitutes a *bona fide* non-discriminatory measure of general application of a kind that governments normally take in the public interest for such purposes as ensuring public safety, raising revenues, protecting the environment, or regulating economic activities, unless the measure is designed by the Host Government to have a confiscatory effect, provided that it will be deemed to be expropriatory if it is of general application and it prohibits payment under the Insured Contract or revokes any existing consent, land lease, authorisation, licence or approval of government or public bodies or authorities of the Designated Country that has a material adverse impact on the conduct of the business of the Insured Debtor and provided the Insured Debtor is not in breach of the conditions applicable to such consent, authorisation, licence or approval;
- 1.2.32.5 breach by the Host Government of contractual obligations to the Insured Debtor or the Insured, when the Host Government is acting in a commercial capacity such as supplier, buyer or trader, shall not constitute an expropriatory measure;
- 1.2.33 **"FAIS"** means the Financial Advisory and Intermediary Services Act, 37 of 2002;
- 1.2.34 **"Final Maturity Date"** means the date of final repayment of the capital plus interest under the Senior Commercial Bank Term Facility Agreement as envisaged in the definition of Final Discharge Date (as defined in the Common Terms Agreement);
- 1.2.35 **"Finance Documents"** means –

- 1.2.35.1 the Insured Contract;
- 1.2.35.2 the Intercreditor Agreement;
- 1.2.35.3 all Security Documents;
- 1.2.35.4 all other finance documents defined as such in the Common Terms Agreement;
- 1.2.36 **"Financial Close"** means financial close as defined in the Common Terms Agreement;
- 1.2.37 **"Forced Labour"** means all work or service, not voluntarily performed that is exacted from an individual under threat of force or penalty;
- 1.2.38 **"Guarantee"** means the guarantee issued by the Guarantor;
- 1.2.39 **"Goods"** means goods delivered or to be delivered by the Export Contractor to the Insured Debtor in terms of the Export Contract;
- 1.2.40 **"Government Approvals"** means, in relation to the doing of any act or the entering into of any transaction or document, all consents, approvals, authorisations, registrations, licences or permits of the Host Government or of any government or authority of any country, state or place which are required in order that the act may lawfully be done or for the lawful entry into of all transactions related to the Project;
- 1.2.41 **"Guarantor"** means the Host Government;
- 1.2.42 **"Harmful Child Labour"** means the employment of children that is economically exploitative or is likely to be hazardous to or to interfere with, the child's education, or to be harmful to the child's health, or physical, mental, spiritual, moral or social development;
- 1.2.43 **"Host Government"** means -

- 1.2.43.1 the present or any succeeding governing authority (without regard to the method of its succession or as to whether it is internationally recognised) in effective control of all or any part of the territory of the Designated Country or any political or territorial subdivision thereof (including any dependent territory);
- 1.2.43.2 any other public authority in or of the Designated Country on which regulatory powers are, or have been, conferred by the laws of the Designated Country at the time of the Loss, and for which actions the governing authority of the Designated Country may be held liable; and
- 1.2.43.3 only in the case of a Breach of Contract and Award;
- 1.2.44 **"Insolvency"** means the occurrence of any of the following events -
- 1.2.44.1 a final liquidation or bankruptcy order is granted by a court of competent authority (whether voluntary or compulsory) in respect of the Insured Debtor or the deregistration of the Insured Debtor;
- 1.2.44.2 a compromise or scheme of arrangement (statutory or otherwise) binding on the Insured Debtor and all of the Insured Debtor's creditors (whether or not including the Insured Debtor or the Insured) becomes effective, provided that if such compromise or arrangement is only contractual, the Insured shall not agree to it without the prior written consent of the Insurer;
- 1.2.44.3 a final judicial management order or similar order is granted in respect of the Insured Debtor in circumstances where such order contains a directive staying all legal proceedings against the Insured Debtor without leave of the court;
- 1.2.44.4 any similar event which under the laws of the Designated Country is equivalent to any of the events referred to in clause 1.2.44.1, 1.2.44.2 or 1.2.44.3;
- 1.2.45 **"Insured"** means the financial institution, a bank duly incorporated in terms of

the laws applicable in the Republic of South Africa, with registration number [tba];

1.2.46 **"Insured Contract"** means collectively, the Common Terms Agreement as well as the Senior Commercial Bank Term Facility Agreement dated [tba];

1.2.47 **"Insured Debt"** shall comprise and be specifically limited to –

1.2.47.1 an amount not exceeding the Insured's Proportion of the total amount advanced under the Insured Contract, being a maximum capital amount [tba];

1.2.47.2

1.2.48 **"Insured Debtor"** means [tba], a company with limited liability incorporated [tba];

1.2.49 **"Insured Lenders"** means –

1.2.49.1 the Insured;

1.2.49.2 financial institution;

1.2.49.3 financial institution,

in the amounts as set out in **Annexure E**;

- 1.2.50 **"Insured Loss(es)"** means such part of the Insured Debt as has not been received or retained (as contemplated in clause 1.2.3) by the Insured due to a Cause of Loss beyond the control of the Insured (on the basis that cessation of Drawing due to a breach by the Insured Debtor under the Insured Contract shall not be construed as a Cause of Loss within the control of the Insured), provided that loss, expense or cost so arising in respect of a Commercial Cause of Loss shall only be covered as to 85% (eighty five percent) thereof;
- 1.2.51 **"Insured's Proportion"** means the Insured's proportion of the Insured Debt that is made available under the Insured Contract as set out in **Annexure E**;
- 1.2.52 **"Insurer"** means Export Credit Insurance Corporation of South Africa SOC Ltd, registration number 2001/013128/30, with FAIS registration number 30656. Specific reference is made to the FAIS legislation referred to in **Annexure C**;
- 1.2.53 **"Intercreditor Agent"** means financial institution;
- 1.2.54 **"Intercreditor Agreement"** means the intercreditor deed dated [tba] concluded between amongst others the Insured Lenders;
- 1.2.55 **"LIBOR"** means, in relation to any payment period for purposes of the Insured Contract, and for purposes of determining the Discounted Outstanding Premium –
- 1.2.55.1 the ICE Benchmark Administration Limited interest settlement rate for US Dollars and the relevant payment period displayed on Reuters Screen LIBOR01 provided that if such page is replaced or such service ceases to be available, the Insurer may specify another page or service displaying the appropriate rate after consultation with the Insured; or
- 1.2.55.2 (if no screen rate as described in clause 1.2.55.1 is available for such payment period) such rate as may be calculated by the Insurer (rounded

upwards to four decimal places) by interpolation from such rates as may be available on the relevant screen,

in each case, at or about 11.00 am London time on the Quotation Day in the Relevant Interbank Market provided that if no screen rates are available either (i) for any period, as described in clauses 1.2.55.1 and 1.2.55.2, or (ii) for US Dollars, LIBOR for such payment period shall be such rate as may be determined by the Insurer;

1.2.55.3 for any period shorter than 6 (six) Months, the rate shall be interpolated from 6 (six) Month LIBOR in accordance with the formula set out in the definition of Base Rate in the Insured Contract;

1.2.56 "**Local Currency**" means [tba];

1.2.57 "**LTA**" means the Lenders' Technical Advisor as defined in the Common Terms Agreement;

1.2.58 "**Material Adverse Effect**" means any event or circumstance which –

1.2.58.1 has, or is reasonably likely to have, a material adverse effect on –

1.2.58.1.1 the ability of the Insured Debtor to perform in a timely manner its material obligations under the Transaction Documents to which it is a party;

1.2.58.1.2 the business operations of the Insured Debtor;

1.2.58.1.3 the financial condition (including assets, revenues, liabilities, prospects and results of operations) or affairs of the Insured Debtor (or any successor); or

1.2.58.2 results, or is reasonably likely to result in –

1.2.58.2.1 any of the Transaction Documents ceasing to be legal, valid and binding on, and enforceable substantially in accordance with its terms, against

- any party to it;
- 1.2.58.2.2 any of the Security Documents ceasing to provide to the Insured perfected and enforceable security over the assets purported to be covered by the relevant Security Document;
- 1.2.59 **"Maximum Liability"** means 100% (one hundred percent) of the Insured Debt in respect of Political Causes of Loss and 85% (eighty five percent) for Commercial Causes of Loss;
- 1.2.60 **"Monitoring Procedure"** means the obligation on the part of the Insured to monitor whether the Insured Debtor complies with the terms and conditions stipulated in the Insured Contract, dealt with more fully in terms of clause 7.1 of this Policy;
- 1.2.61 **"Month"** means a calendar month;
- 1.2.62 **"Obligor"** means the obligors as defined in the Common Terms Agreement;
- 1.2.63 **"Outstanding Premium"** means each Premium that has not yet been paid by the Insured to the Insurer in accordance with the provisions of clause 9.1.3, calculated in accordance the provisions of clause 9.1.1.2, if applicable, and clause 9.1.1.3, as though there had been no Claim;
- 1.2.64 **"Parties"** or **"Party"** means respectively, collectively both and individually each of the parties to this Policy;
- 1.2.65 **"Policy"** means this policy, the Annexures hereto and any endorsement/s which are issued in respect hereof;
- 1.2.66 **"Political Cause(s) of Loss"** means any one or more of the following events, namely –
- 1.2.66.1 Transfer Restriction;
- 1.2.66.2 War and Civil Disturbance;

- 1.2.66.3 Expropriation;
- 1.2.66.4 Change in Law;
- 1.2.66.5 Breach of Sovereign Financial Obligations; and
- 1.2.66.6 Breach of Contract;
-
- 1.2.67 **"Premium(s)"** means the amount of money calculated and payable by the Insured in terms of clause 9;
- 1.2.68 **"Project"** means the development, financing, procurement, construction, operation and maintenance and ownership of a [tba] by the Insured Debtor;
- 1.2.69 **"Project Accounts"** means the project accounts as defined in the Common Terms Agreement;
- 1.2.70 **"Project Documents"** means collectively –
- 1.2.70.1 the Export Contract;
- 1.2.70.2 the other Project Documents as defined in the Common Terms Agreement;
- 1.2.71 **"Proposal"** means the revised proposal submitted by the Commercial Bank Facility Agent to the Insurer dated [tba], as amended in terms of which it made application to obtain insurance cover as set out in this Policy;
- 1.2.72 **"Protracted Default"** shall have occurred if any Scheduled Payment under the Insured Contract is not paid on due date, and the payment has not been made within a period of 180 (one hundred and eighty) days after the due date of payment (or postponed due payment as may be agreed to in writing by the Insurer), which failure is not caused directly or indirectly by any of the events described as a Political Cause of Loss (other than Breach of Contract which has arisen as a result of failure to honour any payment due and payable to the

Insured Debtor under the agreement and which is not disputed by the Host Government) or Insolvency, provided that no protracted default shall have occurred for so long as the reason for failure to make payment of that amount is because the obligation to make payment is the subject of dispute;

1.2.73 **"Quotation Day"** means -

1.2.73.1 in relation to any period for which an interest rate is to be determined, 2 (two) Business Days before the first day of that period unless market practice differs in the Relevant Interbank Market in which case the Quotation Day will be determined by the Insured in accordance with market practice in the Relevant Interbank Market (and if quotations would normally be given by leading banks in the Relevant Interbank Market on more than one day, the Quotation Day will be the last of those days);

1.2.73.2 in relation to the Discounted Outstanding Premium, the Business Day immediately prior to the date on which the Insurer notifies the Insured in writing that it has accepted a Claim in accordance with the provisions of clause 13.7;

1.2.74 **"R"** or **"Rand"** or **"ZAR"** means the lawful currency of South Africa;

1.2.75 **"Recovery"** or **"Recoveries"** means any recovery in money or otherwise received by the Insured or to which the Insured is unconditionally entitled which is available for the purposes of reducing the Amount of Loss, whether practically or legally, excluding any amount standing to the credit of the ECIC Premium Account, which has been funded in accordance with the terms of the CTA but only to the extent sought from excess cash flows of the Insured Debtor and only to the extent that such amount is used to pay outstanding Premiums in terms hereof;

1.2.76 **"Related Parties"** means –

1.2.76.1 the Insured;

