

## EXPORTER'S UNDERTAKING AGREEMENT

between

**EXPORT CREDIT INSURANCE CORPORATION OF SOUTH AFRICA SOC LTD**

and

**[Exporter]**

and

**[●]**

and

**[Financial Institution]**

## TABLE OF CONTENTS

1	INTERPRETATION AND PRELIMINARY .....	3
2	PREAMBLE .....	10
3	DOCUMENTATION REQUIREMENTS .....	12
4	DURATION .....	18
5	WARRANTIES AND REPRESENTATIONS .....	18
6	ACCESS TO INFORMATION.....	22
7	OWNERSHIP AND INSURANCES .....	25
8	PROCEDURAL ISSUES .....	26
9	BREACH.....	26
10	EXERCISING OF CARE.....	27
11	NOTICES AND DOMICILIA .....	27
12	CONFIDENTIALITY .....	29
13	PUBLICATION.....	30
14	FRAUDULENT OR FALSE CLAIMS .....	30
15	GENERAL.....	31
16	WHOLE AGREEMENT, NO AMENDMENT.....	31

## ANNEXES

ANNEXE "A" : SOUTH AFRICAN CONTENT OF GOODS AND SERVICES

ANNEXE "B" : EXPORTER'S DECLARATION

**WHEREBY IT IS AGREED AS FOLLOWS:**

**1 INTERPRETATION AND PRELIMINARY**

The headings of the clauses in this Agreement are for the purpose of convenience and reference only and shall not be used in the interpretation of nor modify nor amplify the terms of this Agreement nor any clause hereof. Unless a contrary intention clearly appears –

1.1 words importing –

1.1.1 any one gender include the other two genders;

1.1.2 the singular include the plural and *vice versa*; and

1.1.3 natural persons include created entities (corporate or unincorporate) and the state and *vice versa*;

1.2 the following terms shall have the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings, namely –

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

1.2.2 "**Agreement**" means this Exporter's Undertaking Agreement setting out the undertakings of the Exporter, [Exporter] and the Financial Institution in relation to the Supply of those Goods and Services in terms of the Export Contract making up the South African Content, in relation to the Contract;

1.2.3 "**Business Day**" means any day which is not a Saturday, Sunday or a proclaimed public holiday in South Africa, the Designated Country and, for US Dollar payments, including New York;

- 1.2.4 **"Common Terms Agreement"** means the common terms agreement dated [●] that has been entered into between amongst others, the Financial Institution and the Customer;
- 1.2.5 **"Contract"** means the contract between [the Exporter] and the Customer dated [●] pursuant to which [●] will deliver goods and services to the Customer;
- 1.2.6 **"Contract Price"** means the price calculated with reference to the Export Contract, being US\$[●] ([●] US Dollars);
- 1.2.7 **"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;
- 1.2.8 **"Customer"** means [●], registration number [●], a limited liability company duly incorporated under the laws of [●];
- 1.2.9 **"Delivery Period"** means a period that terminates on the earliest of the following dates –
- 1.2.9.1 close of business on the date which is 6 (six) months after the Scheduled Commercial Operations Date (as defined in the Facility Agreement);

- 1.2.9.2 the date upon which the available commitment (as defined in the Facility Agreement) of the Financial Institution has been cancelled or drawn down in full in terms of the Facility Agreement;
- 1.2.9.3 [●] or such later date as may be agreed by the ECIC in writing, provided that the Delivery Period shall not extend beyond the Longstop Date (as defined in the Common Terms Agreement);
- 1.2.10 **"Designated Country"** means the [●];
- 1.2.11 **"Drawing / Drawdown"** means any advance or utilisation under the Facility Agreement;
- 1.2.12 **"ECIC"** means Export Credit Insurance Corporation of South Africa SOC Ltd, Registration No 2001/013128/07;
- 1.2.13 **"ECIC Risk Policy"** means the Financial Credit Specific Account Cover Policy of Insurance No FP[●] issued by the ECIC in favour of the Financial Institution;
- 1.2.14 **"Effective Date"** means the date that the Financial Credit Specific Account Cover Policy of Insurance referred to in clause 1.2.13 becomes effective;
- 1.2.15 **"Exporter"** means [●], a limited liability for profit company duly incorporated in accordance with the laws applicable in the Republic of South Africa with registration number [●];
- 1.2.16 **"Export Contract"** means the contract between [●] and the Exporter dated [●] in terms of which the Exporter will Supply those Goods and Services making up the South African Content of the goods and services in relation to the Contract;

- 1.2.17 **"Exporter's Declaration"** means the Exporter's Declaration to be completed by the Exporter pursuant to the Supply of Goods and Services to [●] in terms of the Export Contract, a draft of which is attached as **Annexure "B"**;
- 1.2.18 **"Facility Agreement"** means the Senior A Facility Agreement read with the Common Terms Agreement dated on or about the date of this Agreement between amongst others the Financial Institution and the Customer pursuant to which a Facility not exceeding US\$[●] ([●] US Dollars) is made available to the Customer in relation to the Project;
- 1.2.19 **"Financial Institution"** means [●] registration number [●], a limited liability public company duly incorporated in accordance with the laws of South Africa;
- 1.2.20 **"Forced Labour"** means all work or service, not voluntarily performed that is exacted from an individual under threat of force or penalty;
- 1.2.21 **"Goods"** means the goods Supplied in respect of the Export Contract by the Exporter to [●] in relation to the goods, making up the South African Content in relation to the Contract;
- 1.2.22 **"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 and permits of the South African Government and/or 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 entering into of all transactions in relation to the Contract;

