

**EXECUTION
COPY**

**EXPORT CREDIT INSURANCE
INVESTMENT INSURANCE
POLICY OF INSURANCE
NO IGP000 [●]**

between

EXPORT CREDIT INSURANCE CORPORATION OF SOUTH AFRICA LIMITED

and

[INSURED]

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

1.2.2 "**Amount of Loss**" means monetary loss directly arising from a Cause of Loss in respect of the Investment, which shall be limited to 90% (ninety percent) of the Current Insured Amount, being –

1.2.2.1 in the case of proportional percentage of the damage occasioned to the business operations of the Enterprise calculated as the difference between the Current Insured Amount and the reduced value of the Enterprise (determined at book value in terms of South African generally accepted accounting practice after the Cause of Loss has taken place) as a percentage of the equity interest (together with

dividends already declared but cannot be repatriated) which the Insured has in the Enterprise, as supported by an auditor's certificate prepared by any of Ernst & Young, KPMG, PricewaterhouseCoopers or Deloitte with the way in which the Current Insured Amount has been determined and in such form as set out in Annexure "C" hereto and reasonably approved in writing by the Insurer;

plus 90% (ninety percent) of the Insured's share of any earnings retained in the Enterprise during the period of the cover of this Policy up to a maximum of a certain percentage per Insurance Year (to be agreed with the Insured at the beginning of each Insurance Year), but limited to an absolute maximum for the total period of cover for 100% (one hundred percent) of the Insured's initial share investment, after deduction of the following amounts –

- 1.2.2.2 any amounts and/or benefits received by the Insured or applied for its benefit in any way whatsoever in respect of the Investment outside the Designated Country;
- 1.2.2.3 any costs and/or expenses which the Insured would have incurred in performing its obligations but which are saved and/or not incurred due to the lodging of a Claim;
- 1.2.2.4 the amount of any counterclaim or setoff to which the Insured or the Enterprise is entitled or any advantage available to the Insured which would reduce or mitigate such Amount of Loss;
- 1.2.2.5 any other amount available to the Insured which has the effect of reducing the Amount of Loss,

specifically excluding the following amounts –

- 1.2.2.6 consequential loss, indirect loss and/or loss of profits;

- 1.2.2.7 any loss, expense or cost which is due to incorrect wording of, or insufficient provisions in, or the invalidity of any document embodying or relating to the Investment;
- 1.2.2.8 any loss, expense or cost arising from fluctuations in rates of exchange;
- 1.2.2.9 any loss, expense or cost arising from the non-performance by the Insured of any of its obligations pertaining to the Investment as well as arising from any other dispute relating to the performance of the Government of the Designated Country, between the Insured, the Enterprise and the Government of the Designated Country, whether such dispute relates to the Investment or not to the extent that any such dispute results in a loss, expense or cost due to the Insured not having acted reasonably in the circumstances;
- 1.2.2.10 any loss, expense or cost arising from a breach or default by the Enterprise, the Insured or any officer, employee or representative of the Insured or from any act or omission by the Enterprise, the Insured or such officer, employee or representative; and
- 1.2.2.11 any loss, expense of cost arising from any failure by the Insured to comply with the laws of South Africa relating to the Investment and/or the Enterprise, including but without limiting the generality of the foregoing, the Currency and Exchanges Act, 1933, as amended and the regulations promulgated thereunder,

provided that the Amount of Loss shall be determined using the USD/ Zim Dollar exchange rate at the time when the Cause of Loss has occurred, if applicable;

- 1.2.3 **"Annexure(s)"** means the Annexure(s) attached to this Policy setting out the salient information of this Policy, as initialled by the Parties;
- 1.2.4 **"Authorised Officer"** means -
- 1.2.4.1 in relation to the Insurer, the Chief Executive Officer or any other person authorised in writing by the Insurer; and
- 1.2.4.2 in relation to the Insured, any person nominated in writing by the Insured;
- 1.2.5 **"Award"** means a final and binding decision rendered against the Government by a court of law or similar judicial forum or international arbitrator recognised by the Insurer (it being recorded that the Insurer recognises the arbitration process as envisaged in the Shareholders' Agreement) or any irrevocable and unconditional recognition or admission of liability by the Government in writing;
- 1.2.6 **"Breach of Contract"** means the inability of the Insured or the Enterprise to enforce an Award rendered against the Government pursuant to a breach or repudiation by the Government of its obligations in terms of the Mining Licence, provided that –
- 1.2.6.1 the Award is for a specified monetary amount and has been rendered pursuant to a breach or repudiation of the material obligations of the Government under the relevant agreements which has directly resulted in an Amount of Loss;
- 1.2.6.2 the Insured has made reasonable efforts to exhaust all remedies to enforce the Award against the Government for a period of 365 (three hundred and sixty five) consecutive days from the date of the Award;