- 1.2.76.2 the Insured Debtor;
- 1.2.76.3 the Insured Lenders;
- 1.2.76.4 the Shareholders; and
- 1.2.76.5 Obligors;
- 1.2.77 **"Relevant Interbank Market"** means the London Interbank Market;
- 1.2.78 **"Resident"** means a resident as defined from time to time in the Income Tax Act, No 58 of 1962, as amended from time to time;
- 1.2.79 **"Scheduled Payment"** means –
- 1.2.79.1 an instalment of principal (including any mandatory pre-payment but excluding a voluntary prepayment) and/or interest (including interest on overdue amounts) payable to the Insured on a due date pursuant to the provisions of the Insured Contract; or
- 1.2.79.2 in the event of an acceleration of the Insured Debt pursuant to the relevant clause of the Common Terms Agreement, all amounts outstanding under the Insured Contract due to the Insured following such acceleration;
- 1.2.80 **"Security"** means any and all security provided for the due compliance of the obligations of the Insured Debtor in terms of the Insured Contract;
- 1.2.81 **"Security Trustee"** means Security Trustee as defined in the Insured Contract;
- 1.2.82 **"Security Documents"** means the transaction security documents as defined in the Common Terms Agreement;
- 1.2.83 **"Services"** means the services rendered or to be rendered by the Export Contractor to the Insured Debtor in terms of the Export Contract;

- 1.2.84 **"Shareholders"** means the shareholders as defined in the Common Terms Agreement;
- 1.2.85 **"Signature Date"** means the date upon which this Policy is signed by the Party signing last in time;
- 1.2.86 **"South Africa"** means the Republic of South Africa;
- 1.2.87 **"South African Content"** means the South African Content of the Goods or Services as set out in **Annexure D**;
- 1.2.88 **"Transaction Documents"** means the Finance Documents and the Project Documents collectively;
- 1.2.89 **"Transfer Restriction"** means –
- 1.2.89.1 any action by the Host Government that prevents the Insured Debtor or the Insured, as the case may be, from directly or indirectly -
- 1.2.89.1.1 converting Local Currency into US Dollars in order to make a Scheduled Payment under the Insured Contract; or
- 1.2.89.1.2 transferring outside the Designated Country any amount of US Dollars which constitutes a Scheduled Payment; and
- 1.2.89.2 failure by the Host Government (or by entities authorised under the laws of the Designated Country to operate in the foreign exchange markets) to effect such conversion and/or transfer on behalf of the Insured or the Insured Debtor,

provided that in the cases of clauses 1.2.89.1 and 1.2.89.2 above the Insured and/or the Insured Debtor, without success for a period of 180 (one hundred and eighty) days from the due date of the Scheduled Payment, has made all reasonable efforts to convert and/or transfer such currency in accordance with the laws, regulations and procedures of the Designated Country, through all

lawful mechanisms that the Insured and/or the Insured Debtor could have reasonably utilized in the absence of this coverage. No waiting period shall be required in respect of any subsequent default that constitutes a Transfer Restriction if such Transfer Restriction occurs within the existing 180 (one hundred and eighty) day waiting period or prior to the resolution of the existing Transfer Restriction event;

- 1.2.89.3 Transfer Restriction does not cover currency devaluation or depreciation;
- 1.2.90 **"US\$" or "US Dollars"** means the lawful currency of the United States of America;
- 1.2.91 **"Utilisation Request"** means the utilisation request completed by the Insured Debtor in terms of which it draws down on the facility made available under the Insured Contract, one of the conditions to such utilisation being that there must be no restriction under this Policy to such Drawing being made;
- 1.2.92 **"VAT"** means value-added tax as levied in terms of the Value Added Tax Act, 1991;
- 1.2.93 **"War and Civil Disturbance"** means –
- 1.2.93.1 acts of war (whether declared or undeclared), revolution, hostilities, rebellion, insurrection, civil war, civil commotion, that cause -
- 1.2.93.1.1 the destruction, disappearance or physical damage to all or a material and/or substantial part of the assets of the Insured Debtor which are relevant to the Project for which the Insured Debtor bears the risk of loss in the Designated Country, provided that such property is used principally in connection with the Project; or
- 1.2.93.1.2 the Insured Debtor to be unable to carry out operations essential to its overall financial viability as a going concern for a consecutive period of 180 (one hundred and eighty) days or results in the Insured Debtor being unable to honour a Scheduled Payment and it remains

outstanding for a period of at least 180 (one hundred and eighty) days. No waiting period shall be required in respect of any subsequent payment default that is caused by War and Civil Disturbance if such War and Civil Disturbance occurs within the existing 180 (one hundred and eighty) day waiting period or prior to the resolution of the existing War and Civil Disturbance event;

- 1.2.93.2 the coverage for War and Civil Disturbance applies only to acts undertaken with the primary intent of achieving a political objective. It does not extend to acts undertaken primarily to achieve non-political labour, non-political student, or other non-political objectives.
- 1.3 Unless otherwise indicated, words and expressions used in this Policy shall bear the meaning so assigned to them in the Finance Documents.
- 1.4 Any substantive provision, conferring rights or imposing obligations on a Party and appearing in any of the definitions in this clause 1 or elsewhere in this Policy, shall be given effect to as if it were a substantive provision in the body of the Policy.
- 1.5 Words and expressions defined in any clause shall, unless the application of any such word or expression is specifically limited to that clause, bear the meaning assigned to such word or expression throughout this Policy.
- 1.6 The words "include" and "including" mean "include without limitation" and "including without limitation". The use of the words "include" and "including" followed by a specific example or examples shall not be construed as limiting the meaning of the general wording preceding it.
- 1.7 Subject to clauses 1.9 and 1.15, defined terms appearing in this Policy in title case shall be given their meaning as defined, while the same terms appearing in lower case shall be interpreted in accordance with their plain English meaning.

- 1.8 A reference to any statutory enactment shall be construed as a reference to that enactment as at the Signature Date and as amended or substituted from time to time.
- 1.9 Any reference to "business hours" shall be construed as being the hours between 08h30 and 17h00 on any Business Day. Any reference to time shall be based upon South African Standard Time.
- 1.10 Unless specifically otherwise provided, any number of days prescribed shall be determined by excluding the first and including the last day or, where the last day falls on a day that is not a Business Day, the next succeeding Business Day.
- 1.11 Where figures are referred to in numerals and in words, and there is any conflict between the two, the words shall prevail, unless the context indicates a contrary intention.
- 1.12 No provision herein shall be construed against or interpreted to the disadvantage of a Party by reason of such Party having or being deemed to have structured, drafted or introduced such provision.
- 1.13 The expiration or termination of this Policy shall not affect such of the provisions of this Policy as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.
- 1.14 The use of any expression in this Policy covering a process available under South African law, such as winding-up, shall, if either of the Parties to this Policy is subject to the law of any other jurisdiction, be construed as including any equivalent or analogous proceedings under the law of such other jurisdiction.
- 1.15 This Policy incorporates the Annexures which Annexures shall have the same force and effect as if set out in the body of this Policy. In this Policy the words "clause" or "clauses" and "annexure" or "annexures" refer to clauses of

and annexures to this Policy. To the extent that there is any conflict between any Annexure and the provisions of the Policy, the provisions of the Policy shall prevail.

2 BASIS OF THE POLICY

2.1 The Commercial Bank Facility Agent made a Proposal to the Insurer on [tba] as amended by the Insured, in terms of which it made application to obtain insurance cover as envisaged in this Policy. The insurance cover provided by the Insurer in terms of this Policy relates to –

2.1.1 Political Causes of Loss; and

2.1.2 Commercial Causes of Loss.

2.2 The Insured acknowledges that the fundamental basis inducing the Insurer to enter into the Policy is the material information and relevant statements contained in the Proposal and such information and statements are the essence of the contract contained in the Policy. By entering into the Policy the Insured warrants to the Insurer that all of the material and/or relevant statements made in the Proposal were true and correct at the date of the Proposal unless otherwise notified in writing by the Commercial Bank Facility Agent and/or the Insured on or before the Effective Date. If the Commercial Bank Facility Agent and/or the Insured advises the Insurer before the Effective Date of any change to the material and/or relevant statements made in the Proposal that occurred after [tba], the Insurer shall be entitled to cancel this Policy by written notice to the Insured on or prior to the Effective Date. However, this warranty is not to be construed as limiting the obligation imposed on the Insured by law to disclose to the Insurer all material circumstances and really to use good faith in its dealings with the Insurer.

2.3 Without limiting the rights of the Insurer, if any of the material and/or relevant statements contained in the Proposal are untrue or incorrect on the date of the Proposal or on the Effective Date, the Insurer will not be obliged to pay any Claim

to the Insured under this Policy on the basis that the Insurer may retain any Premium that has been paid by the Insured as pre-estimated liquidated damages.

- 2.4 The Insured has accepted the Insurer's offer to provide insurance cover on the terms and conditions set out herein.
- 2.5 It is recorded that the Contract Price shall be an amount equal to [tba], excluding VAT .
- 2.6 It is recorded that the South African Export Credit Support Agreement (2012) will apply to this Project.
- 2.7 The Parties therefore agree that the insurance cover as provided for in this Policy shall be subject to the following terms and conditions.

3 SUSPENSIVE CONDITIONS

- 3.1 The rights and obligations of the Parties under this Policy (other than as set out in this clause 3) are subject to and conditional upon the fulfilment of the following suspensive conditions by not later than [tba] (or such later date as the Insurer may agree in writing), namely that –
- 3.1.1 the Insured has confirmed to the Insurer in writing that it did not, after all due enquiry, have knowledge of –
- 3.1.1.1 the occurrence or anticipated occurrence of a Cause of Loss that may result or has resulted in an Amount of Loss; or
- 3.1.1.2 the non-receipt or likely non-receipt of a Scheduled Payment;
- 3.1.2 the Insured Debtor has entered into the Finance Documents to which it is a party and the Finance Documents have become unconditional in all respects, save to the extent that they may be conditional upon the entering into of this Policy;

- 3.1.3 the Insured has ensured and confirmed in writing to the Insurer that the Insured Debtor has obtained all the necessary consents, licences, undertakings, permits and authorisations from all the relevant authorities for the implementation of the Project, as confirmed by reputable legal counsel;
- 3.1.4 the Insured has ensured and confirmed in writing to the Insurer that the Transaction Documents are legally valid, binding and enforceable in the relevant jurisdictions, as confirmed by reputable legal counsel;
- 3.1.5 the Insured has ensured and confirmed in writing to the Insurer that the Insured and the Export Contractor have obtained the necessary approvals (where applicable) from the South African Reserve Bank for the funding of the Insured Contract and the execution of the Export Contract, alternatively confirmation has been obtained that these agreements fall within the existing foreign exchange approval of the parties concerned, if applicable;
- 3.1.6 the Insured has ensured and confirmed in writing to the Insurer that the Insured Debtor has obtained all required approvals from the Central Bank of the Designated Country and/or other relevant authorities for the establishment and operation of Project Accounts, and the repatriation of funds from the Designated Country (if applicable), as confirmed by reputable legal counsel;
- 3.1.7 the Insured has ensured and confirmed in writing that a coordinating exporter's undertaking agreement has been entered into between amongst others, the Export Contractor, the Insured and the Commercial Bank Facility Agent in terms of which the Export Contractor undertakes, *inter alia*, to achieve at least a 50% (fifty percent) South African Content on the Insured Debt under the Insured Contract;
- 3.1.8 in compliance with the terms and conditions of the South African Export Credit Support Agreement (2012), the Insured has provided or disclosed the following information for the Insurer's acknowledgement or approval –

- 3.1.8.1 commercial terms of the transaction;
 - 3.1.8.2 floating reference rate options (floating interest charged on the Insured Debt);
 - 3.1.8.3 hedging strategy or arrangement of the Insured Debt (if any); and
 - 3.1.8.4 interest payment dates.
- 3.1.9
- 3.1.10
- 3.1.11 the Insured has ensured that the Agreements are satisfactorily executed and are, as evidenced by a legal opinion from a reputable legal counsel, legally binding and valid for the term of the Insured Contract;
 - 3.1.12 the Insured has ensured and confirmed in writing to the Insurer that the Insured Debtor has entered into an Export Contract and such agreement has become unconditional in all respects save to the extent that it is conditional upon this Policy becoming effective;
 - 3.1.13 the Insured has ensured that the guarantee is satisfactorily executed and is, as evidenced by a legal opinion from a reputable legal counsel, legally binding and valid for the term of the Insured Contract;
 - 3.1.14 the Insured has ensured and confirmed in writing to the Insurer that the Insured Debtor has entered into the Project Documents, including specifically –
 - 3.1.14.1 [tba];
 - 3.1.14.2 [tba];
 - 3.1.14.3 [tba];

- 3.1.15 the Insured has ensured and confirmed in writing to the Insurer that the Insured Debtor has conducted an environmental and social impact assessment study for the Project in accordance with local laws and regulation and the Equator Principles;
- 3.1.16 the Insured has ensured and confirmed in writing to the Insurer that the Insured Debtor has established environmental and social management plans for the Project in accordance with local laws and regulation and the Equator Principles as confirmed by the LTA;
- 3.1.17 the Insured has ensured that all of the LTA's material recommendations regarding environmental and social issues have been incorporated in the environmental management plans as confirmed by the LTA;
- 3.1.18 the Security Documents have been established in favour of the Insured to the extent possible under English laws and have become unconditional in all respects, and including the following or their equivalent under English, Designated Country or South African law as relevant –
- 3.1.18.1 [tba];
- 3.1.18.2 [tba];
- 3.1.18.3 [tba];
- 3.1.18.4 [tba];

as confirmed by reputable legal counsel.