- 1.2.23 **"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;
- 1.2.24 **"Host Government"** means -
- 1.2.24.1 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); and
- 1.2.24.2 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;
- 1.2.25 **"Party"** or **"Parties"** means respectively, collectively both and individually each of the Parties to this Agreement;
- 1.2.26 **"Project"** means the design, financing construction, erection, commissioning, operation and maintenance of a [●] (as defined in the Facility Agreement) at [●];
- 1.2.27 **"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;
- 1.2.28 **"Services"** means services to be Supplied by the Exporter in respect of the Export Contract making up the South African Content in relation to the Contract;
- 1.2.29 **"South Africa"** means the Republic of South Africa;

- 1.2.30 **"South African Content"** means the South African Content of Goods and Services as set out in **Annexure "A"**;
- 1.2.31 **"Supply/Supplied"** means that Goods are supplied and Services are rendered by the Exporter in terms of the Export Contract;
- 1.2.32 **"US Dollars"** or **"US\$"** means the lawful currency of the United States of America;
- 1.3 any reference in this Agreement to "Date of Signature Hereof" shall be read as meaning a reference to the date of the last signature of this Agreement;
- 1.4 any reference to an enactment is to that enactment as at the Date of Signature hereof as amended or re-enacted from time to time;
- 1.5 if any provision in a definition is a substantive provision conferring rights or imposing obligations on any party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of the Agreement;
- 1.6 when any number of days is prescribed in this Agreement, same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or public holiday, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday;
- 1.7 where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail;
- 1.8 expressions defined in this Agreement shall bear the same meanings in schedules or annexures to this Agreement which do not themselves contain their own definitions;

- 1.9 reference to day/s, month/s or year/s shall be construed as Gregorian calendar day/s, month/s or year/s;
- 1.10 the use of any expression in this Agreement covering a process available under South African law such as a winding-up (without limitation *eiusdem generis*) shall, if any of the Parties to this Agreement is subject to the law of any other jurisdiction, be construed as including any equivalent or analogous proceedings under the law of such defined jurisdiction;
- 1.11 where any term is defined within the context of any particular clause in this Agreement, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this Agreement, notwithstanding that that term has not been defined in this interpretation clause;
- 1.12 the expiration or termination of this Agreement shall not affect such of the provisions of this Agreement 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;
- 1.13 the rule of construction that a contract shall be interpreted against the party responsible for the drafting or preparation of the contract, shall not apply;
- 1.14 any reference in this Agreement to a party shall, if such party is liquidated or sequestered, be applicable also to and binding upon that party's liquidator or trustee, as the case may be;
- 1.15 the words "include", "including" and "in particular" shall be construed as being by way of example or emphasis only and shall not be construed as, nor shall they take effect as, limiting the generality of any preceding word/s;

- 1.16 the words “other” and “otherwise” shall not be construed *eiusdem generis* with any preceding words where a wider construction is possible.

## 2 PREAMBLE

- 2.1 The ECIC is in terms of the Act authorised to amongst others incentivise the exportation of Goods and Services from South Africa.

- 2.2 The ECIC is in the process of issuing the ECIC Risk Policy on the basis that –

- 2.2.1 [●] entered into the Contract with the Customer;

- 2.2.2 [●] entered into the Export Contract with the Exporter on the basis that the Exporter will Supply the Goods and the Services in relation to the goods and services to be delivered by [●] in terms of the Contract. The obligation to pay for the Goods and Services Supplied or to be Supplied by the Exporter in terms of the Export Contract rests with [●] and the obligation to pay for the goods and services delivered or to be delivered by [●] to the Customer in terms of the Contract rests with the Customer;

- 2.2.3 notwithstanding the foregoing, [●] shall be obliged to make payment to the Exporter even if the Customer does not make payment to [●] for any reason other than non-performance by the Exporter on the basis that the Exporter thus does not take any risk with reference to performance under the balance of the Contract. In other words, if the Customer has not paid [●] on due date, [●] shall still be obliged to pay the Exporter to the extent that the Exporter has performed its obligations under the Export Contract on due date;

- 2.2.4 to the extent that the Customer objects in any matter in paying [●] in terms of the Contract in circumstances where it does not relate to any default by the Exporter in terms of the Export Contract, [●] shall

nevertheless immediately pay the Exporter in terms of the Export Contract and it shall not be any defence that it has not received payment from the Customer;