- 1.2.6.3 the breach and/or repudiation materially adversely impacts upon the business operations of the Enterprise;
- 1.2.6.4 the Government has failed to comply with the Award in terms of the arbitration proceedings within the time periods as may have been stipulated;
- 1.2.7 "**Business Day**" means any day which is not a Saturday, Sunday or a proclaimed public holiday in South Africa and the Designated Country and, for US Dollar payments, including New York;
- 1.2.8 "**Cause(s) of Loss**" shall be limited to Expropriation, War, Transfer Restrictions and Breach of Contract;
- 1.2.9 "**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 relevant Insured;
- 1.2.10 "**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;
- 1.2.11 "**Current Insured Amount**" means the amount(s) in respect of which the Insured shall enjoy cover in terms of this Policy for a specific Insurance Year and as agreed in writing between the Parties and specified in an

Annexures issued no later than the commencement of each Insurance Year, which amount shall not exceed the aggregate of –

1.2.11.1 the US Dollar amount of the Investment together made by the Insured in the Enterprise at any specific point in time plus the US Dollar amount of the proportionate percentage of any retained earnings in the Enterprise during the period of the cover up to a maximum of a certain percentage per Insurance Year (to be agreed with the Insured at the beginning of each Insurance Year), but limited to an absolute maximum for the total period of cover of this Policy of 100% (one hundred percent) of the Initial Investment, less –

1.2.11.1.1 the amount of any reserves which arise in the Enterprise to the extent that the distributed reserves exceed a percentage agreed between the Parties of any form of distribution by the Enterprise per annum (including capital distributions);

1.2.11.1.2 the Insured's share of any percentage of Losses incurred by the Enterprise determined with reference to its Investment in the Enterprise from the effective date to the commencement of the relevant insurance year;

1.2.11.1.3 any repayments of share capital and/or any other form of distribution to the Insured,

to which amounts in clause 1.2.11.1 shall be added –

1.2.11.2 any dividends declared but not paid on the shares held by the Insured in the Enterprise, which amount shall be limited to 100% (one hundred percent) of the amount for which the Investment was actually subscribed for determined with reference to the entire insurance period

and which is, in terms of the applicable laws of the Designated Country on the Effective Date, allowed to be transferred to South Africa;

- 1.2.11.3 any other amounts agreed upon by the Parties;
- 1.2.12 "**Date of Loss**" means the date when a Cause of Loss occurs after expiry of the relevant periods as mentioned in the definition of War, Expropriation, Transfer Restriction and Breach of Contract;
- 1.2.13 "**Designated Country**" means [●];
- 1.2.14 "**Discriminatory**" means any action the Government the principal effect of which is directly borne by the Enterprise, excluding *bona fide* measures by the Government in the exercise of legitimate regulatory authority;
- 1.2.15 "**Effective Date**" means the date that the suspensive conditions referred to in clause 3 (*Suspensive Conditions*) of this Policy have been fulfilled by the Insured or waived in writing by the Insurer and the Insured has confirmed in writing to the Insurer that the Policy is effective;
- 1.2.16 "**Enterprise**" means [●];
- 1.2.17 "**Event of Default**" means an event of default as envisaged in this Policy;
- 1.2.18 "**Expropriation**" means –
- 1.2.18.1 any measure taken, directed, authorised, ratified or approved by the Government, which is expropriatory within the meaning of –
- 1.2.18.1.1 and which constitutes –
- 1.2.18.1.1.1 an administrative action;
- 1.2.18.1.1.2 a legislative action which requires no further legislation, regulation or administrative action for its implementation;

- 1.2.18.1.2 subject to clause 1.2.18.1.5 below, a measure shall be "expropriatory" if the measure –
- 1.2.18.1.2.1 prevents the operation of the Enterprise; or
- 1.2.18.1.2.2 deprives the Insured of its rights of ownership and/or management of the Enterprise, including all the underlying assets; or
- 1.2.18.1.2.3 deprives the Insured of the use and control of funds deposited (either in local currency or US Dollars) by the Insured, or by the Enterprise for the account of the Insured, with a financial institution in the Designated Country, and such funds constitute a dividend,
- provided, however that the measure deprives the Insured of those rights for a period of 365 (three hundred and sixty five) consecutive days;
- 1.2.18.1.3 for the purposes of this clause, a series of measures by the Government shall be regarded as one measure, if their combined effect is "expropriatory" within the meaning of clause 1.2.18.1.1;
- 1.2.18.1.4 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 and ensuring public safety, raising revenues, protecting the environment, or regulating economic activities, unless the measure is designated by the Government to have a confiscatory effect;
- 1.2.18.1.5 breach by the Government of contractual obligations to the Insured or the Enterprise, when the Government is acting in a commercial

capacity such as a supplier, buyer or trader, shall not constitute an expropriatory measure;