- 3.2 The suspensive conditions set out in clause 3.1 operate for the sole benefit of the Insurer which may, by written notice to the Insured, waive fulfilment thereof or extend the period for the fulfilment of such suspensive condition(s) by any additional period.

- 3.3 In the event that any of the suspensive conditions are not so fulfilled or waived by the date by which they must be fulfilled or waived and the date for fulfilment or waiver of such conditions has not been extended in writing by the Insurer, this Policy shall not be of any force or effect and shall be *void ab initio*.
- 3.4 It is specifically recorded that the suspensive conditions referred to in clause 3.1 above will not be deemed to have been satisfied unless the Insured has submitted written confirmation that the relevant conditions have been satisfied (and the Insured has supplied to the Insurer all supporting documentation on which it has relied in arriving at such conclusion) and such confirmation has been acknowledged in writing by the Insurer ("**Acknowledgment Letter**"). Once the Insurer has issued the Acknowledgment Letter, the Insurer will issue a letter to the Insured that those suspensive conditions which are to be satisfied in the discretion of the Insurer, have in fact been satisfied and that, relying on the written confirmation of the Insured, the Policy will be declared effective ("**Effective Date Notice**"). In the event that the information supplied by the Insured in relation to the suspensive conditions covered by the Acknowledgment Letter is materially false or misleading, the issuance of the Effective Date Notice shall not prejudice the Insurer's rights and remedies available to it in law pursuant to such misrepresentation, subject always to the provisions of clause 32 dealing with the documentation risk assumed by the Insured.

4 **INSURANCE COVER**

- 4.1 The Insurer agrees to indemnify the Insured in the event of the Insured sustaining an Amount of Loss in respect of the Insured Contract as a result of the occurrence of any Political Causes of Loss and/or any Commercial Causes of Loss, subject to such amount not exceeding the Insured Loss and provided further that the indemnity shall be limited to the Maximum Liability.
- 4.2 The Insured accepts the insurance cover provided by the Insurer as envisaged in clause 4.1.

- 4.3 It is specifically recorded that the cover provided by this Policy shall only commence on the Effective Date as confirmed in writing by the Insurer to the Insured through the Effective Date Notice.
- 4.4 Notwithstanding the fact that the event may constitute a Political Cause of Loss, it is emphasised that the event must still lead to an Insured Loss, i.e the non-receipt of any part of the Insured Debt by the Insured notwithstanding the fact that the event may have occurred to a third party.
- 4.5 To the extent that any information requirements are to be satisfied by the Insured, it shall be deemed to have satisfied these requirements to the extent that the Commercial Bank Facility Agent has provided such information and no duplicate steps or information need to be provided by the Insured in these circumstances. However, the primary obligation shall still be on the Insured to ensure that such information or undertakings have in fact been provided by the Commercial Bank Facility Agent.

5 **INSURED CONTRACT**

- 5.1 The principal amount shall be repayable in [tba].
- 5.2 For the purpose of Interest Make-Up, interest will accrue at the Base Rate plus [tba].
- 5.3 The payment terms of the Export Contract shall be as follows –
- 5.3.1 at least 15% (fifteen percent) of the value of the Contract Price shall be paid by the Insured Debtor from its own resources prior to or during the Availability Period;
- 5.3.2 up to 85% (eighty five percent) on financial credit [tba];
- 5.3.3 notwithstanding the interest rate that applies to the Insured Debt, the interest rate that will be used for purposes of the South African Export Credit Support

Agreement (2012) will be capped (as set out in that agreement) and will be applied as per such agreement.

- 5.4 All amounts shall be disbursed in US Dollars.
- 5.5 The Insurer shall not have any liability under this Policy until the Insured –
- 5.5.1 has paid the relevant Premium that may be due at that point in time pursuant to clause 9; and
- 5.5.2 has confirmed to the Insurer in writing that the first Utilisation under the Insured Contract has been made to the Insured Debtor.
- 5.6 It is recorded that the Insured Lenders will make the total amount available in terms of the Insured Contract. The proportionate exposure of the Insured Lenders as at the Effective Date is as set out in **Annexure E**. Separate policies on exactly the same terms shall be issued by the Insurer to each of the Insured Lenders and any new lenders.
- 5.7 This Policy shall endure until the Final Maturity Date on the basis that it shall still cover events that resulted in an Insured Loss prior to such date, even though the relevant Claim concerned may be submitted by the Insured thereafter.

6 **SOUTH AFRICAN CONTENT REQUIREMENTS**

- 6.1 The Insured shall use reasonable endeavours to obtain proof from the Export Contractor to the reasonable satisfaction of the Insurer that the Goods Delivered and/or to be Delivered and the Services rendered and/or to be rendered in terms of the Export Contract and in respect of which the Insured granted the Loan, shall have a cumulative South African Content as set out in this clause 6 of not less than 50% (fifty percent) of the capital amount of the Insured Debt. In addition, all documents, to the extent relevant, referred to under the definition of "Delivery" shall be delivered by the Insured to the extent that it has received delivery thereof from the Export Contactor, including such other documents as the Insurer may

require to the extent provided by the Export Contractor from time-to-time and shall be delivered forthwith by the Insured to the Insurer.

- 6.2 The South African Content is to be calculated on a cumulative basis at the end of the Availability Period and the 50% (fifty percent) South African Content requirement does not apply with reference to each specific Drawing to be made.
- 6.3 It is specifically recorded that the South African Content documentation supplied by the Export Contractor through the Insured will not necessarily be verified by the Insurer with every Drawdown. The documentation so provided by the Export Contractor will be subjected to verification by the Insurer annually on a sample basis. Such verification may be done by the Insurer through third parties, including external auditors, appointed by the Insurer. It is specifically recorded that all relevant documentation provided to the Insured shall be submitted prior to the last Drawdown or prior to the end of the Availability Period as contemplated in the Insured Contract.
- 6.4 The cover provided by the Insurer to the Insured in terms of this Policy will not be impacted upon whether the Export Contractor achieves the South African Content or not.

7 MONITORING PROCEDURE

- 7.1 The Insured shall diligently implement the Monitoring Procedure in a manner that is consistent with care and skill that can be expected from a person in this position and shall use reasonable endeavours to obtain information as to enable it to comply with its obligations in terms of this Policy, including without limitation the obligation to inform the Insurer timeously of such events as dealt with herein.
- 7.2 The Insured shall be required to produce evidence to the Insurer when lodging a Claim that the Monitoring Procedure as stipulated in clause 7.3 below has been reasonably implemented.

7.3 In implementing the Monitoring Procedure, the Insured shall provide the Insurer with quarterly (31 March, 30 June, 30 September and 31 December of each year) reports within 30 (thirty) days after expiry of the relevant quarter, during the Availability Period and annually thereafter (provided that interim financial statements shall be provided as and when being made available) relating to the progress, the implementation of the Insured Contract and related information so as to enable the Insurer to determine the extent of the risks covered by this Policy and any change in the extent thereof. Such report shall, amongst others, include the following information to the extent applicable –

7.3.1 executive summary of the Project;

7.3.2 financial analysis of the Project;

7.3.3 management of the Project;

7.3.4 exceptional occurrences relating to the Project;

7.3.5 construction report;

7.3.6 operational report; and

7.3.7 environmental management reports.

7.4 The above rights of the Insurer are without prejudice to the right of the Insurer to call for any additional information which may be reasonable in the circumstances and it shall not detract from the obligations of the Insured in terms of this Policy to notify the Insurer promptly of any event or circumstance that may reasonably be expected to lead to an event of default in terms of the Insured Contract or any event that may reasonably be expected to lead to a Claim being instituted under this Policy.

7.5 Receipt of any information provided to the Insurer by the Insured in terms of this clause 7 shall not be deemed to be a consent of the Insurer in relation to the

Project or any waiver or consent in respect of the Insured's rights or obligations in terms of the Finance Documents or the Project Documents.

8 EXCLUSIONS

8.1 It is specifically recorded that the following amounts or potential liabilities of the Insurer are excluded from the ambit of this Policy, namely -

8.1.1 any Drawing which takes place otherwise than as provided for in the Insured Contract to the extent that it may relate to a Cause of Loss or contributed to an Insured Loss provided that the Insured is entitled to approach the Insurer should the Insured wish to change the drawdown procedures;

8.1.2 any loss, cost or expense to the extent that such loss, cost or expense arises from any material misrepresentation or non-disclosure by the Insured or their employees or directors in providing information to the Insurer which induced the Insurer to enter into this Policy and/or any information disclosed thereafter or not disclosed to the Insurer which is material and accordingly would have been taken into account by the Insurer in determining whether it was prepared to provide the cover under this Policy and if so on what terms and conditions;

8.1.3 any loss, cost or expense to the extent that such loss, cost or expense arises from the default by any agent, officer, employee, or representative of the Insured or from any act or omission on the part of such person or entity in relation to the Project;

8.1.4 any loss, cost or expense to the extent that it relates to the non-performance of the Insured's obligations under the Transaction Documents to which it is a party and/or this Policy where the Policy is not terminated in terms of clause 21 or where the Insurer is entitled to repudiate a Claim or otherwise to terminate this Policy;

- 8.1.5 any expenses which the Insured would have incurred in performing its obligations in terms of the Insured Contract, but which are saved and/or not incurred by the Insured due to the lodging of a Claim;
- 8.1.6 consequential loss, indirect loss and/or loss of profits (other than any interest amount included in the Insured Debt);
- 8.1.7 any loss, cost or expense to the extent that it is due to faulty wording of, incorrect wording of, or insufficient provisions in, or the invalidity of any provision of the Insured Contract and the other Transaction Documents to which the Insured is a Party (provided that this clause 8.1.7 shall not apply if the Insured Contract or such Transaction Document becomes invalid or unenforceable after the Effective Date by reason of any change in any law or the promulgation of any new law, or the revocation or issue of any order, decree or regulation having the force of law);
- 8.1.8 any loss, cost or expense to the extent it arises from changes in rates of exchange; and
- 8.1.9 any event of default or payment delays to the extent not attributable to a Cause of Loss, it being recorded that the cover afforded in terms of this Policy will reduce proportionately to the extent that any Loss is suffered by the Insured as a result of events not covered by a Cause of Loss.
- 8.2 Subject to the voting arrangements as set out in the Intercreditor Agreement and the Insured Contract, the Insurer's liability for any Claim ceases or reduces when the Insured commits any of the following acts (unless such act would not, to a reasonable insurer, materially increase the Insurer's risk under this Policy) without the Insurer's prior written consent, namely for the Insured to –
- 8.2.1 waive non-performance of an obligation under the Finance Documents if it negatively affects any of the interests or rights of the Insurer in terms hereof;

- 8.2.2 waive a condition precedent to the Insured's obligations under the Finance Documents;
 - 8.2.3 waive the Insured's rights in connection with the Finance Documents;
 - 8.2.4 change the method of calculating the amount or the due date of the whole or any part of a Scheduled Payment;
 - 8.2.5 allow subordination of payments due to the Insured by the Insured Debtor relating to the Insured Contract;
 - 8.2.6 modify or amend any term or condition of the Finance Documents (except modifications or amendments that are of a formal, minor or technical nature and do not materially change any party's rights or obligations);
 - 8.2.7 compromise or settle a dispute in relation to any of the Insured's rights under any of the Finance Documents to the extent that it may relate to any of the Insurer's interests and/or rights in terms of this Policy;
 - 8.2.8 save as otherwise provided for herein, accept or reject any offer of compensation, indemnification or reimbursement from any person other than the Insurer in relation to a Cause of Loss; and
 - 8.2.9 fail to comply with the requirements of this Policy in respect of loss prevention and minimisation or exercise of a right under the Transaction Documents to which it is a party that can reasonably be considered to have caused, or increased the amount of, the Amount of Loss or reduce the amount which is likely to be recovered.
- 8.3 Save as otherwise provided for herein and subject to the voting arrangements as set out in the Intercreditor Agreement and the Insured Contract, the Insured shall not exercise any of its rights, votes and powers in respect of the Insured Contract, in a manner which is reasonably likely to negatively impact or negatively affects any of the interests or rights of the Insurer in terms hereof, without the prior written consent of the Insurer.