- 2.2.5 to the extent that [●] has received payment from the Customer, it is deemed that [●] will have paid the Exporter within 5 (five) Business Days and no pay-through risk is assumed by the Exporter.
- 2.3 It is a requirement in terms of the ECIC Risk Policy that the goods and services to be delivered in terms of the Contract shall have a cumulative South African Content of not less than 50% (fifty percent) of the Senior A Facility Commitment (as defined in the Facility Agreement).
- 2.4 In order to satisfy the requirement set forth in clause 2.3 above, [●] has contracted the Supply of the Goods and the Services, making up the South African Content to the Exporter in terms of the Export Contract.
- 2.5 In order to enable the ECIC to monitor whether the Goods and Services Supplied under the Export Contract meet the minimum South African requirements of South African Content as specified in clause 2.3 above, it is a requirement that the Parties enter into this Agreement.
- 2.6 The Financial Institution will make payment of Drawdowns to the Customer, and the Customer will pay [●] in respect of the Project and in terms of the Contract, as and when a claim is submitted by [●] to the Customer and the disbursement is requested by the Customer in accordance with the provisions of the Facility Agreement. [●] will then, in accordance with clause 2.2.3, pay the Exporter when a claim is submitted to [●] and [●] has received the corresponding payment from the Customer, provided that [●] shall not be entitled to withhold payment to the Exporter to the extent that the Exporter has performed its obligations under the Export Contract. Payment to the Exporter is thus not dependent as to whether [●] has

received payment from the Customer. Both [●] and the Exporter shall be obliged to take all steps that are necessary so as to enable the Financial Institution to make payment of a specific Drawdown within the time limits as applicable.

- 2.7 The Department of Trade and Industry guidelines on complex structures and transactions regarding empowerment scoring and fronting were taken into account by the rating agencies and the ECIC, which guidelines may be found at the following website:

<http://www.thedti.gov.za/GuidelinesComplexstructuresFronting.pdf>.

- 2.8 The Parties therefore agree subject to the terms and conditions as set out herein.

- 2.9 The obligations of the Exporter and [●] in terms of this Agreement are joint and several.

### 3 DOCUMENTATION REQUIREMENTS

- 3.1 The Exporter shall provide written proof to the ECIC to the reasonable satisfaction of the ECIC that Goods and Services Supplied in terms of the Export Contract satisfy the requirement set forth in clause 2.3 above. Such written proof shall amongst others include the following documents as the ECIC may reasonably require from time to time –

- 3.1.1 copies of commercial invoices of the Exporter and Group Five International, as the case may be, evidencing the amount invoiced by both the Exporter and [●] in respect of the relevant Goods and the Services in terms of the Contract and the Export Contract;

- 3.1.2 the invoices and /or relevant bills of lading (if applicable) for the Goods being Supplied or a progress certificate or a contractor's invoice detailing

the value of the works completed in the context of the Supply of Services under both the Contract and the Export Contract;

- 3.1.3 Exporter's Declaration/s signed by at least 2 (two) directors or authorised officers of the Exporter and [●], as the case may be;
- 3.1.4 a South African Content Certificate dealing with the Supply of the Goods and Services signed by at least 2 (two) authorised signatories of the Exporter;
- 3.1.5 acceptance certificates signed in writing by the Customer in relation to the Goods and the Services and acceptable in the entire discretion of the ECIC;
- 3.1.6 directors' resolutions by the Exporter and [●]authorising selected directors to provide the export documentation as envisaged herein;
- 3.1.7 sworn affidavit from the Exporter and [●], as the case may be, pursuant to the Exporter's Declaration in relation to the Supply of Goods and Services;
- 3.1.8 (in the case of any reimbursement) proof of payment by the Customer to [●], which in turn paid the Exporter of the invoiced amount of the Goods and/or the Services;
- 3.1.9 individual summary sheets detailing certified South African Content in respect of each individual invoice issued for Goods and/or Services Supplied under the Contract and Export Contract;
- 3.1.10 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 Contract and Export Contract;

- 3.1.11 the most recent quarterly audit certificates from a South African auditor approved by the ECIC or the most recent quarterly directors' certificate of the Exporter / [●] on a quarterly basis,
- and such other relevant documents as the ECIC may require in its reasonable discretion from time to time.
- 3.2 The Exporter and [●] undertake to provide the documentation referred to in clause 3.1 at least 5 (five) Business Days prior to Drawdown to the Financial Institution, which in turn will provide the relevant documentation to the ECIC within 10 (ten) Business Days after every Drawdown.
- 3.3 The Financial Institution shall use its reasonable endeavours to procure the relevant documentation from the Exporter and [●] at least 5 (five) Business Days prior to every Drawdown that is made in terms of the Facility Agreement.
- 3.4 It is recorded that the Exporter and [●] shall provide a certificate prepared by external auditors acceptable in the sole discretion of the ECIC on a quarterly basis. The latest audit certificate shall be provided prior to any Drawdown, it being recorded that if there has not been any Drawdown for any specific quarter, the latest audit certificate prepared by the external auditors of the Exporter and [●] must in any event be provided. The certificate must relate to both the performance in the context of the Supply of Services under both the Contract and the Export Contract.
- 3.5 It is recorded that both the South African Content and the Drawdown under the Facility Agreement shall be measured in US Dollars.
- 3.6 It is recorded that the South African Content is to be calculated on a cumulative basis at the end of the Delivery Period and that the South

African Content requirements do not apply with reference to each specific Drawdown to be made.