1.2.18.2 the nationalisation or confiscation of the Investment and/or the Enterprise or any part thereof by the Government without adequate compensation and which constitutes either a final administrative action or a final legislative action which requires no additional or supplemental legislation, regulation or administrative action in order to implement such action, provided that it endures for a period of 365 (three hundred and sixty five) consecutive days;

1.2.19 "**FAIS**" means the Financial Advisory and Intermediary Services Act, 37 of 2002;

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 "**Government**" means -

1.2.21.1 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

1.2.21.2 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;

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, authorities, registrations, licences or permits of the 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 any transaction or document;

- 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 **"Insurance Period"** means the period determined with effect from the Effective Date until the maturity date as indicated in the Schedule;
- 1.2.25 **"Insurance Year"** means a period of 12 (twelve) consecutive uninterrupted calendar months, the first insurance year commencing on the Effective Date and ending 12 (twelve) months thereafter on the basis that subsequent insurance years will commence on the first day after the expiry of the previous insurance year;
- 1.2.26 **"Insured"** means the [tbc], a company duly incorporated in terms of [●], registration number [●];
- 1.2.27 **"Enterprise"** means [●], a private company duly incorporated in terms of the laws of the Designated Country;
- 1.2.28 **"Insured Loss(es)"** means such part of the Insured Debt as has not been received by the Insured due to a Cause of Loss beyond the control of the Insured;
- 1.2.29 **"Insurer"** means Export Credit Insurance Corporation of South Africa SOC Ltd, registration number 2001/013128/06, with FAIS registration number 30656. Specifically reference is made to the FAIS Legislation as set out in Annexure "D" hereto;

1.2.30 **"Investment"** means the ordinary shares to be subscribed for by the Insured in the enterprise in an amount of US\$[●] ([●] US Dollars) resulting in the Insured acquiring at least a 26% (twenty six percent) shareholding in the Enterprise, including in respect of dividends already declared but that cannot be repatriated;

1.2.31 **"Investment Date"** means the date(s) on which the Investment has been acquired by the Insured and it has become the owner thereof;

1.2.32 **"Libor"** means,

1.2.32.1 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 Insured may specify another page or service displaying the appropriate rate after consultation with the Insured; or

1.2.32.2 (if no screen rate as described in clause 1.2.32.1 is available for such payment period) such rate as may be calculated by the Insured (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 date 2(two) Business Days in London prior to the first day of such payment period provided that if no screen rates are available either (i) for any period, as described in clauses 1.2.32.1 and 1.2.32.2, or (ii) for US Dollars, LIBOR for such default payment period shall be such rate as may be determined by the Insured;

- 1.2.33 **"Material Adverse Change"** means a change which has or might have a material adverse change on the circumstances which may result in a Cause of Loss and the liability of the Insurer under this Policy;
- 1.2.34 **"Maximum Liability"** means the maximum liability as specified in Annexure "A" for which the Insurer may be liable in respect of Claims arising hereunder in respect of any Insurance Year, being the Current Insured Amount;
- 1.2.35 **"Mining Licence"** means the mining licence awarded to the Enterprise by the Government to mine for gold;
- 1.2.36 **"Month"** means a calendar month;
- 1.2.37 **"Parties"** or **"Party"** means respectively, collectively both and individually each of the Parties to this Policy;
- 1.2.38 **"Policy"** means this policy, the Schedule and any endorsement/s which are issued in respect hereof;
- 1.2.39 **"Premium(s)"** means the amount of money calculated and payable by the Insured in terms of clause 6;
- 1.2.40 **"Project"** means the establishment of a gold mine in the Designated Country;
- 1.2.41 **"Project Agreements"** means the Subscription Agreement, the Shareholders Agreement and Mining Licence;
- 1.2.42 **"Proposal"** means the revised Proposal submitted by the Insured to the Insurer dated [●] amended in terms of which it made application to obtain insurance cover as set out in this Policy;