- 8.4 Subject to the voting arrangements in the Intercreditor Agreement, in exercising its rights under the Insured Contract in respect of the Insured Debtor, the Insured undertakes to act in accordance with the requirements of the Policy.
- 8.5 The Insurer acknowledges that the Insured is one of several financiers under the Insured Contract or the other creditors under the other Finance Documents and that the Insured Contract is one of a number of loan agreements being made to the Insured Debtor as part of the financing arrangements contemplated. Accordingly, the Insurer acknowledges and agrees that the Insured may not, in accordance with the terms of the Intercreditor Agreement and the other Finance Documents, be able to influence the actions taken by the Insured Lenders under the Insured Contract, in particular because voting or directions to the Intercreditor Agent may be determined by reference to a specified percentage of the Finance Parties or the Creditors as a whole. To the extent that this Policy requires the Insured to take, or not to take, any action, the Insured shall not be deemed to be in breach of this Policy if it has been unable to comply with any such requirement due to the other parties to the Intercreditor Agreement and the other Finance Documents voting for or directing the Intercreditor Agent to act in a manner which is contrary to any requirement of the Policy.

9 PREMIUM

- 9.1 Pursuant to the election made by the Insured –
- 9.1.1 Premiums (plus VAT) shall be paid on the basis as indicated in clause 9.1.3 and are payable by way of electronic transfer/cash to the Insurer without deduction and/or set-off and without the cost of transfer of money on the following basis –
- 9.1.1.1 the Premiums shall be paid in US Dollars (on the basis that the VAT element of the Premium is payable in Rand and determined with reference to the US Dollar/Rand spot exchange rate ruling on the date of the invoice issued by the Insurer);

- 9.1.1.2 the Premiums are equal to [tba] per annum of either the maximum Insured Debt (capital plus interest capitalised and/or accrued, if any) during the Availability Period and thereafter calculated on the reducing outstanding capital balance (including interest capitalised and/or accrued, if any) of the Insured Debt declared by the Insured;
- 9.1.2 the relevant amount in respect of which the Premiums are calculated must be declared at the beginning of each insurance year by the Insured, as and when relevant;
- 9.1.3 the first Premium is payable in advance on the first Drawdown Date. Thereafter Premiums are paid as and when due, annually in advance on the reducing outstanding balance during the repayment period until the date that the Insured Debt has been repaid in full;
- 9.1.4 except for the Premiums payable upfront after the Commencement of the Availability Period, Premiums payable thereafter may not be financed;
- 9.1.5 should the Insured Debtor refinance any portion of the amount due in terms of the Insured Contract, (excluding where the refinancing is funded out of internal cashflows) a penalty shall be payable by the Insured to the Insurer, on the basis that –
- 9.1.5.1 if the refinancing takes place during the first 3 (three) year period of this Policy, the penalty is equal to 20% (twenty percent) of the Discounted Outstanding Premium;
- 9.1.5.2 if the refinancing takes place thereafter, the penalty is equal to 15% (fifteen percent) of the Discounted Outstanding Premium;
- 9.1.5.3 in the event that the Insured Debtor refinances the Insured Debt out of its own free cash flow, the above provisions shall not apply.
- 9.1.6 if the Insurer becomes liable to pay a Claim in terms of the Policy, the Insurer shall be entitled to deduct an amount equal to the Discounted Outstanding

Premium plus the VAT payable thereon from the settlement amount to be paid to the Insured prior to settling the Claim in accordance with the provisions of clause 14, provided that the Insurer has issued an invoice to the Insured setting out the amount of the Discounted Outstanding Premium and the amount of VAT payable thereon. Such deductible amount will be applied to the payment of the lump sum amount if the Claim is settled on a once off basis, alternatively will be deducted from the periodic payments by the Insurer to the Insured if the Insurer decides to settle the Claim over a period, as the case may be. To the extent that the Insurer accepts a Claim that has occurred during the Availability Period, the deductible will be based on the actual amount Drawn Down during such period.

- 9.2 The Insurer may, in its sole discretion, accept late payment of Premium provided the request for extension for payment is received at least 5 (five) Business Days prior to the due date. If accepted, the Insurer, in its sole discretion, reserves the right to charge the Insured interest at LIBOR plus 3% (three percent) on the late Premium from the expiry date of the grace period for payment until payment is received by the Insurer calculated nominal annually and compounded quarterly in arrears.
- 9.3 The Premiums are not refundable.
- 9.4 All amounts payable by the Insured for the Premium shall be paid in cleared funds by direct deposit into such bank account of the Insurer as may be designated from time to time by the Insurer to the Insured in writing.
- 9.5 Subject to the provisions of clause 21.1.2, it is specifically recorded that, if any Premium or any part thereof is not paid by due date or within any extended time periods allowed by the Insurer, the cover provided by the Insurer in terms hereof shall lapse on notice to such effect from the Insurer to the Insured.

10 EXPENSES INCURRED IN MITIGATION OF AN INSURED LOSS AND ATTEMPTING RECOVERIES

- 10.1 Any expenses and/or legal costs incurred by the Insured in consultation with and with the prior written approval of the Insurer in terms of clause 12 or clause 18 for the purpose of pursuing any rights or taking the necessary steps in preventing a threatening loss or mitigating an actual loss in terms of this Policy will be reimbursed by the Insurer to the Insured.
- 10.2 Subject to the provisions of clause 25.4, the Insurer shall reimburse such expenses and/or legal costs within 6 (six) Months after receipt of a tax invoice and properly evidenced documentation prepared by the Insured and given to the Insurer, provided that notification is given to such effect by the Insured to the Insurer in writing.
- 10.3 In circumstances where the Cause of Loss constitutes a Commercial Cause of Loss, the Insurer shall be liable to reimburse 85% (eighty five percent) of the expenses and/or legal costs so incurred and the Insured shall be liable for the balance of the expenses and/or legal costs so incurred.

11 PROTRACTED DEFAULT

- 11.1 If the Insured Debtor fails to pay any amount in relation to the Insured Debt which may result in a Protracted Default, the Insured shall, as soon as possible thereafter, give written notice to the Insured Debtor of such default under the Insured Contract, informing the Insured Debtor of the default and the details thereof, including that payment is due (within applicable grace period).
- 11.2 It is specifically recorded that, if the Insured Debtor disputes its indebtedness under the Insured Contract on reasonable grounds, a Protracted Default shall be deemed not to have occurred until a judgment is granted by a court of law or an award has been made by an arbitrator or arbitration panel confirming the indebtedness of the Insured Debtor to the Insured under the Insured Contract.

- 11.3 Subject to the provisions of clause 11.1, should the Insured Debtor dispute its indebtedness in terms of the Insured Contract, the Insurer may at its sole discretion agree that the period of 180 (one hundred and eighty) days referred to in the definition of Protracted Default shall commence to run from an earlier stage than as set out in the definition of Protracted Default.

12 NOTIFICATION - MITIGATION OF AN INSURED LOSS

- 12.1 Should the Insured not receive any Scheduled Payment or following acceleration, the full amount of the Insured Debt on a due date or suspect that a Cause of Loss is reasonably likely to occur or an actual Cause of Loss has occurred, the Insured shall promptly notify the Insurer (after having made all reasonable enquiries from time to time and having diligently ensured performance with the Monitoring Procedure) and shall take all prudent and reasonable steps in consultation with, and with the prior written approval of the Insurer, to mitigate the amount of any loss which the Insured may have incurred or may be likely to incur, including, if so required by the Insurer, the execution of such documents and the implementation of such steps as may be necessary to collect and/or enable the Insurer to collect the whole or any part of the amount by way of Recoveries.
- 12.2 Without derogating from the generality of the foregoing, once the notification has been given by the Insured to the Insurer in terms of clause 12.1 the Insured shall be obliged to report on a fortnightly basis to the Insurer of any further developments that may have taken place.
- 12.3 Without limiting the generality of clause 12.1, on the occurrence of a Cause of Loss or potential Cause of Loss which is reasonably likely to result in a Claim under this Policy the Insured shall, at its own expense -
- 12.3.1 promptly after becoming aware thereof provide the Insurer with full details in writing of the event in question;
- 12.3.2 promptly give the Insurer such proof, information and sworn declarations as the Insurer may require.

12.4 The Insured shall give written notice to and consult with the Insurer prior to exercising its rights of -

12.4.1 acceleration under the Insured Contract; and

12.4.2 enforcement of any right under the Insured Contract following the occurrence of any potential event of default or event of default as envisaged under the Insured Contract or at any other time where the enforcement of a right under the Insured Contract could reasonably be expected to result in a Cause of Loss.

13 **LOGGING OF CLAIMS**

13.1 In submitting a Claim based on Protracted Default, the Insured must comply with the requirements of clause 11.1.

13.2 Pursuant to the Insured having given written notice to the Insurer of the occurrence of an Insured Loss, the Insured shall be entitled to submit a Claim under the Policy personally (and not through the Commercial Bank Facility Agent) in respect of the Insured Debt as soon as possible in the circumstances, but in any event within 3 (three) Months after the Date of Loss. The 3 (three) Month period will be extended for an additional period of 3 (three) Months should the Insured have been unable to identify the actual Cause of Loss in the particular circumstances.

13.3 In submitting a Claim, the Insured shall provide all relevant information to the Insurer to enable the Insurer to consider such Claim.

13.4 If an Insured Loss has occurred as a result of failure to honour any payment due and payable to the Insured Debtor under the agreement and which is not disputed by the Host Government, and furthermore which payment has not been honoured by the Host Government under the guarantee, the Insured shall be entitled to submit a Claim to that effect on the basis of Breach of Sovereign Financial Obligations if all of the relevant requirements have been met for such

specific Insured Loss. To the extent that the Insurer settles the Claim, the Insured shall be deemed to have applied the amount paid by the Insurer to interest and thereafter to capital.

- 13.5 If any further Insured Loss occurs directly as a result of the Insured Loss as envisaged in clause 13.4 above, the Insured shall be entitled to submit a further Claim based on either Protracted Default or Insolvency, as the case may be, should all of the relevant requirements have been met.
- 13.6 Upon receipt of a Claim, the Insurer shall within a reasonable period consider the merits of the Claim and it shall be entitled to request additional information in respect of the Amount of Loss and such other information as may not have been provided by the Insured.
- 13.7 The Insurer shall inform the Insured in writing of the outcome of any Claim submitted by the Insured under the Policy within 6 (six) Months after the date of receipt of the Claim, but in any event within 10 (ten) days after taking any decision. In particular, the Insurer shall inform the Insured whether –
- 13.7.1 it accepted the Claim;
- 13.7.2 it rejected or disputed the Claim; or
- 13.7.3 it requires additional information to consider the Claim.
- 13.8 Should the Insurer reject or dispute a Claim or the quantum of a Claim, the Insurer shall inform the Insured –
- 13.8.1 of the reasons for the decision;
- 13.8.2 that the Insured may within a period of no less than 90 (ninety) days after the date of receipt of the notice make representations to the Insurer in respect of the decision;

- 13.8.3 of the right to lodge a complaint under the Financial Services Ombud Schemes Act, 2004 (as amended) and the relevant provisions of the Short-Term Insurance Act, 1998 (as amended) relating to the lodging of any such complaint;
- 13.8.4 the time limitation provision for the institution of legal action and the implications thereof.
- 13.9 If the Insured makes representations to the Insurer, the Insurer shall within 45 (forty-five) days after receipt of the representation notify the Insured in writing of its decision to accept, reject or dispute the Claim or the quantum of the Claim.
- 13.10 In the event that the Claim has been rejected or disputed, the provisions of clause 15 apply. Should additional information be requested, the Insurer shall inform the Insured within 3 (three) Months after receipt of the additional information as to the outcome of the Claim on the basis as set out above. In such instance the Insurer may also request additional information apart from rejecting, disputing or accepting the Claim.
- 13.11 In advising the Insured of the outcome of any Claim lodged by the Insured, the Insurer shall inform the Insured that –
- 13.11.1 the Claim has been accepted, whether partly or in its entirety; alternatively
- 13.11.2 rejecting or disputing the Claim,
- and at the same time inform the Insured of the reasons of its decision, without prejudice to the Insurer's rights to review, amplify or add additional reasons for any potential rejection or dispute subsequently depending on whether or not further information is provided or existing information is reconsidered.
- 13.12 The Insured shall provide any additional information reasonably requested by the Insurer to evaluate a Claim. A Claim will be deemed complete when the Insured has provided to the Insurer all additional information reasonably requested by the Insurer.