- 3.7 It is specifically recorded that the South African Content documentation supplied by the Exporter and/or [●] will not necessarily be verified by the ECIC with every Drawdown. A South African Content certificate will not be issued by the ECIC before a Drawdown on the basis that the documentation so provided by the Exporter and [●] will be subjected to verification by the ECIC annually on a sample basis. Such verification may be done by the ECIC through means of third parties, including external auditors, appointed by the ECIC.
- 3.8 The cover provided by the ECIC to the Financial Institution in terms of the ECIC Risk Policy will not be impacted upon whether the Exporter and [●] achieves the South African Content or not.
- 3.9 The Exporter and [●] undertake to notify ECIC immediately of any and all major amendments and addenda to the Contract and Export Contract. This shall apply in particular to –
- 3.9.1 the type and scope of supplies and services;
  - 3.9.2 the total price in US Dollars;
  - 3.9.3 the amount of South African Content of Goods and Services;
  - 3.9.4 the amount of cost increases or decreases from price adjustment;
  - 3.9.5 the payment conditions;
  - 3.9.6 the deadlines of the milestones for the Supply of Goods and Services as well as for the date of readiness for operation.

- 3.10 The Exporter and [●] specifically undertake on a monthly basis following the date of the first disbursement under the Facility Agreement to provide the ECIC with a monthly progress report in respect of the Contract commencing on the last day of the month immediately following the month in which the first Drawdown is made under the Facility Agreement until the operations start date as defined in the Contract.
- 3.11 ECIC is entitled to give information to the Financial Institution and other entities participating in the financing of the Contract and to inform them of the terms and conditions of this Agreement at their request.
- 3.12 The ECIC has the right to review the Contract and Export Contract and monitor the progress of the Project which relates to the Contract and the Supply of Goods and Services in terms of the Export Contract and the Contract as and when the ECIC sees fit and solely for its benefit and to protect its interests. The Exporter and [●] acknowledge that the ECIC owes no duty to the Exporter and [●] to assist, advise or warn the Exporter and [●] in connection with the performance under the Contract and/or Export Contract.
- 3.13 It is agreed that the premiums in terms of the ECIC Risk Policy automatically constitute 100% (one hundred percent) of South African Content for purposes of determining the required amount of South African Content.
- 3.14 The Financial Institution shall provide to the ECIC, within 10 (ten) Business Days from the first Drawdown, the following documents –
- 3.14.1 the documents dealing with the Supply of the Goods and Services referred to clause 3.1;

- 3.14.2 together with the Customer, a valid request for Drawdown as required by the Facility Agreement;
- 3.14.3 a confirmation by the Exporter and [●] that all suspensive conditions as set out in the Contract have been fulfilled or waived;
- 3.14.4 confirmation from the Financial Institution that all of the conditions precedent as set out in the Facility Agreement have been fulfilled or waived;
- 3.14.5 satisfaction that any Government Approvals necessary to conclude the Contract have been obtained;
- 3.14.6 proof that the balance of the payments in respect of the Contract not covered by the Facility Agreement has in fact been made by the Customer to the Exporter and [●],

and such other information as may be reasonably requested by the ECIC in its discretion.

- 3.15 To the extent that ECIC acts on a request and declaration by the Exporter and [●] and it turns out that the relevant documentation, so accepted by ECIC on the face of it, is in fact not correct, the Exporter and [●] shall indemnify and hold harmless ECIC in respect of any damages, costs or expenses which may be suffered as a result thereof.
- 3.16 Consent for disbursements for any Drawdown under the Facility Agreement may only be given if –
  - 3.16.1 the Contract remains in full force and effect and no event of default has taken place, the obligation being on the Exporter or [●] to inform ECIC forthwith to the extent that this may be the case; and

3.16.2 the Facility Agreement remains in full force and effect and no event of default as contemplated therein has taken place, the obligation being on Financial Institution to inform ECIC forthwith to the extent that this may be the case.

3.17 Subject to clause 2.2 and 2.6, [●] shall make payment to the Exporter within 5 (five) Business Days after it receives payment from the Customer, after each Drawdown so that in the aggregate 15% (fifteen percent) of the Contract Price is paid to [●] during the availability period under the Facility Agreement and also to the Exporter.

#### 4 DURATION

This Agreement shall –

4.1 commence on the Effective Date; and

4.2 endure thereafter for the Delivery Period, and in any event, until such time as it has been possible to verify the South African Content as set out herein and to pursue its remedies, to the extent applicable.

#### 5 WARRANTIES AND REPRESENTATIONS

5.1 The Exporter and [●] hereby warrant and represent in favour of the ECIC that –

5.1.1 it is a company duly registered and incorporated and validly existing under the laws of South Africa / [●] and has the power to carry on its business as it is now presently conducted and to own its respective property and other assets;

5.1.2 it has the power to execute, deliver and perform its obligations under this Agreement;