- 1.2.43 **"Recovery"** or **"Recoveries"** means any recovery in money or otherwise received by the Insured or to which the Insured is entitled which is available for the purposes of reducing the Amount of Loss, whether practically or legally;
- 1.2.44 **"Related Parties"** means –
- 1.2.44.1 the Insured;
 - 1.2.44.2 the Enterprise;
 - 1.2.44.3 the shareholders of the Enterprise;
 - 1.2.44.4 any person who has given Security; and
 - 1.2.44.5 the Government;
- 1.2.45 **"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;
- 1.2.46 the **"Shareholders' Agreement"** means the shareholders' agreement to be concluded between the Insured, the Enterprise and [●] pertaining to their relationship as shareholders in respect of the Investment dated [●];
- 1.2.47 **"Signature Date"** means the date upon which this Policy is signed by the Party signing last in time;
- 1.2.48 **"South Africa"** means the Republic of South Africa;
- 1.2.49 **"Subscription Agreement"** means the agreement concluded amongst the Enterprise, the Insured and [●] and dated [●];
- 1.2.50 **"Transfer Restriction"** means –
- 1.2.50.1 any action by the Government that prevents the Insured or the Enterprise, as the case may be from directly or indirectly converting

local currency into US Dollars in order to make a dividend payment, including the denial of such conversion in an exchange rate category at least as favourable as the category applicable to US Dollars;

- 1.2.50.2 failure by the 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 and/or the Enterprise,

provided that in the cases of clauses 1.2.50.1 and 1.2.50.2 above –

- 1.2.50.3 the Insured and/or the Enterprise can within the Designated Country lawfully and freely dispose of the local currency or US Dollars, as the case may be;

- 1.2.50.4 the Insured and/or the Enterprise, without success for a period of 365 (three hundred and sixty five) consecutive days, 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 Enterprise could have reasonably utilised in the absence of this coverage;

- 1.2.50.5 Transfer Restriction does not cover currency devaluation or depreciation;

- 1.2.51 "**US\$**" or "**US Dollar(s)**" means the lawful currency of the United States of America;

- 1.2.52 "**VAT**" means value added tax as levied in terms of the Value Added Tax Act, 1991;

- 1.2.53 "**War**" means –

- 1.2.53.1 acts of war (whether declared or on declared), revolution, insurrection, civil war, civil commotion as well as the destruction, disappearance of physical damage of the real or tangible property (other than precious metals, gems, works of art, money or documents) for which the Enterprise bears the risk of loss in the Designated Country, provided such property is used principally in connection with the Enterprise;
- 1.2.53.2 the Enterprise is unable to carry out operations essential to its overall financial liabilities as a going concern as a result of any of the events as set out in clause 1.2.53.1 for a period of 365 (three hundred and sixty five) consecutive days in the case of the first event or subsequent but non-consecutive events, provided that no such requirement shall be applied to subsequent consecutive events that were directly caused by such events of war and civil disturbance; and
- 1.2.53.3 the coverage for war and civil disturbance applies only to acts undertaken with the primary intent of achieving a political objective and does not extend to acts undertaken primarily to achieve labour, student or other non-political objectives.
- 1.2.54 **“Zim Dollar”** means the lawful currency of Zimbabwe.
- 1.3 Unless otherwise indicated, words and expressions defined in this Policy shall bear the meaning so assigned to them.
- 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 1.8, 1.10 and 1.16, 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 The terms "holding company" and "subsidiary" shall bear the meanings assigned thereto in the Companies Act, 1973, as amended or substituted.
- 1.9 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.
- 1.10 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.
- 1.11 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.
- 1.12 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.

- 1.13 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.
- 1.14 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.
- 1.15 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.
- 1.16 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 PREAMBLE

- 2.1 The Insured made a Proposal to the Insurer on [●] as amended, in terms of which it made application to obtain insurance cover as envisaged in this Policy.
- 2.2 The Insured has accepted the Insurer's offer to provide insurance cover on the terms and conditions set out herein.

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 [●] or such later date as the Insurer may agree in writing), namely that –
- 3.1.1 the Insurer has been provided with written documentation confirming the authority of the signatories of the Insured signing this Policy;
 - 3.1.2 the Insured has confirmed to the Insurer in writing that it did not, after due enquiry have actual or constructive knowledge of the occurrence or anticipated occurrence of a Cause of Loss that may or has resulted in Amount of Loss;
 - 3.1.3 the Insured has obtained satisfactory legal opinion from an independent legal counsel in the Designated Country, acceptable to the Insured, that all financing arrangements and Project Agreements,, are legal, valid, binding and enforceable under the laws of the Designated Country (and any other relevant jurisdiction);
 - 3.1.4 the Insured has obtained approval from the South African Reserve Bank for the financing of the Investment;
 - 3.1.5 all funding commitments by the Insured and all other shareholders of the Enterprise have been granted on an irrevocable basis;
 - 3.1.6 the Enterprise has been legally registered in terms of the laws applicable in the Designated Country;
 - 3.1.7 the Enterprise has title over the assets and mineral deposits associated with the mine;