- 13.13 Any Claim and any additional information requested by the Insurer to evaluate the Claim must be in English. Any additional information, which is not in English, must be accompanied by an authenticated translation into English.
- 13.14 The Insurer shall be entitled to verify every aspect of a Claim, and the events relevant to a Claim, and the Insured must cooperate, and shall use its reasonable endeavours to cause the Insured Debtor to cooperate with the Insurer in this regard.
- 13.15 Except for any action taken by the Insured in accordance with any consultation with or suggestion made by the Insurer, the Insurer still has a right to reject any Claim submitted by the Insured for the relevant Amount of Loss on any other lawful grounds.
- 13.16 The Insurer shall not be liable for any Claim which is not received and proved in writing by the Insured, within a period which is the longer of –
- 13.16.1 12 (twelve) Months from the occurrence of a Date of Loss; and
- 13.16.2 where a Claim has been received within the time period stated in clause 13.16.1, and the Insurer has requested additional information in respect of the Amount of Loss and such information has not been provided by the Insured within 3 (three) Months after the date of last request by the Insurer for such additional information, or such other period as the Insurer may consent to in writing.

14 **SETTLEMENT OF CLAIMS**

- 14.1 The Insurer shall commence paying or settling a Claim within 30 (thirty) Business Days after the Insured has accepted the basis of settlement proposed by the Insurer. The payment obligations of the Insurer shall be suspended for the period between 15 December to 7 January (both days exclusive) of every year and the obligation to pay an amount on the part of the Insurer shall be extended

accordingly and furthermore, the Insurer shall not be obliged or liable to any penalty interest or compensation to the Insured as a result of such suspension.

14.2 The Insurer shall have a choice to –

14.2.1 pay the relevant amounts according to the repayment profile and the Scheduled Payment dates as set out in the Insured Contract; or

14.2.2 subject to agreement by the Insured, pay a lump sum amount to the Insured.

14.3 Except to the extent already taken into account in determining the Amount of Loss, any amount payable by the Insurer to the Insured under this Policy shall be reduced by the amount of actual Recoveries received and retained (as contemplated in clause 1.2.3) by the Insured up to the date of payment by the Insurer without taking into account any time value of money. Once the Insurer has so paid an Insured Loss for which the Insured is covered in terms of this Policy and any Recovery is thereafter paid directly to the Insured, the Insured shall be obliged to pay such Recovery forthwith to the Insurer as envisaged in clause 18, together with any interest actually received by the Insured in respect of that amount.

14.4 The amount of any Claim paid by the Insurer shall be made in US Dollars.

15 REJECTION OR DISPUTE OF CLAIMS

15.1 The Insured shall have a period of 90 (ninety) days after the date of the decision of the Insurer to reject or dispute a Claim, to make representations to the Insurer in respect of any decision so made by the Insurer pursuant to the lodging of a Claim by the Insured.

15.2 The Insured shall have a period of 12 (twelve) Months from the date of the Insurer's decision to reject or dispute a Claim to institute legal proceedings against the Insurer in respect of such Claim.

- 15.3 Should legal proceedings not be instituted within the 12 (twelve) Month period concerned (excluding the 90 (ninety) day period referred to in clause 15.1) in the High Court of South Africa (North Gauteng High Court – Pretoria) (or any successor to that division), the Insured's right to any further action in connection with a Claim will be forfeited and the Insurer will be absolved from any and/or all liability in respect of the Insured Loss and/or the Claim concerned.

16 **INTEREST ON OVERDUE AMOUNTS**

If the Insurer becomes unconditionally liable to settle a valid Claim under the Policy in circumstances where the Insured Debtor has failed to pay any accrued interest in full in accordance with the Insured Contract in relation to the principal amount that has been accepted by the Insurer as part of the Claim, that accrued but unpaid interest, together with any further accrued but unpaid interest under the Insured Contract in respect of the principal amount concerned, from time to time, shall form part of the Insured Debt (but at the rate referred to in the definition of Insured Debt) and accordingly the Insurer shall be liable to make payment to the Insured of such accrued but unpaid interest under the Insured Contract, up to and including the date of payment of the Claim, either as part of the lump sum settlement of the Claim under clause 14.2.1 or in instalments under clause 14.2.2 on the relevant Scheduled Payment dates.

17 **CESSION AND SUBROGATION**

- 17.1 Against acceptance of an obligation in terms of a Claim by the Insurer to the Insured (whether partly or in full), the Insured shall if so required by the Insurer, subject to the provisions of the Intercreditor Agreement and the Insured Contract –
- 17.1.1 cede and transfer to the Insurer its rights under the Finance Documents and/or all or some of its rights in or under any Security in respect of the Insured Debt; and/or

- 17.1.2 deliver up to or otherwise transfer to the Insurer any negotiable instruments, guarantees or other securities relating to the Insured Debt, including the Finance Documents; and/or
- 17.1.3 deliver to the Insurer whatever documents associated with the Project from which the Insured may benefit pursuant to the realisation thereof, including the Finance Documents; and/or
- 17.1.4 subrogate to the Insurer all rights which the Insured may have in terms of the Finance Documents, all Security and all other agreements to which the Insured is a party and which relates to the Insured Debt.
- 17.2 The Insured shall, subject to the provisions of clause 12 and the Intercreditor Agreement, do and permit to be done all such steps as may be necessary or reasonably required by the Insurer for the purpose of enforcing any rights to which the Insurer shall be, or would become, subrogated pursuant to paying a Claim to the Insured whether such steps shall be required before or after such indemnification. In the absence of compliance with this obligation, the Amount of Loss shall be reduced proportionately with reference to the potential amount of the Recovery to which the Insurer would have become entitled and all related Security.
- 17.3 It is appreciated that the right of subrogation and the exercise of rights by the Insured are subject to the terms and conditions of the Insured Contract and the Intercreditor Agreement. The Insured shall ensure that its rights under the Finance Documents (to the extent relevant and permitted under applicable law) can automatically be ceded to the Insurer against acceptance of a Claim without any further consent of any third party having to be obtained in those circumstances apart from notification (by way of the execution of a transfer certificate) to the other parties. However, the ability to exercise these rights will be within the framework the provisions of the Insured Contract.

18 RECOVERIES

- 18.1 Subject to the provisions of clause 13.10, upon collection by the Insured of any Recoveries in respect of the Insured Debt after payment of a Claim by the Insurer, the net amount collected shall be paid over to the Insurer within a period of 10 (ten) Business Days of receipt of the amount concerned.
- 18.2 It is specifically recorded that the Insured shall be obliged to transfer, cede and/or pay any amount and/or benefit referred to in clause 1.2.3.1 should the Insurer have indicated its liability in terms of this Policy in respect of the Insured Debt and is paying such liability on the basis as set out in this Policy, which transfer, cession and/or passing back of the benefit will take place within 5 (five) Business Days after the date of such event.
- 18.3 Should it not be possible for the Insured to comply with its obligations in terms of clause 18.1 and clause 18.2 due to any set of circumstances agreed to beforehand by the Insurer, the Insured shall be obliged to continue pursuing its rights arising from such set of circumstances as instructed by the Insurer on the basis that any benefit so obtained subsequently will be part of Recoveries.
- 18.4 It shall always be in the discretion of the Insurer to retransfer the Insured Contract and/or all Security back to the Insured with a view to the Insured ensuring administering of same in circumstances where the Insurer deems appropriate on the basis that the Insured should accept such transfer.
- 18.5 In the case of Transfer Restriction, the Insured shall exercise its voting rights to cause the relevant amount of local currency that cannot be converted or in respect of which there is a restriction to be transferred into a designated banking account for the benefit of the Insurer with a view that such amount is to be converted and/or remitted whenever it is possible. The conversion of the amount or transfer of the amount into the designated banking account for the benefit of the Insurer, as the case may be, should take place against or prior to the payment of a Claim by the Insurer.

- 18.6 It is specifically recorded that, in the event of the Insurer being liable under this Policy pursuant to a Commercial Cause of Loss, and the entire Claim of the Insured is in fact accepted by the Insurer -
- 18.6.1 the Insurer shall consult with the Insured at all material times with reference to the way in which the Insurer is to proceed with a view to receive potential Recoveries;
- 18.6.2 15% (fifteen percent) of any such Recovery shall be paid upon receipt thereof to the Insured after deduction of all costs and/or expenses incurred by the Insurer in obtaining or attempting to obtain such Recovery or ancillary costs which the Insurer may have incurred on the basis that the same ratio shall apply to the Insured to the extent that the Insured has been instructed in writing by the Insurer to recover any potential amount or attempt to do so, but in any event no later than within a period of 5 (five) Business Days after receipt thereof.
- 18.7 In circumstances where one is dealing with a Political Cause of Loss, and the entire Claim of the Insured is in fact accepted by the Insurer, the Insurer shall be entitled in its entire discretion to decide how to deal with any rights which it may have obtained in terms of clause 17 without the requirement of consulting with the Insured with reference to the way in which it is to proceed in mitigating its own losses, subject to the Insured still being obliged to render such assistance to the Insurer as the Insurer may reasonably require.

19 REPRESENTATIONS

- 19.1 The Insured makes the following representations in favour of the Insurer, namely –
- 19.1.1 it is a bank duly registered under the laws of South Africa and has the power to carry on its business as it is now being conducted and to own its respective property and other assets;

- 19.1.2 it has power to execute, deliver and perform its obligations under the Finance Documents to which it is a party and this Policy to which the Insured is a party;
- 19.1.3 all necessary corporate, shareholder and other action has been taken by the Insured to authorise the execution, delivery and performance of the Insured Contract by it and no limitation on the powers of it will be exceeded as a result of the entering into of the Finance Documents to which it is a party and/or this Policy;
- 19.1.4 the obligations expressed to be assumed by it in terms of the Finance Documents to which it is a party and this Policy are, to the best of its knowledge and belief (having relied on, inter alia, legal opinions and legal due diligence (to the extent obtained) from reputable, qualified and acceptable legal counsel to this effect) legal and valid obligations binding on it and enforceable against it in accordance with the terms thereof (provided this clause shall not apply if the Insured Contract or any Security becomes invalid or otherwise unenforceable after the Effective Date by reason of any change in any law or the promulgation of any new law, or the revocation or issue of any order, decree or regulation having the force of law);
- 19.1.5 the execution and delivery of, the performance of its obligations under, and compliance by it with the provisions of the Finance Documents to which it is a party and this Policy do not and will not, to the best of its knowledge and belief (having relied on, inter alia, legal opinions and legal due diligence (to the extent obtained) from reputable, qualified and acceptable legal counsel to this effect –
- 19.1.5.1 contravene any existing applicable law, statute, rule or regulation (but excluding the Act and any regulation promulgated pursuant thereto unless caused by or arising from the conduct or omission on the part of the Insured) or any judgment, decree or permit to which it is subject (provided this clause shall not apply if the Insured Contract or any Security becomes invalid or otherwise unenforceable after the Effective Date by reason of any