- 5.1.3 it is fully conversant with the terms and conditions of the Contract and the Facility Agreement (to the extent applicable to it) and it undertakes to comply with those provisions on due date;
- 5.1.4 all necessary corporate, director and other action has been taken to authorise the execution, delivery and performance of this Agreement and no limitation on the powers of it will be exceeded as a result of the entering into of this Agreement;
- 5.1.5 the obligations expressed to be assumed by it in terms of this Agreement are legal and valid obligations binding on it and enforceable against it in accordance with the terms thereof;
- 5.1.6 the execution and delivery of, the performance of its obligations under, and compliance with the provisions of this Agreement do not and will not contravene any existing applicable law, statute, rule or regulation or any judgement, decree or permit to which it is subject or contravene or conflict with any provision of its constitutive documents;
- 5.1.7 all Government Approvals from the Host Government or any other country, including South Africa, have been obtained for the entering into of the Contract and Export Contract and all such Government Approvals required in order to implement and complete the Contract and Export Contract will be obtained as and when required under applicable law;
- 5.1.8 the Exporter and [●] shall use reasonable endeavours so as to ensure that the minimum South African Content will be achieved in relation to the Contract and Export Contract;
- 5.1.9 it will not allow any variation or amendment of the Contract and the Export Contract without the prior written consent of the ECIC unless it is not material and does not affect the value of the Goods and Services

under the Export Contract and value of goods and services under the Contract or the date by which the Contract and the Export Contract is to be performed. Any variation which affects the South African Content of Goods and Services or which affects any financial arrangements including security will be material;

- 5.1.10 it will not assign, cede or delegate any of its rights or obligations under the Contract and the Export Contract without the prior written consent of the ECIC;
- 5.1.11 except as disclosed in writing to the ECIC, the Exporter is not in breach of any obligations under the Contract and the Export Contract or this Agreement;
- 5.1.12 except as disclosed in writing to the ECIC, there is no dispute between the Exporter and the Customer and [●] or any other person in connection with the Contract;
- 5.1.13 there has been no material variation or amendment to the Contract and the Export Contract, except as consented to by the ECIC in accordance with clause 5.1.9 above (other than immaterial variations or amendments);
- 5.1.14 it will use its reasonable commercial endeavours to comply with its obligations under the Contract and the Export Contract, subject to the terms and conditions contained therein;
- 5.1.15 all information from time to time Supplied to the ECIC by the Exporter, is true at the time and the context in which it is given and the Exporter has fully disclosed to the ECIC in writing all information within its knowledge which a reasonable Exporter would expect the ECIC to want to know with regards to the Contract and the Export Contract;

- 5.1.16 all information about the financial position of the Exporter provided to the ECIC on the date on which it is given –
  - 5.1.16.1 gives a true and fair view of the financial position and performance of the Exporter;
  - 5.1.16.2 discloses all liabilities, contingent or otherwise;
  - 5.1.16.3 discloses all encumbrances to which the Exporter's assets are subject;
  - 5.1.16.4 has been prepared in accordance with generally accepted accounting principles and practices consistently applied in South Africa (being consistent with IFRS);
  - 5.1.16.5 in the case of projections and forecasts, has a reasonable basis;
- 5.1.17 except as disclosed to the ECIC in writing, no material adverse change in the financial position or operations of the Exporter occurred since it has first submitted an application for finance or insurance coverage to the ECIC in relation to the Project;
- 5.1.18 the Exporter is not aware of any claim or dispute, current, pending or threatened, which may, if decided against the Exporter, adversely affect its liability to honour its duty of care and obligations under this Agreement or the Contract / Export Contract, as the case may be;
- 5.1.19 it has not engaged in any Corrupt Practices in obtaining the Contract and the Export Contract and will not otherwise engage in any Corrupt Practices or make use of any Harmful Child Labour or Forced Labour;
- 5.1.20 in respect of the Exporter, it shall at all times be a Resident;

- 5.1.21 where appropriate, it shall immediately exercise all rights and take all steps in terms of the Contract and the Export Contract;
  - 5.1.22 it shall comply in all respects with all applicable laws, rules, regulations and orders of any governmental authority applicable to it and the performance under the Contract and the Export Contract;
  - 5.1.23 it shall promptly upon becoming aware thereof, provide details of any litigation, arbitration or administrative proceedings concerning the Contract and Export Contract;
  - 5.1.24 it shall promptly, upon becoming aware thereof, inform the ECIC of any potential event of default under the Contract and Export Contract.
- 5.2 All the warranties and representations are made at the Effective Date and when each request for a Drawdown is made under the Facility Agreement.
- 5.3 The Exporter and [●] and/or the Financial Institution shall ensure that the ECIC shall be provided with all relevant information from the Customer in relation to the Project as and when reasonably requested by the ECIC.

## 6 ACCESS TO INFORMATION

- 6.1 The Exporter and [●] shall –
- 6.1.1 co-operate to the fullest extent possible with the ECIC whenever a request is made for information in relation to –
    - 6.1.1.1 the performance of the Export Contract and Contract, as the case may be;
    - 6.1.1.2 the performance of the Exporter's and [●] obligations under this Agreement;

- 6.1.1.3 progress in respect of the Contract / Export Contract and the Project (in respect of the Project, such progress relevant to the works performed under the Contract / Export Contract);
- 6.1.1.4 the financial position of the Exporter / [●];
- 6.1.1.5 any other matters regarding the Contract / Export Contract and the Project (in respect of the Project, such matters as are relevant to the works performed under the Contract or Goods and Services under the Export Contract);
- 6.1.2 if requested by the ECIC, upon having been provided reasonable notice, allow all of its agents or representatives to inspect, review or audit the books, records and accounts of the Exporter / [●] which relate to the Export Contract and Contract or any other matter referred to in this Agreement;
- 6.1.3 if requested by the ECIC –
  - 6.1.3.1 provide the ECIC with the Exporter's / [●] unaudited pro forma financial statements as soon as they become available;
  - 6.1.3.2 provide the ECIC with a written report concerning the progress of the Export Contract and Contract;
  - 6.1.3.3 ensure that all Contracts with sub-contractors and suppliers in connection with the Project oblige each sub-contractor and each supplier to allow the agents or representatives of the ECIC to inspect or audit the books, records and account of the sub-contractor or supplier which relate to the Export Contract and Contract or its performance;