- 3.1.8 the Insured has entered into a Subscription Agreement in terms which of the Insured will subscribe for the shares in the Enterprise and such agreement has become unconditional, save to the extent that it may be conditional upon the entering into of this Policy;
- 3.1.9 the Insured has subscribed for at least 26% (twenty six percent) of the paid-up issued share capital (together with voting rights) in the Enterprise;
- 3.1.10 the Insured has entered into the Shareholders Agreement with the Enterprise and the other Shareholders of the Enterprise regulating the rights and obligations amongst each other;
- 3.1.11 the Insured has ensured and confirmed that it and/or the Enterprise has obtained all approvals from the Central Bank of the Designated Country and/or other relevant authorities for the subscription of shares in the Enterprise and the repatriation of dividends and other distributions to the Insured;
- 3.1.12 the Insured has confirmed that the Government of the Republic of South Africa and the Government have entered into a Bilateral Investment Protection Agreement and such Agreement has become effective and ratified by both governments, as advised by the Department of Trade and Industry and or the Department of International Relations and Cooperation of the Government of the Republic of South Africa.
- 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 or the date by which they must be fulfilled or waived 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 24 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 Investment, subject to the Insurer's Maximum Liability specified in the Schedule. At the beginning of each insurance year the Insured shall elect the amount representing the Current Insured Amount for which cover is required. The Current Insured Amount for the first insurance year will not exceed an amount of US\$ [●] ([●] US Dollars) in respect of the Investment;
- 4.2 In respect of the insurable Investment amount:
- 4.2.1 It is recorded that the Parties shall agree on the Current Insured Amount for each subsequent Insurance Year in advance.
- 4.2.2 The Insured shall provide the Insurer a reasonable period prior to the commencement of a specific Insurance Year with a calculation of the Current Insured Amount that is to apply to the subsequent Insurance Year based on the book value of the Enterprise as determined in terms of South African generally accepted accounting practice which calculation shall be supported by an auditor's certificate prepared by any of Ernst & Young, KPMG, PricewaterhouseCoopers or Deloitte and in such form as set out in Annexure "C" hereto and reasonably approved in writing by the Insurer.
- 4.2.3 Upon receipt of such calculation and auditor's certificate, the Parties shall negotiate with a view to determine the Current Insured Amount for the ensuing Insurance Year. If such agreement has not been entered into prior to the commencement of a specific Insurance Year, then the amount used in the previous Insurance Year shall be the Current Insured Amount.
- 4.2.4 The Current Insured Amount shall be limited to the Maximum Liability.

4.2.5 The Parties record that the intention is that the financial reporting currency of the Enterprise will be in US Dollars. However, to the extent that the Zim Dollar is the financial reporting currency, the USD/Zim Dollar exchange rate that will be used to determine the Current Insured Amount in US Dollars will be the exchange rate at the time when the declaration set out in Annexure “B” is made. For the first year of insurance, the USD/Zim Dollar exchange rate that will be used will be the exchange rate that applies at the Effective Date.

4.3 The cover provided in terms of this Policy will not exceed a period of 10 (ten) years from the Effective Date.

4.4 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.

5 **BASIS OF POLICY**

5.1 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 are thus 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 and on 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 the utmost good faith in its dealings with the Insurer. 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.

5.2 It is recorded that the information required from the Insurer is 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 lead to the Claim being instituted under this Policy.

5.3 Receipt of any information provided to the Insurer by the Insured in terms of this clause 5 shall not be deemed to be a consent of the Insurer in relation to the Investment or any waiver or consent in respect of the Insured's rights or obligations in terms of the Finance Documents.

6 **EXCLUSIONS**

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

6.1.1 any portion of the Investment not approved of in writing by the Insurer at the time of Signature Date;

6.1.2 any loss, cost or expense arising from any misrepresentation or non disclosure by the Insured or anybody acting on behalf of the Insured 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 would have been taken into account by the Insurer with reference to the exercise of its rights and performance of its obligations hereunder;

6.1.3 any loss, cost or expense arising from the default of any agent or employee of the Insured or from any act or omission on the part of such

agent or employee, excluding any scenario where such default, act or omission is in fact directly caused by a Cause of Loss;

6.1.4 any loss, cost or expense which is due to faulty wording of, or insufficient provision in, or the invalidity of any provision or any document embodying or relating to the Investment or any form of security where the cover of the Policy is subject to the existence of such security;

6.1.5 any loss, cost or expense arising from changes in rates of exchange.

6.2 If the Insurer alleges that by reason of the provisions of any of the issues referred to in clause 6.1 which allegation shall be *prima facie* evidence, loss, cost or damage is not covered by this Policy, the burden of proving the contrary shall rest on the Insured.

7 THE EXTENT OF COVER

7.1 The cover provided under this Policy shall not exceed the Maximum Liability.

7.2 The Insured shall retain for his own account and risk such portion of the Amount of Loss that is not covered by this Policy, it being recorded that any Amount of Loss shall be reduced by 10% (ten percent).