- change in any law or the promulgation of any new law, or the revocation or issue of any order, decree or regulation having the force of law);
- 19.1.5.2 conflict with or result in any breach of any of the terms or provisions of, constitute a default under any agreement or other instrument or treaty to which it is a party or which is binding upon it or any of its assets or revenues;
- 19.1.5.3 contravene or conflict with any provision of its constitutive documents;
- 19.1.6 it shall use reasonable endeavours to ensure that all of the material information supplied by the Insured and the Commercial Bank Facility Agent (on behalf of the Insured) to the Insurer in connection with the Finance Documents, the Proposal and/or this Policy as at the date on which the information is supplied, is true, complete and accurate in all material respects and, in the case of forecasts, shall have been based on reasonable assumptions made by the Insured and the Commercial Bank Facility Agent and on opinions genuinely and *bona fide* held by the Insured and the Commercial Bank Facility Agent;
- 19.1.7 having made reasonable enquiries in the circumstances, every consent, authorisation, licence, permit or approval required by the Insured in connection with, the execution, delivery, validity or enforceability of the Finance Documents and/or this Policy has been obtained or made and is in full force and effect (having relied (in part) on legal opinions from reputable, qualified and acceptable legal counsel to this effect) (provided that this clause shall not apply if any of the Finance Documents become invalid or otherwise unenforceable after the Effective Date by reason of any change in any law or the promulgation of any new law, or the revocation or issue of any order, decree or regulation having the force of law);
- 19.1.8 to the best of the knowledge and belief of the Insured, having made all reasonable enquiries in the circumstances, no Material Adverse Effect has

occurred since the date of the Proposal which has not been disclosed in writing by the Insured;

19.1.9 the material terms and conditions of the Insured Contract are not inconsistent with the terms and conditions and requirements set out in this Policy;

19.1.10 to the best of its knowledge and belief, on the Effective Date (having relied on legal opinions from reputable, qualified and acceptable legal counsel to this effect -

19.1.10.1 the Finance Documents constitute the legal, valid and binding obligations of, and are enforceable, against, each of the Related Parties who is a party to them;

19.1.10.2 as at the Effective Date, each of the Related Parties has observed and performed the requirements of all applicable laws of the Designated Country and Republic of South Africa relating directly to the Insured Debtor, the Project or the Finance Documents (including the Insured Contract);

19.1.10.3 as at the Effective Date, each of the Related Parties has obtained, maintained and observed all applicable Government Approvals relating in any way directly to the Insured Debtor, the Project or the Finance Documents (including the Insured Contract);

19.1.10.4 the Insured is not a party to any contractual document or party to an arrangement in either case not recorded in the Finance Documents which has a material adverse effect on the rights of the Insured with respect to the Insured Debtor or the Project or under the Insured Contract.

19.2 The representations –

19.2.1 set out in clause 19.1 are given on the Effective Date;

- 19.2.2 set out in clauses 19.1.1, 19.1.2, 19.1.3, 19.1.4, 19.1.5.2, 19.1.5.3, 19.1.8 and 19.1.9 shall be deemed to have been repeated on each date that a Drawing takes place;
- 19.2.3 set out in clauses 19.1.6 and 19.1.7 (in the latter case relying on information provided by the Insured Debtor) shall be deemed to have been repeated on each date that any payment is made by the Insured Debtor (but excluding any date on which an Event of Default occurs).
- 19.3 A breach of any provision of this clause 19 shall only constitute an Event of Default entitling the Insurer to terminate this Policy and/or to claim forfeiture of the Premiums if such breach –
- 19.3.1 would materially affect the reassessment of the risk under the Policy if such reassessment were to take place in the light of such breach; or
- 19.3.2 is reasonably likely to have a material adverse effect on an Amount of Loss.

20 COVENANTS

- 20.1 The Parties agree that –
- 20.1.1 none of the provisions of the Finance Documents to which the Insured is a party shall be amended without the prior written consent of the Insurer, which consent shall not be unreasonably withheld or delayed taking into account the requisite time limits for providing consent under the relevant Finance Documents (save in relation to minor or technical issues which do not impact upon the cover provided in terms of this Policy);
- 20.1.2 the Insured shall inform the Insurer (whether itself or through the Commercial Bank Facility Agent, as the case may be) promptly when it becomes aware of any potential event of default or event of default or any breach under the any of the Finance Documents;

- 20.1.3 the Insured shall not waive any right which it has under the Finance Documents unless the prior written consent of the Insurer has been obtained, including with reference to Closing Date.
- 20.2 Subject to the Insured being obliged to at all times exercise reasonable care and skill, forethought and prudence in relation to this Policy and that it is obliged to diligently ensure performance of the Monitoring Procedure, the Insured shall –
- 20.2.1 promptly upon request provide the Insurer (whether itself or through the Commercial Bank Facility Agent, as the case may be) with all relevant details it is able to obtain of the Transaction Documents and the implementation of this Policy;
- 20.2.2 promptly upon becoming aware inform the Insurer (whether itself or through the Commercial Bank Facility Agent, as the case may be) of any default or potential event of default in terms of the Transaction Documents or related documentation referred to herein after becoming aware of such event of default or potential default;
- 20.2.3 not consent to any amendment to the terms and conditions of the Transaction Documents to which it is a party without the prior written consent of the Insurer, (which consent shall not be unreasonably withheld or delayed) save in relation to minor or technical issues which do not impact upon the cover provided in terms of this Policy;
- 20.2.4 promptly inform the Insurer (whether itself or through the Commercial Bank Facility Agent, as the case may be) of any possible Material Adverse Effect upon becoming aware thereof;
- 20.2.5 promptly upon becoming aware of them provide details (whether itself or through the Commercial Bank Facility Agent, as the case may be), of any litigation, arbitration or administrative proceedings concerning the Finance Documents;

- 20.2.6 promptly on request by the Insurer supply the Insurer (whether itself or through the Commercial Bank Facility Agent, as the case may be), with a certificate, signed by 2 (two) of its Authorised Officers on its behalf, certifying whether or not an Event of Default has occurred and/or is continuing to the best of its knowledge and belief;
- 20.2.7 promptly inform the Insurer (whether itself or through the Commercial Bank Facility Agent, as the case may be) in writing when it becomes aware that any information provided to the Insurer is no longer correct or true;
- 20.2.8 obtain or cause to be obtained, maintain in full force and effect and comply in all respects with the conditions and restrictions (if any) imposed in, or in connection with, every consent, authorisation, licence or approval of governmental or public bodies or authorities or courts and do, or cause to be done, all other acts and things which may from time to time be necessary under applicable law for the continued performance of all of the material obligations of the Insured under the Finance Documents and/or the Policy, alternatively exercise all rights which it is able to do to obtain such approvals and the like if able to do so in terms of the Finance Documents, except for any event due to a Political Cause of Loss beyond the control of the Insured;
- 20.2.9 comply in all respects with all applicable laws, rules, regulations and orders of any governmental authority applicable to it and material to the performance of its obligations under the Transaction Documents to which it is a party and/or this Policy;
- 20.2.10 at all times be a Resident;
- 20.2.11 immediately upon becoming aware thereof, exercise all rights and take all reasonable steps to cause that the Insured Debtor refrains from, in connection with the Project, employing Harmful Child Labour and/or using Forced Labour;
- 20.2.12 immediately exercise all rights and take all reasonable steps to cause that the Insured Debtor fulfils all duties related to proper implementation of the Project;

- 20.2.13 refrain from engaging in Corrupt Practices;
- 20.2.14 assume 15% (fifteen percent) of the Commercial Causes of Loss risk of the Insured Contract for its own account.
- 20.3 It is recorded that Project Completion will not be deemed to have been achieved unless the following items have been satisfied -
- 20.4 The Insured will ensure that the following covenants are incorporated into the Insured Contract, albeit not verbatim. For the avoidance of doubt, it is acknowledged by the Insurer that the wording of the covenants as incorporated in the Insured Contract will not necessarily match the wording referred to below even though the principles shall be reflected in the Insured Contract.
- 20.5 Given the fact that the Insured forms one of the Insured Lenders in terms of the Insured Contract, the Insured undertakes that –
- 20.5.1 It will not vote to change the identity of the Commercial Bank Facility Agent, the Intercreditor Agent, Hedging Coordinator and Security Trustee without the prior written consent of the Insurer;
- 20.5.2 it shall not exercise any vote to enforce any rights under the Insured Contract unless the prior written consent of the Insurer has been obtained;
- 20.5.3 the Insured shall not exercise any voting rights to enforce any event of default without any prior consultation with the Insurer or the prior written consent of the Insurer having been obtained, such consent not to be unreasonably withheld;
- 20.5.4 no vote requiring the unanimous consent of all Senior Lenders shall be exercised without the prior written consent of the Insurer.

- 21.1 Each of the events set out in this clause is an Event of Default, namely –
- 21.1.1 the Insured breaches any material term and condition of this Policy and fails to remedy such breach within a period of 10 (ten) Business Days after receipt of written notice from the Insurer to such effect;
- 21.1.2 the Premium is not received within 15 (fifteen) days after due date or such other period as agreed to by the Insurer;
- 21.1.3 if, without the Insurer's prior written consent, any Drawing relating to the Insured Debt takes place without compliance with or waiving of the conditions precedent relating thereto as set out in the Insured Contract or the proceeds of such Drawing are not utilised towards the costs of the Project or the refinancing of such costs, as provided for in terms of the Insured Contract, capitalised interest and/or Premiums;
- 21.1.4 the Insured repudiates any term of the Finance Documents.
- 21.2 Without derogating from the Insurer's rights to reject or dispute any Claim or any portion thereof in terms of law, upon the occurrence of an Event of Default or at any time thereafter whilst it is continuing, the Insurer shall be entitled, without prejudice to its rights in terms of this Policy or at law, to either terminate this Policy or to claim immediate specific performance, in either case without prejudice to its rights to claim damages. In addition, to the extent that the Insurer is not the defaulting Party, all Premiums paid by the Insured shall be forfeited.
- 21.3 It is specifically recorded that the provisions of this clause 21 shall not relieve the Insured from proving any Insured Loss and the cause thereof in submitting any Claim under this Policy.

22 COUNTERPARTS

This Policy may be signed by the Parties in counterparts, whether by way of facsimile or otherwise, and each signed copy shall be deemed to be an original.

23 FRAUDULENT OR FALSE CLAIMS

- 23.1 Attention is drawn to the provisions of section 10 of the Act which states that it is a criminal offence to wilfully make a false or misleading statement in, or in connection with this Policy.
- 23.2 If the Insured or any person acting on its behalf wilfully makes any material false or misleading statement in connection with this Policy, or if any Claim is made falsely or fraudulently in any manner whatsoever, then this Policy shall become void and all Premiums paid by the Insured shall be forfeited and any amount previously paid by the Insurer under the Policy shall forthwith be repayable by the Insured to the Insurer, to the extent that the payment of such amount may in any way be related to the statement or Claim concerned.

24 EXERCISING OF CARE

- 24.1 The Insured shall at all times exercise reasonable care and skill, forethought and prudence in performing its obligations under the Insured Contract.
- 24.2 Having diligently performed its obligations in terms hereof, the Insured shall forthwith notify the Insurer of the occurrence of any event which is likely to cause an Insured Loss or which is likely to cause a significant deterioration in any risk covered by this Policy once it has becomes aware thereof.

25 VALUE-ADDED TAX

- 25.1 Each cash amount charged by the Insurer shall be increased by the VAT corresponding amount.
- 25.2 In the payment of any Claim by the Insurer to the Insured pursuant to the acceptance of such a Claim as envisaged in clause 14.1, such Claim amount shall be increased by the VAT component payable by the Insured in respect of the amount so received from the Insurer.

- 25.3 The Insurer shall not compensate the Insured for any VAT input credit to which the Insured is entitled to pursuant to any expenses and/or losses suffered by the Insured when the Insurer reimburses the Insured for any costs and/or expenses that it may have incurred pursuant to clause 10.
- 25.4 Notwithstanding the provisions of clauses 25.2 and 25.3, it is recognised that, in certain circumstances, the Insured may not be able to claim a full input VAT claim given its apportionment ratio. In such instance, the Insured shall advise the Insurer in writing of such fact, in which event the Insurer shall determine the payment taking into account any potential apportionment of VAT to which the Insured may be subject.

26 **CESSION OF RIGHTS**

The Insured shall not cede any or all of its rights and/or delegate any of its obligations under the Policy unless the consent of the Insurer has first been obtained, which consent shall not be unreasonably withheld, and the form of cession has been approved in writing by the Insurer, provided that the Insured has disclosed all relevant information pertaining to the cession and the circumstances giving rise thereto in writing to the Insurer. Any cession and/or delegation made or purported to be made by the Insured without such consent and approval having first been obtained shall void the Policy, provided that any Premiums paid by the Insured shall be retained by the Insurer.