- 6.1.3.4 ensure that all the information the Exporter / [●] provide to the ECIC is accurate and complete at the time it is provided. All estimates provided to the ECIC must be based on assumptions which are reasonable in all the circumstances existing at the time they are provided;
- 6.1.3.5 maintain satisfactory evidence of entitlement to each milestone payment in accordance with the Export Contract and Contract.
- 6.2 The Exporter / [●] shall be obliged to provide the following to the ECIC when specified –
  - 6.2.1 6 (six) monthly updates on the financial status of the Exporter / Group Five International and, when available, audited financial statements;
  - 6.2.2 quarterly statements (before the first day of each January, April, July and October) of the amounts expected to be paid under the Export Contract and Contract for the remainder of the Export Contract and Contract performance period and the dates when the Exporter / Group Five International expect to submit invoices against milestones achieved under the Export Contract and Contract respectively;
  - 6.2.3 copies of all insurance certificates of the types of insurance as required to be put into effect and maintained by the Exporter / [●] under the Export Contract and Contract, as the case may be, together with certificates of currency each time each policy is renewed;
  - 6.2.4 written details of any dispute in connection with the Export Contract and Contract, as the case may be, whether the dispute is between the Exporter and [●] or [●] and the Customer or involves any other person, forthwith after the Exporter / [●] become aware of the existence of the dispute.

## 7 OWNERSHIP AND INSURANCES

The Exporter and [●], as the case may be are obliged to –

- 7.1 obtain and retain ownership of all Goods and Services to be financed under the Facility Agreement until ownership has passed to [●] or the Customer, as the case may be, in terms of the Export Contract or Contract, as the case may be, approved by the ECIC in advance in writing;
- 7.2 refrain from allowing any charge, lien or liability to be created in respect of the Goods and/or Services unless the lien or liability is –
  - 7.2.1 created in the normal course of the Exporter's business;
  - 7.2.2 required by the Contract / Export Contract;
  - 7.2.3 created by operation of law; or
  - 7.2.4 created with the prior written consent of the ECIC; or
  - 7.2.5 permitted in terms of the Facility Agreement;
- 7.3 ensure or procure that the Goods to be Supplied under the Export Contract which in turn shall be Supplied under the Contract are insured to the extent that cautious owners ordinarily insure similar Goods until it is delivered and accepted by the Customer. The insurance must give full replacement value coverage against risks of loss or damage to the Goods for so long as the Exporter / [●] continues to have an insurable interest in them;
- 7.4 notify the ECIC of any event, loss or damage which is likely to give rise to a claim under the insurances. If a claim is made under any of the insurances, the Exporter / [●] must keep the ECIC informed of the progress of the claim;

7.5 use proceeds received from every claim under any of the insurances to complete the Export Contract and the Contract. Should the Exporter be allowed to terminate the Export Contract and similarly Group Five International the Contract pursuant to a claim under the insurance, the Exporter and similarly Group Five International shall not terminate it unless it has first obtained the prior written consent of the ECIC, which consent will not be unreasonably withheld or delayed.

## 8 PROCEDURAL ISSUES

8.1 Each Party shall within 5 (five) Business Days after the Signature Date provide the other with a list of the names of persons duly authorised to bind such party and to act as the contact persons pursuant to the provisions of this Agreement, certified specimens of such persons' signatures and evidence satisfactory to each party that such persons are in fact duly authorised to bind the Party it represents.

8.2 The Exporter / [●] confirm that it shall at all times adhere to the terms and conditions of the Export Contract and the Contract, respectively.

8.3 Neither the Financial Institution nor the Exporter / [●] shall cede any of their respective rights and/or delegate any of their respective obligations under this Agreement to any third party without the prior written consent of the ECIC first being obtained.

## 9 BREACH

Should the Exporter / [●] breach any of the terms and conditions of this Agreement and fail to remedy such breach within a period of 5 (five) Business Days or such other period as may be reasonable in the circumstances (provided that the Exporter / [●] demonstrate to the ECIC in writing what steps they are taking to remedy the breach) after receipt of written notice to such

effect from the ECIC, the ECIC shall be entitled, without prejudice to any of its rights which it may have in terms of this Agreement or at law –

- 9.1 to claim immediate specific performance;
- 9.2 the ECIC shall engage with the Exporter / [●] as to the reasons for the underachievement of the South African Content; and/or
- 9.3 to blacklist the Exporter / [●],

in either case without prejudice to its rights to claim damages.

**10 EXERCISING OF CARE**

- 10.1 The Exporter / [●] shall at all times exercise reasonable care and skill, forethought and prudence in performing its obligations under the Export Contract and Contract, respectively.
- 10.2 The Exporter / [●] shall at all times use its best endeavours to obtain such information as may have to be disclosed to the ECIC in terms of this Agreement.