8 PREMIUM

The Premium is 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 –

8.1 the Premium shall be paid in US Dollars;

8.1.1 the Premiums as set out in Annexure "A" will be paid against presentation by the Insured and within 5 (five) Business Days after acceptance by the

Insurer of a statement in respect of the Current Insured Amount for the relevant Insurance Year;

- 8.1.2 Premiums will be calculated as to approximately 2,3% (two comma three percent) of Investment plus value added tax;
- 8.1.3 the Premiums shall be adjusted annually so as to reflect the amounts covered by the Insurer in terms of the Current Insured Amount for each Insurance Year on a year-to-year basis.
- 8.2 The first premium shall be paid by the Insured to the Insurer within 5 (five) Business Days after the date of the letter referred to in clause 3.2.
- 8.3 The Insurer may, in its sole discretion, accept late payment of Premiums provided the request for extension for payment is received at least 2 (two) Business Days prior to the due date for payment. If accepted, the Insurer, in its sole discretion, reserves the right to charge the Insured interest at 6 (six) month Libor plus a margin of 3% (three percent) per annum on the late Premiums from the due date for payment until payment is received by the Insurer.
- 8.4 Premiums are not refundable for any reason pursuant to the early termination or otherwise of this Policy.
- 8.5 All amounts payable by the Insured for Premiums 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.
- 8.6 If a Cause of Loss has occurred and the Insured has lodged a Claim in accordance with this Policy, no further Premiums will be due after the Date of Amount of Loss.

9 PREVENTION OR MITIGATION OF AN INSURED LOSS

9.1 Any Expenses incurred by the Insured in consultation with and with the prior written approval of the Insurer for the purpose of preventing a threatening Amount of Loss or mitigating an actual Amount of Loss in terms of this Policy will be paid by the Insurer as to 90% (ninety percent) thereof. Such amount will be paid at the same time as the Amount of Loss is indemnified by the Insurer, or, if no Amount of Loss has occurred, as soon as such fact has been established and within 7 (seven) Business Days after receipt of a tax invoice and properly evidenced documentation.

9.2 Any costs incurred by the Insurer for the purpose of preventing a threatening Amount of Loss or mitigating an actual Amount of Loss in terms of this Policy shall be borne by the Insured to the extent of 10% (ten percent) thereof. The Insurer shall be entitled to deduct from any amount payable by it to the Insured the amount outstanding in terms of this clause. If no amount becomes payable by the Insurer, any amounts due to it shall be paid as soon as such fact has been established.

10 NOTIFICATION - MITIGATION OF AN INSURED LOSS

10.1 Should an event which would give rise to a Cause of Loss occur, the Insured shall immediately upon becoming aware thereof notify the Insurer 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 Amount of 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. If time is of the essence and the Insured is unable to obtain instructions from the Insurer notwithstanding its reasonable endeavours to do

so, the Insured shall be entitled to take such interim steps as it may bona fide deem appropriate in the circumstances with a view to mitigate the potential loss. To the extent that the Insured may be required by the Insurer to act contrary to the terms of the Shareholders' Agreement, the Insurer shall indemnify the Insured against any cost, damages, loss or expense incurred by the Insured in complying with the requirements of the Insurer.

10.2 Any amount payable by the Insurer to the Insured under this Policy shall be reduced by the amount of actual Recoveries received 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 a Amount of 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 amount forthwith to the Insurer together with any interest actually received by the Insured in respect of that amount.

10.3 Without limiting the generality of clause 10.1, on the occurrence of a Cause of Loss pursuant to which the Insured intends to lodge a Claim, the Insured shall, at its own expense -

10.3.1 promptly at its cost provide the Insurer with full details in writing of any Claim;

10.3.2 promptly at its cost give the Insurer such proof, information and sworn declarations as the Insurer may require,

provided that, to the extent that the Insurer is of the opinion that there may have been a Cause of Loss in circumstances where the Insured has not lodged a Claim, the Insured shall nevertheless be obliged to provide such information as may be required by the Insurer at that stage.

10.4 After payment by the Insurer of any claim in terms of this Policy and, if so required by the Insurer, the Insured shall take all steps, excluding the institution of proceedings, to effect Recoveries whether from the Government, the Enterprise or any other person from whom such Recoveries may be made. To the extent that the Insured may be required by the Insurer to act contrary to the terms of the Shareholders' Agreement in effecting any Recoveries, the Insurer shall indemnify the Insured against any cost, damages, loss or expense incurred by the Insured in doing so. Upon collection of any such Recoveries, the Insured and the Insurer shall share in the net amount of such Recoveries (after deduction of all costs and expenses incurred in obtaining the Recovery) in the ratio of 10:90 respectively. If there is no recovery, the Insurer shall bear all reasonable costs of the attempted recovery.