27 **CO-OPERATION**

Provided that the Insurer undertakes to be bound by any confidentiality undertaking to which the Insured is bound –

- 27.1 the Insurer may at any time examine or make copies of any letters, accounts or other documents in the possession or control of the Insured relating to or connected with this Policy or any transaction between the Insured and the Insured Debtor and/or the Sponsor to the extent that it may in any way be related or connected with this Policy and/or the Insured Contract;

- 27.2 the Insured shall within such reasonable time as may be specified by the Insurer, supply the Insurer with any information in its possession or take any reasonable steps to obtain for the Insurer any information or copies of any documents in the possession of any third party relating to or connected with this Policy.

28 **OTHER INSURANCE**

- 28.1 If at the time of the occurrence of any event giving rise to a Claim under this Policy, the Insured has another insurance/policy in place with any other insurer covering the Insured against the same Amount of Loss, the Insurer shall be entitled to set-off the whole or a portion of the Amount of Loss recoverable from that insurer from the Amount of Loss payable by the Insurer to such Insured under this Policy, in respect of such event.
- 28.2 The Insured shall inform and disclose to the Insurer the existence of any insurance/policy covering the same Amount of Loss covered in terms of this Policy with any other insurer, including the terms and conditions thereof.

29 **POSTPONEMENT OF PAYMENT**

The Insured shall not agree to a postponement of the due date for payment of any part of the Insured Debt provided, however, that in the event of the need for such postponement arising at or shortly before the due date, the Insured may grant such postponement as may have been agreed upon with the Insurer. The extension of cover occasioned by such postponement of payment will be subject to such terms and conditions as the Insurer may specify at the time.

30 **PAYMENTS MADE BY THE INSURED DEBTOR**

- 30.1 Payments by the Insured Debtor shall always take place in accordance with the payment waterfall contained in amongst others clauses 3 and 4 of the Intercreditor Agreement.
- 30.2 The order of application of payments and recoveries as set out in the Intercreditor Agreement shall override any appropriation made by the Insured Debtor.

- 30.3 No variation shall be made to the order of application for payments and recoveries as set out in the Intercreditor Agreement except with the prior written consent of the Insurer.
- 30.4 Payments shall be made in terms of the payment waterfall as set out in the Intercreditor Agreement.

31 **DECLARATIONS**

The Insured shall be obliged to provide the following declarations to the Insurer (whether personally or through means of the Commercial Bank Facility Agent, as the case may be) –

- 31.1 after any Drawing date under the Insured Contract, the date and the capital in US Dollars of each Drawing, and due dates and amounts of the interest and capital instalments payable by the Insured Debtor;
- 31.2 after making a final Drawing, the due dates, and amounts of the instalments payable by the Insured Debtor under the Insured Contract as well as any interest which may be payable in respect thereof. This declaration should be accompanied by a consolidated schedule of all Drawings that have taken place and the approximated consolidated repayment profile;
- 31.3 after payment of a portion of the Insured Debt is due, the amount, the due date and whether payment has been received or not and the reason for any unpaid amounts as well as any interest accruing thereon.

32 DOCUMENTATION RISK

- 32.1 It shall be the responsibility of the Insured to ensure that the conditions and provisions contained in the Finance Documents provided in terms thereof are valid and enforceable in the appropriate legal jurisdictions. The Insurer does not accept any liability with regard to the correctness and enforceability of the abovementioned documents and instruments even though the Insurer may have had sight thereof.
- 32.2 It is specifically recorded that any communication by the Insurer shall not be deemed to imply that the Insurer has confirmed the validity or otherwise assumed liability pertaining to the validity of the Finance Documents.
- 32.3 Should any third party or the Insured Debtor raise in defence whenever rights are to be enforced an argument that any term, clause and/or condition of the Finance Documents or any Security provided in terms thereof are invalid or unenforceable in pursuing any right or remedy under any of the documents concerned in circumstances after the Insurer has accepted a Claim or should the Insurer endeavour to enforce any rights which it may have pursuant to the provisions of clause 17, the Insurer shall be obliged to take all such legal steps as may be available to it in the appropriate legal jurisdiction or forum to confirm the validity and enforceability of the document, clause or condition concerned.
- 32.4 In the circumstances envisaged in clause 32.3, the Parties shall cooperate and consult with each other in the conduct of the legal proceedings concerned. Should the Parties fail to reach any agreement, the final decision shall lie with the Insurer, acting reasonably.
- 32.5 If the Insurer is obliged to take the relevant legal steps as envisaged in clause 32.3, the Insured shall pay to the Insurer all reasonable costs (including external legal costs, travel costs, and other fees and charges paid or payable) incurred by the Insurer to the extent that it is attributable to the claims of the Insured Debtor or the third party concerned. Should a court of law, arbitrator or

an arbitration panel make a judgement that the relevant document, term, clause or condition was in fact valid *ab initio*, the relevant costs paid by the Insured to the Insurer shall be refunded.

32.6 Notwithstanding any other right or remedy which may be available to the Insurer, including the enforcement of costs referred to in clause 32.5, should a court of law or an arbitrator or arbitration panel make a judgement or an award is given to the effect that the document, term, clause or condition concerned was invalid *ab initio* or became invalid as a result of a cause not covered by a Cause of Loss the Insurer shall be entitled to suspend payment of the remaining balance of the Claim if the Claim is not paid in a lump sum, alternatively a proportionate amount of the lump sum as determined by the Expert referred to in clause 32.7 must be repaid to the Insurer to the extent that the Insurer paid a lump sum to the Insured, to the extent that it may impact upon the ability of the Insurer to seek full recourse against third parties pursuant to having accepted a Claim with reference to the Amount of Loss.

32.7 As a parallel process and in circumstances where the Insurer has accepted a Claim, the Parties shall at the same time forthwith meet to agree the extent to which the potential invalidity may impact upon the position of the Insurer, specifically with reference to its ability to obtain Recoveries. Should the Parties fail to agree on the potential financial impact of such potential invalidity, the matter may be referred by either of the Parties within a period of 30 (thirty) days after the commencement of the initial discussions to an expert agreed upon by them for the determination of the financial impact of such potential invalidity, failing agreement as appointed by the chairperson of the President of the South African Institute of Chartered Accountants (the "**Expert**") –

32.7.1 who shall act as an expert and not as an arbitrator;

32.7.2 who shall give each Party an opportunity to make written submissions to him;

- 32.7.3 whose decision, except for manifest error, shall be final and binding on the Parties;
- 32.7.4 whose costs shall be borne by the Parties in equal shares;
- 32.7.5 who shall make his decision as soon as possible, but in any event within a period of 6 (six) months after the date of initial referral to him.
- 32.8 Should a court, arbitrator or arbitration panel find that the relevant document, term, clause or condition is invalid –
- 32.8.1 the Insured shall be entitled to appeal against any such decision or award and to take such matter further at its cost (with the cooperation of the Insurer);
- 32.8.2 should a subsequent appeal body find that the document, clause or condition concerned is valid, the liability of the Insurer to pay the relevant amounts concerned shall be reinstated.

33 **CONFLICT**

To the extent that the provisions of this Policy, any letter of offer of cover and/or the Insured Contract may be in conflict, the terms and conditions of this Policy shall prevail.

34 **RECOURSE TO THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA**

- 34.1 It is recorded that the Insurer issues this Policy in its own name on the basis that the Government of the Republic of South Africa is liable for the debts of the Insurer in circumstances where a Claim is payable in terms of this Policy by admission, settlement or order of court and the Insurer is not able to perform its obligations so aforesaid.
- 34.2 It is specifically agreed that the Insured shall always be obliged to institute claims against the Insurer in the first instance. The Insured shall only be entitled to seek recourse directly against the Government of the Republic of South Africa should

the Insurer be liable to pay a Claim in terms of this Policy by admission, settlement or order of court and the Insurer is not able to perform its obligations so aforesaid. For the avoidance of doubt, the Insured specifically acknowledges that it will not institute any Claim against the Government of the Republic of South Africa unless the Insurer has insufficient funds to comply with any Claim which it is liable to discharge. To the extent that any Claim is disputed and/or not admitted, not settled or not payable in terms of an order of court, no Claim may be instituted against the Government of the Republic of South Africa.

35 ENVIRONMENTAL OBLIGATIONS

35.1 The Insured must use, and shall immediately exercise all of its rights in terms of the Insured Contract and all related agreements to cause the Insured Debtor to comply with all environmental obligations in relation to the Project, including under -

35.1.1 the Insured Contract;

35.1.2 the environmental laws, rules, or regulations of the Designated Country which are or will be applicable to the Insured Debtor and/or the Project;

35.1.3 the environmental laws, rules or regulations which are specifically covenanted in the Insured Contract; and

35.1.4 the Environmental Laws and Social Management Plans for the Project in accordance with local laws and regulation and the IFC Performance Standards / Equator Principles and the World Bank Environmental, Health and Safety Guidelines as confirmed by a reputable independent environmental consultant.

35.2 If the Insured Debtor defaults in compliance with any of its environmental obligations referred to in clause 35.1, the Insured must use, and shall immediately enforce all of its rights to cause the Insured Debtor to take all reasonable and practical steps to remedy the relevant default within 14 (fourteen)

days of the Insured becoming aware of the default or such longer period as the Insurer may agree in writing.

35.3 In this context, a reference to environmental laws includes any applicable law in the Designated Country and the IFC Performance Standards / Equator Principles and the World Bank Environmental, Health and Safety Guidelines concerning -

35.3.1 the protection of health and safety;

35.3.2 the environment; or

35.3.3 the emission or substance which is capable of causing harm to any living organism or the environment; and

35.3.4 any laws, rules, rulings, decrees, decisions, regulations, guidelines or judgments of any governmental authority relating to environmental matters of obligation to the Insured Debtor which –

35.3.4.1 are in existence from time to time; and

35.3.4.2 must be complied with in respect of the Project.

36 MAINTENANCE OF AND ACCESS TO INFORMATION

36.1 The Insured and the Commercial Bank Facility Agent must cooperate, and use reasonable endeavours to procure that the Insured Debtor cooperates, with the Insurer to exercise the rights under clause 36.2.

36.2 The Insured must provide to the Insurer, and use its reasonable endeavours to obtain from the Insured Debtor and provide to the Insurer, within 10 (ten) Business Days or such extended period agreed by the Insurer in writing of the request any information and documents including business and financial records relating to the Project.

36.3 'Business and financial records' include management accounts of the Insured Debtor which accurately and completely report the status and progress of the

Project, the nature and value of exports of Goods and Services from South Africa in connection with the Project, and annual financial statements.

- 36.4 The Insurer may exercise its rights under clause 36.1 through external auditors and other consultants engaged by it.
- 36.5 The Insured will also ensure that the Insured Debtor consents to granting representatives of the Insurer access to the project site as provided for in the Common Terms Agreement, during the period of this Policy.

37 PUBLICATION

The Insured agrees that the Insurer may publish in its annual report the following information –

- 37.1 the name of the financial institutions providing finance to the Project;
- 37.2 the Project description;
- 37.3 the identity of the Export Contractor, Insured Lenders and the Insured Debtor;
- 37.4 the Designated Country where the Project is implemented;
- 37.5 the value of the Project and/or the amount insured by the Insurer in relation to the Project; and
- 37.6 the economic impact of the Project.

38 NOTICES AND DOMICILIA

- 38.1 The Parties select as their respective *domicilia citandi et executandi* the following physical addresses, and for the purposes of giving or sending any notice provided for or required under this Policy, the said physical addresses as well as the following telefax numbers –

<u>Name</u>	<u>Physical Address</u>	<u>Telefax</u>
the Insurer:	Block C7 & C8 Eco Origins	+27 12 471-3850

Office Park
349 Witch Hazel Avenue
Highveld Ext 79
Centurion

Marked for the attention of: Portfolio Management and Workout Unit

<u>Name</u>	<u>Physical Address</u>	<u>Telefax</u>
the Insured:	3 rd Floor, East Wing 30 Baker Street Rosebank 2196	+27 86 587-6786

Marked for the attention of: Head: P&I

<u>Name</u>	<u>Physical Address</u>	<u>Telefax</u>
the Commercial Bank Facility Agent:	1 Merchant Place 14 th Floor 1 Fredman Drive Sandton 2196	+27 11 282-4056

Marked for the attention of: Head of Transaction Management: IFS

provided that a Party may change its *domicilium* or its address for the purposes of notices to any other physical address or telefax number by written notice to the other Party to that effect. Such change of address will be effective 5 (five) Business Days after receipt of the notice of the change.