**11 NOTICES AND DOMICILIA**

- 11.1 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 Agreement, the said physical addresses as well as the following telefax numbers –

<u>Name</u>	<u>Physical Address</u>	<u>Telefax</u>
ECIC:	Block C7 & C8 Eco Origins Office Park 349 Witch Hazel Avenue Highveld Ext 79 Centurion	+27 12 471-3850

Marked for the attention of: Portfolio Management and Workout Unit

<u>Name</u>	<u>Physical Address</u>	<u>Telefax</u>
Exporter:	[●]	[●]

Marked for the attention of: [●]

<u>Name</u>	<u>Physical Address</u>	<u>Telefax</u>
[●]:	[●]	[●]

Marked for the attention of: Wim Fourie

<u>Name</u>	<u>Physical Address</u>	<u>Telefax</u>
Financial Institution:	[●]	[●]

Marked for the attention of: [●]

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 Parties to that effect. Such change of address will be effective 5 (five) Business Days after receipt of the notice of the change.

- 11.2 All notices to be given in terms of this Agreement will be given in writing, in English, and will -
- 11.2.1 be delivered by hand or sent by telefax;
  - 11.2.2 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
  - 11.2.3 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.

11.3 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.

11.4 The Parties record that whilst they may correspond via email during the currency of this Agreement for operational reasons, no formal notice required in terms of this Agreement, nor any amendment of or variation to this Agreement may be given or concluded via email.

## 12 **CONFIDENTIALITY**

The ECIC undertakes to keep confidential information supplied by the Exporter / Group Five International to the ECIC confidential and only utilise such information for purposes for which it was disclosed. In this context –

12.1 such undertaking only relates to confidential information which may have an adverse impact on the Exporter / [●] and/or the Customer;

12.2 these provisions do not apply to information which is –

12.2.1 publicly known or becomes publicly known through no unauthorised act of the ECIC;

12.2.2 lawfully received by the ECIC from a third party;

12.2.3 disclosed by the Exporter / [●] to a third party without similar restrictions;

12.2.4 required to be disclosed pursuant to a requirement of a governmental agency or any applicable law;

12.2.5 publicly disclosed with the Exporter's / [●] written consent.

### 13 PUBLICATION

The Exporter / [●] agree that the ECIC may publish in its annual report the following information –

13.1 details of the Project/Contract/Export Contract;

13.2 the Project/Contract/Export Contract description;

13.3 the Designated Country where the Customer conducts business;

13.4 the value of the Project and the Contract and Export Contract; and

13.5 the economic impact of the Project and the Export Contract or Contract, as the case may be.

### 14 FRAUDULENT OR FALSE CLAIMS

14.1 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 any insurance issued by the ECIC.

14.2 If the Exporter / [●], or any person authorised to act on its behalf wilfully makes any material false or misleading statement in connection with this Agreement, or if any claim or statement is made falsely or fraudulently in any manner whatsoever, then it shall be deemed that the Exporter / [●] has breached the Agreement and the ECIC shall be entitled to all remedies available to it as set out in this Agreement, without prejudice to any other remedy available to in terms of law.

## 15 GENERAL

- 15.1 The Exporter /[●] undertake that they will not act in a manner contrary to the intention of the Contract, Export Contract or any other agreement pertaining to the Supply of Goods and Services by the Exporter /[●] for the Project.
- 15.2 The Parties irrevocably and unconditionally consent to the non-exclusive jurisdiction of the North Gauteng High Court – Pretoria (or any successor to that division) in regard to all matters arising from this Agreement.
- 15.3 This Agreement may be signed in counterparts, including by way of facsimile, each of which copies shall be deemed to be an original.

## 16 WHOLE AGREEMENT, NO AMENDMENT

- 16.1 This Agreement constitutes the whole agreement between the Parties relating to the subject matter hereof.
- 16.2 No amendment or consensual cancellation of this Agreement or any provision or term hereof or of any agreement, bill of exchange or other document issued or executed pursuant to or in terms of this Agreement and no settlement of any disputes arising under this Agreement and no extension of time, waiver or relaxation or suspension of any of the provisions or terms of this Agreement or of any agreement, bill of exchange or other document issued pursuant to or in terms of this Agreement 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.

- 16.3 No extension of time or waiver or relaxation of any of the provisions or terms of this Agreement or any agreement, bill of exchange or other document issued or executed pursuant to or in terms of this Agreement, shall operate as an estoppel against any party in respect of its rights under this Agreement, nor shall it operate so as to preclude such party thereafter from exercising its rights strictly in accordance with this Agreement.
- 16.4 To the extent permissible by law no party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein, whether it induced the contract and/or whether it was negligent or not.
- 16.5 To the extent that ECIC is successful in enforcing any rights against the Exporter / [●] in terms of this Agreement, the Exporter shall amongst others be liable for all costs and expenses incurred by ECIC in enforcing such rights (including legal costs on an attorney and client scale).