11 **LOGGING OF CLAIMS**

11.1 Upon the occurrence of a Amount of Loss the Insured shall be entitled to lodge a claim under the Policy in respect of the Current Insured Amount.

11.2 Such claim may be submitted in writing to the Insurer for consideration for settlement –

11.2.1 where the Amount of Loss is directly due to Expropriation or War, within 6 (six) Months after the occurrence of a Cause of Loss; and

11.2.2 where the Amount of Loss is directly due to Transfer Restriction, within 30 (thirty) days after the occurrence of the Cause of Loss;

11.2.3 where the Amount of Loss is directly due to Breach of Contract, within 30 (thirty) days of the occurrence of the Cause of Loss.

- 11.3 The Insurer shall pay to the Insured the Insured percentage of the Amount of Loss within 30 (thirty) days after the Insured has accepted the basis of settlement proposed by the Insurer.
- 11.4 The Insurer shall not be liable for any claim which is not received and (proved in writing by the Insured), by the Insurer within a period which is the longer of –
- 11.4.1 the time periods as set out in clause 11.2; and
- 11.4.2 1 (one) Month after the date of the last request by the Insurer for additional information pertaining to an Amount of Loss.
- 11.5 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.
- 11.6 The Insurer shall be entitled to check every aspect of a Claim, and the events relevant to a Claim, and the Insured must cooperate, and cause the Enterprise to cooperate, with the Insurer in this regard.
- 11.7 Any action taken by the Insured in accordance with any consultation with or suggestion made by the Insurer shall be without prejudice to any right the Insurer may have to reject any Claim submitted by the Insured for the relevant Amount of Loss.
- 11.8 The Insured must use, and ensure that the Enterprise use all reasonable measures to overcome, protest and prevent any Cause of Loss and any Amount of Loss, including exercising due consideration whether, subject to the terms of the Project Agreements as well as the Finance Documents -

- 11.8.1 to commence proceedings under any available administrative, arbitral or judicial process in the Designated Country;
- 11.8.2 to take such reasonable action as may be suggested in writing by the Insurer;
- 11.8.3 in the event of the occurrence of War, Expropriation or Breach of Contract, to lodge any possible claim for compensation, indemnification or reimbursement for the whole or any part of the Amount of Loss with the relevant person or Government; and
- 11.8.4 to exercise all rights it has against any of the other Related Parties or the Government including doing everything practicable or reasonable to recover the Amount of Loss from any of the other Related Parties and the Government to the extent that they are or may be liable for the whole or part of the Amount of Loss including:
 - 11.8.4.1 requiring payment of the relevant amount to be made from outside the Designated Country;
 - 11.8.4.2 exhausting any rights of set-off as soon as they become available to the Insured, and preventing set-offs, claims, cross-claims and counter-claims being exercised against the Insured;
 - 11.8.4.3 realising any Security given to the Insured as soon as the Insured is permitted to do so under the Contract Documents; and
 - 11.8.4.4 in respect of Expropriation or Transfer Restriction, realising any money deposited by the Insured or the Enterprise in any account held with a governmental or financial institution in or outside the Designated Country.
- 11.9 The Insured shall give written notice to and consult with the Insurer prior to

enforcement of any right under the Project Agreements.

- 11.10 The Insurer shall not have any liability under this Policy until the Insured has paid the relevant Premium and any VAT due under this Policy by the due date of payment pursuant to clause 8;

12 **CESSION AND SUBROGATION**

- 12.1 Contemporaneously with and as a condition precedent to payment of a Claim by the Insurer to the Insured, the Insured shall if so required by the Insurer –

12.1.1 cede and transfer to the Insurer its rights under the Investment to which the claim relates and/or all rights in or under any securities in respect of the Investment;

12.1.2 deliver up to or otherwise transfer to the Insurer any negotiable instruments, guarantees or other securities relating to the Investment in respect of which the claim is paid.

12.2 It is acknowledged that there may be certain instances where it may not be possible for the Insured to comply with its obligations in terms of this clause 12.1. In such event the Insured shall use reasonable endeavours so as to place the Insurer in the same economic financial position, including the transfer of any and all benefits associated with the Investment as and when received by the Insured.

12.3 Subject to the provisions of clause 9.1, the Insured shall at its own cost do and permit to be done all such things 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 upon indemnification of the Insured whether such thing shall be required before or after such indemnification, provided that the Insured will not be responsible for the costs of the Insurer.