- 38.2 All notices to be given in terms of this Policy will be given in writing, in English, and will -
- 38.2.1 if sent by courier in a correctly addressed envelope to it at its chosen address shall be deemed to have been received on the 3rd Business Day after sending (unless the contrary is proved);
- 38.2.2 if delivered by hand during business hours, be presumed to have been received on the date of delivery. Any notice delivered after business hours or on a day which is not a Business Day will be presumed to have been received on the following Business Day; and

- 38.2.3 if sent by telefax during business hours, be presumed to have been received on the date of successful transmission of the telefax. Any telefax sent after business hours or on a day which is not a Business Day will be presumed to have been received on the following Business Day.
- 38.3 Notwithstanding the above, any notice given in writing in English, and actually received by the Party to whom the notice is addressed, will be deemed to have been properly given and received, notwithstanding that such notice has not been given in accordance with this clause.
- 38.4 The Parties record that whilst they may correspond via email during the currency of this Policy for operational reasons, no formal notice required in terms of this Policy, nor any amendment of or variation to this Policy may be given or concluded via email.

39 GENERAL

- 39.1 The Parties irrevocably and unconditionally consent to the non-exclusive jurisdiction of the High Court of South Africa (North Gauteng High Court – Pretoria) (or any successor to that division) in regard to all matters arising from this Policy.
- 39.2 This Policy constitutes the whole agreement between the Parties relating to the subject matter hereof.
- 39.3 No dispute between the Parties shall result in any time limit for the submission of Claims and/or the compliance of obligations by the Insured to be extended and/or postponed whatsoever. However, should any dispute arise between the Insured and the Insurer pertaining to the payment by the Insurer of any Claim under this Policy, the Insurer shall not be liable to pay any such Claim until such dispute has been finally settled.
- 39.4 No amendment or consensual cancellation of this Policy or any provision or term hereof or of any agreement, or other document issued or executed pursuant to or

in terms of this Policy and no settlement of any disputes arising under this Policy and no extension of time, waiver or relaxation or suspension of or agreement not to enforce or to suspend or postpone the enforcement of any of the provisions or terms of this Policy or of any agreement, or other document issued pursuant to or in terms of this Policy shall be binding unless recorded in a written document signed by the Parties (or in the case of an extension of time, waiver or relaxation or suspension, signed by the Party granting such extension, waiver or relaxation). Any such extension, waiver or relaxation or suspension which is so given or made shall be strictly construed as relating strictly to the matter in respect whereof it was made or given.

- 39.5 No extension of time or waiver or relaxation of any of the provisions or terms of this Policy or any agreement, bill of exchange or other document issued or executed pursuant to or in terms of this Policy, shall operate as an estoppel against any Party in respect of its rights under this Policy, nor shall it operate so as to preclude such Party thereafter from exercising its rights strictly in accordance with this Policy.
- 39.6 No failure by any Party to enforce any provision of this Policy shall constitute a waiver of such provision or affect in any way such Party's right to require the performance of such provision at any time in the future, nor shall a waiver of a subsequent breach nullify the effectiveness of the provision itself.
- 39.7 Nothing in this Policy shall without the prior written consent of the Insurer give any rights to any person other than the Insured and the Insurer.
- 39.8 If at any time any term or provision of this Policy or the application thereof to any person or circumstance shall to any extent be or become illegal, invalid or unenforceable, the remainder of this Policy, or the application of such term or provision to persons or circumstances other than those as to which it is already illegal, invalid or unenforceable, shall not be affected or impaired thereby.

40 **CONFIDENTIALITY**

The Parties undertake to keep all information exchanged between them confidential provided that this restriction shall not apply to information that is -

- 40.1 publicly known or becomes publicly known through no unauthorised act of the party concerned;
- 40.2 lawfully received by such party from a third party;
- 40.3 disclosed by the disclosing party to a third party subject to similar restrictions;
- 40.4 required to be disclosed pursuant to a requirement of a governmental agency or any applicable law;
- 40.5 publicly disclosed with the disclosing party's written consent;
- 40.6 clearly marked as non-confidential;
- 40.7 disclosed to each Party's advisers and auditors; and

40.8 disclosed to the Insured Debtor.

SIGNED at _____ on _____ 2015

For and on behalf of
**EXPORT CREDIT INSURANCE
CORPORATION OF SOUTH AFRICA
SOC LTD.**

Signature

Name of Signatory

Designation of Signatory

SIGNED at _____ on _____ 2015

For and on behalf of
**FINANCIAL INSTITUTION
(as Insured)**

Signature

Name of Signatory

Designation of Signatory

SIGNED at _____ on _____ 2015

For and on behalf of
FINANCIAL INSTITUTION
(as Commercial Bank Facility Agent)

Signature

Name of Signatory

Designation of Signatory

SCHEDULE		
Policy No:	FP [tba]	
Section 1:	Name of Insured:	Financial Institution
	Address:	[tba]
Section 2:	Types of Cover:	Political Causes of Loss and Commercial Causes of Loss
Section 3:	Insured Percentage:	100% (one hundred percent) in respect of Political Causes of Loss and 85% (eighty five percent) in respect of Commercial Causes of Loss
Section 4:	Maximum Liability	100% (one hundred percent) in respect of Political Causes and 85% (eighty five percent) in respect of Commercial Causes of Loss
Section 5:	Insured Debtor:	[tba]

PREMIUM SPLIT

Insured:	Financial Institution
Policy No:	FP [tba]
Operating Condition	Premium
9.1	Pursuant to the election made by the Insured –
9.1.1	Premiums (plus VAT) shall be paid on the basis as indicated in clause 9.1.3 and are payable by way of electronic transfer/cash to the Insurer without deduction and/or set-off and without the cost of transfer of money on the following basis –
9.1.1.1	the Premiums shall be paid in US Dollars (on the basis that the VAT element of the Premium is payable in Rand and determined with reference to the US Dollar/Rand spot exchange rate ruling on the date of the invoice issued by the Insurer);
9.1.1.2	the Premiums are equal to [tba] per annum of either the maximum Insured Debt (capital plus interest capitalised and/or accrued, if any) and thereafter calculated on the reducing outstanding capital balance (including interest capitalised and/or accrued, if any) on the Insured Debt declared by the Insured;
9.1.2	the relevant amount in respect of which the Premiums are calculated must be declared at the beginning of each insurance year by the Insured, as and when relevant;
9.1.3	the first Premiums is payable in advance on the first Drawdown Date . Thereafter Premiums are paid as and when due, annually in advance on the reducing outstanding balance during the repayment period until the date that the Insured Debt has been repaid in full;
9.1.4	Except for the Premiums payable upfront after the Commencement of the Availability Period, Premiums payable thereafter may not be financed;
9.1.5	should the Insured Debtor refinance any portion of the amount due in terms of the Insured Contract, a penalty shall be payable by the

<p>9.1.5.1</p> <p>9.1.5.2</p> <p>9.1.5.3</p>	<p>Insured to the Insurer, on the basis that –</p> <p>if the refinancing takes place during the first 3 (three) year period of this Policy, the penalty is equal to 20% (twenty percent) of the Discounted Outstanding Premium;</p> <p>if the refinancing takes place thereafter, the penalty is equal to 15% (fifteen percent) of the Discounted Outstanding Premium;</p> <p>in the event that the Insured Debtor refinances the Insured Debt out of its own free cash flow, the above provisions shall not apply.</p>
<p>9.1.6</p>	<p>if the Insurer becomes liable to pay a Claim in terms of the Policy, the Insurer shall be entitled to deduct an amount equal to the Discounted Outstanding Premium plus the VAT payable thereon from the settlement amount to be paid to the Insured prior to settling the Claim in accordance with the provisions of clause 14, provided that the Insurer has issued an invoice to the Insured setting out the amount of the Discounted Outstanding Premium and the amount of VAT payable thereon. Such deductible amount will be applied to the payment of the lump sum amount if the Claim is settled on a once off basis, alternatively will be deducted from the periodic payments by the Insurer to the Insured if the Insurer decides to settle the Claim over a period, as the case may be. To the extent that the Insurer accepts a Claim that has occurred during the Availability Period, the deductible will be based on the actual amount Drawn Down during such period.</p>

<p>IMPORTANT – PLEASE READ CAREFULLY</p> <p>As a short-term insurance policyholder or prospective policyholder, you have the right to the following information:</p> <p>1. GENERAL INFORMATION</p> <p>Registered Name: Export Credit Insurance Corporation of South Africa SOC Ltd Abbreviated Name: ECIC</p> <p>Registration Number: 2001/013128/30</p> <p>VAT Number: 4170197125</p> <p>FSB License Number: 30656</p> <p>FSB License Category: Short Term Insurance, Commercial Lines, Financial Advisory Services and Financial Intermediary Services</p> <p>E-mail: (www.info@ecic.co.za) Website: www.ecic.co.za Telephone: +27124713800 Fax: +2712 471 3850/51</p> <p>Office: Block C7 & C8 Eco Origins Office Park, 349 Witch Hazel Avenue, Highveld Ext 79, Centurion P O Box 7075, Centurion, 0046</p> <p>Any changes to the above information will be communicated to you in writing</p>	<p>3. OTHER MATTERS OF IMPORTANCE</p> <p>ECIC issues policies on its behalf with the government as the ultimate insurer;</p> <p>ECIC must give written reasons for repudiating your claim;</p> <p>ECIC is obliged to notify you directly of the cancellation of your insurance contract; and</p> <p>All the ECIC representatives have a letter of appointment verifying the ECIC accepts responsibility for activities performed within the scope of, or in the course of their mandated duties.</p>
<p>2. COMPLIANCE DEPARTMENT</p> <p>Manager and Compliance Officer: Mr Lesego Mosupye</p> <p>Telephone: + 27 12 471 3817 Fax: + 27 471 3850/51 Email: LMosupye@ecic.co.za</p> <p>Delivered to our offices addressed to: "The Compliance Officer"</p>	<p>4. THE FAIS OMBUDSMAN</p> <p>If any complaint made to the intermediary or insurer is not resolved to your satisfaction, you may submit your complaint to the FAIS Ombudsman who can be reached at:</p> <p>Address: PO BOX 74571 Lynnridge 0040</p> <p>Email: info@faisombud.co.za Telephone: +27 12 470 9080/0860 324 766 Fax: +27 12 348 3447</p> <p>5. THE SHORT TERM INSURANCE OMBUDSMAN</p> <p>The short-term Insurance Ombudsman is available to advise you in the event of claim problems which are not satisfactorily resolved by the insurer. The Ombudsman can be reached at:</p> <p>Address: P O Box 32334 Braamfontein 2017</p> <p>Website: www.insuranceombudsman.co.za Telephone: +27 11 726 8900 Fax: +27 11 726 5501</p>

SOUTH AFRICAN CONTENT

- 1 The following items shall be deemed to constitute South African Content –
 - 1.1 the costs of materials and manufactured goods purchased or Services obtained from the Export Contractor/Supplier minus the value of any materials, goods or major components of manufactured goods which have been imported from sources outside South Africa;
 - 1.2 wages, salaries and other remuneration paid by the Export Contractor/Supplier in South Africa to its employees and such portions of wages, salaries and other remuneration payable to the employees concerned who are performing work outside South Africa, and which is paid by the Export Contractor/Supplier in South Africa;
 - 1.3 freight charges paid in respect of capital material and manufactured Goods shipped by a shipping company;
 - 1.4 insurance premiums paid to the Insurer in respect of a policy issued in South Africa;
 - 1.5 finance charges, excluding any interest for post-delivery finance, paid to any financial institution normally operating in South Africa;
 - 1.6 fees and charges paid for any other services performed in South Africa on the Export Contractor/Supplier' behalf by South African resident organisations;
 - 1.7 fees and profits accruing to the Export Contractor/Supplier to the extent that it is confirmed by external auditors and the Insurer has confirmed that they qualify as South African Content.

Attention is also drawn to the fact that the payment of freight charges to a company normally doing business in South Africa will not necessarily qualify as South African Content since the whole or part of such payment may relate to freight costs incurred in respect of a shipping line or vessel which in the Insurer's absolute opinion does not qualify as South African Content.

PROPORTIONATE EXPOSURE OF INSURED LENDERS

Financial Institution –	[tba]	
Financial Institution –		[tba]
Financial Institution – [tba]		
<u>TOTAL:</u>		_____ [tba] _____

MATERIAL CLAUSES OF THE AGREEMENT