SIGNED at \_\_\_\_\_ on \_\_\_\_\_ 2014

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

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name of Signatory

\_\_\_\_\_  
Designation of Signatory

SIGNED at \_\_\_\_\_ on \_\_\_\_\_ 2014

For and on behalf of

**[Exporter]**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name of Signatory

\_\_\_\_\_  
Designation of Signatory

SIGNED at \_\_\_\_\_ on \_\_\_\_\_ 2014

For and on behalf of

**[●]**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name of Signatory

\_\_\_\_\_  
Designation of Signatory

SIGNED at \_\_\_\_\_ on \_\_\_\_\_ 2014

For and on behalf of  
**[Financial Institution]**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name of Signatory

\_\_\_\_\_  
Designation of Signatory

## SOUTH AFRICAN CONTENT OF GOODS AND SERVICES

The following items shall be deemed to constitute South African Content –

- 1 the costs of materials and manufactured Goods Supplied or Services that are rendered by the Exporter minus the value of any materials, goods or major components of manufactured goods which have been imported from sources outside South Africa;
- 2 wages, salaries and other remuneration paid by the Exporter in South Africa to its employees and such portions of wages, salaries and other remuneration payable to employees of the Exporter and/or [●] who are performing work outside South Africa, and which is paid by the Exporter and/or [●] in South Africa;
- 3 freight charges paid in respect of capital material and manufactured Goods shipped by a shipping company;
- 4 insurance premiums paid to the ECIC in respect of a policy issued in South Africa;
- 5 finance charges, excluding any interest for post-delivery finance, paid to any financial institution normally operating in South Africa;
- 6 fees and charges paid for any other services performed in South Africa on the Exporter's behalf by South African resident organisations;
- 7 fees and profits accruing to the Exporter and the Financial Institution to the extent that it is confirmed by external auditors and the ECIC 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 ECIC's absolute opinion does not qualify as South African Content.

**SOUTH AFRICAN EXPORTER'S DECLARATION**

To: Export Credit Insurance Corporation of South Africa SOC Ltd ("**ECIC**")  
Block C7 & C8 Eco Origins Office Park  
349 Witch Hazel Avenue  
Highveld Ext 79  
Centurion  
CC : [Financial Institution]

[Date]

Dear Sirs

**Agreement between [●] ("Exporter") and [●] ("[●]") in relation to the Project**

**Exporter's Declaration No: [●]**

1. Words and expressions defined in the Exporter's Undertaking Agreement (the "**Agreement**") between ECIC, Investec Bank Limited (the "**Financial Institution**"), [●] and the Exporter shall have the same meaning ascribed to them in this Agreement when used in this Exporter's Declaration.
2. This declaration is given by me in respect of Invoice No [●], in terms of the Agreement.
3. The undersigned, being duly authorised, declare and confirm that –
  - 3.1 the Contract / Export Contract is legally valid, binding and enforceable in the relevant jurisdiction and as against the parties thereto as at the date hereof, no legal action has been instituted or is pending thereunder or pursuant to such Contract / Export Contract, nor has any dispute arisen, or threatened to arise thereunder or pursuant to such Contract / Export Contract, and no steps have been taken to refer such dispute to arbitration for resolution;
  - 3.2 an amount of USD[●] ([●] **US Dollars**) has been received by the Exporter from Group Five International which is equal to 15% (fifteen percent) of the above invoice, which amount was received by Group Five International from the Customer;

- 3.3 the total amount received to date in respect of Goods and/or Services is USD[●] ([●] **US Dollars**);
- 3.4 the following declaration is made in terms of the Contract Price:
  - 3.4.1 for the period from commencement of the Project to date:
    - 3.4.1.1 the total aggregate value of Goods supplied and/or Services rendered by the Exporter in respect of the Contract Price and which have been certified as containing South African Content is USD[●] ([●] **US Dollars**); and
    - 3.4.1.2 Goods and/or Services amounting to a further USD[●] ([●] **US Dollars**) are still to be certified as containing South African Content;
  - 3.4.2 for the period under declaration (from [date of previous declaration] to [date of this declaration], the value of Goods Supplied and Services rendered by the Exporter in respect of the Contract Price is USD[●] ([●] **US Dollars**) which amount is comprised of the following:
    - 3.4.2.1 the total value of Goods Supplied and/or Services rendered by the Exporter in respect of the Contract Price and which have been certified as containing South African Content is USD[●] ([●] **US Dollars**); and
    - 3.4.2.2 Goods and/or Services amounting to a further USD[●] ([●] **US Dollars**) are still to be certified as containing South African Content;
- 3.5 the South African Content of Goods and/or Services referred to in the first sentence of 3.4.1.1 above is not less than [●]% (..... percent) of the value of the Goods and/or Services;
- 3.6 the South African Content of the Goods and/or Services referred to in 3.4.2.1 above, is not less than [●]% (..... percent) of the value of such Goods and/or Services;
- 3.7 the cumulative South African Content of the Goods and/or Services Supplied or rendered to date and the Goods and/or Services to be supplier

or rendered in terms of the Contract / Export Contract shall be no less than 50% (fifty percent) of the Contract Price.

3.8 attached hereto are -

3.8.1 sworn affidavit from Exporter;

3.8.2 an Exporter's Declaration signed by at least 2 (two) directors of the Exporter; auditor's certificate, as the case may be.

4 In my opinion, based on my examination of the aforementioned books, records and letters referred to in 3.8.2 and 3.8.2 above, the percentage stated in 3.6 fairly represents the minimum South African Content of all Goods supplied and/or Services rendered during the period ending [●] in terms of the Contract / Export Contract.

Yours faithfully,  
For and on behalf of  
[Exporter]

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