- 12.4 The Insurer recognises that the Insured is bound by the conditions of the Shareholders' Agreement concluded for the purposes of the Enterprise and that such agreements contain, inter alia, an obligation upon the Insured to cede its rights in respect of the Investment or portion of the Investment to the third party lenders of the Enterprise as security for loans advanced to the Enterprise by these lenders. It is therefore acknowledged that the Insured may not be able to cede all of the rights in respect of the Investment pursuant to the payment of a claim. However, it shall be incumbent upon the Insured to take all steps in consultation with the Insurer and such third party lenders to comply with its obligations as far as legally possible. In this regard full details shall be provided by the Insured of these restrictions prior to the date of signature hereof. No amendment which is likely to have an adverse effect on the rights and liabilities of the Insured under this Policy may be made to such Shareholders' Agreement without the prior written consent of the Insurer.
- 12.5 Upon collection by the Insured of any Recoveries in respect of the Amount of Loss after payment of a claim by the Insurer, the net amount collected shall be apportioned in the ratio of 90% (ninety percent) to Insurer and 10% (ten percent) to the Insured, which amount shall be paid over to the Insurer within a period of 5 (five) Business Days.
- 12.6 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 1.2.2.1 should the Insurer have indicated its liability in terms of this Policy in respect of the Investment or Current Insured Amount 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.

- 12.7 Should the Insured be required by the Insurer under the provisions of this clause 11.1 to pursue any rights or to take any steps, the Insurer shall reimburse to the Insured all reasonably legal costs so incurred by the Insured.
- 12.8 It shall always be in the discretion of the Insurer to retransfer the Insured rights in terms of the Project Agreements back to the Insured with a view to the Insured ensuring administrating of same in circumstances where the Insurer deems appropriate on the basis that the Insured should accept such transfer.
- 12.9 In the case of Transfer Restriction, the Insured shall cause the relevant amount of local currency that cannot be converted or in respect of which there is a restriction to transfer 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 transfer of the amount into the designated banking account for the benefit of the Insurer should take place against or prior to the payment of a Claim by the Insurer.

13 REPRESENTATIONS

- 13.1 The Insured makes the following representations in favour of the Insurer, namely –
- 13.1.1 it is a company 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;
- 13.1.2 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;

- 13.1.3 all necessary corporate, shareholder and other action has been taken to authorise the execution, delivery and performance of the Project Agreements by it and no limitation on the powers of it will be exceeded as a result of the entering into Project Agreements and/or this Policy;
- 13.1.4 the obligations expressed to be assumed by it in terms of the Project Agreements to which it is a party and this Policy are legal and valid obligations binding on it and enforceable against it in accordance with the terms thereof (provided this clause shall not apply if any of the Project Agreements 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);
- 13.1.5 the execution and delivery of, the performance of its obligations under, and compliance by it with the provisions of the Project Agreements to which it is a party and this Policy do not and will not –
 - 13.1.5.1 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 any of the Project Agreements 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);
 - 13.1.5.2 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;

- 13.1.5.3 contravene or conflict with any provision of its constitutive documents;
- 13.1.6 it is duly authorised to acquire the Investment and to enter into this Policy;
- 13.1.7 all of the information supplied to the Insured in connection with the Investment, the Enterprise and/or this Policy is true, complete and accurate in all material respects and, in the case of forecasts, based on reasonable assumptions and on opinions genuinely and bona fide held;
- 13.1.8 use reasonable endeavours to ensure that all of the material information supplied by the Insured to the Insurer in connection with the Project Agreements , 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 on opinions genuinely and *bona fide* held by the Insured;
- 13.1.9 having made all 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 Project Agreements and/or this Policy has been obtained or made and is in full force and effect;
- 13.1.10 to the best of the knowledge and belief of the Insured, having made all reasonable enquiries in the circumstances, no Material Adverse Change has taken place since the date of the Proposal;
- 13.1.11 the material terms and conditions of the Project Agreements are not inconsistent with the terms and conditions and requirements set out in this Policy.

- 13.1.12 to the best of its knowledge and belief, on the Effective Date -
- 13.1.12.1 the Project Agreements constitute the legal, valid and binding obligations of, and are enforceable, against, each of the Related Parties who is a party to them;
- 13.1.12.2 each of the Related Parties has observed and performed the requirements of all applicable laws of the Designated Country and Republic of South Africa at any time in force relating directly or indirectly, to the Enterprise, the Investment, the Project Agreements;
- 13.1.12.3 each of the Related Parties has obtained, maintained and observed all applicable Government Approvals at any time in force relating in any way, directly or indirectly, to the Enterprise, the Investment, the Project Agreements;
- 13.1.12.4 no contractual document or arrangement exists which has a Material Adverse Effect on the rights of the Insured with respect to the Enterprise or the Investment or under any of the Project Agreements.
- 13.2 The representations –
- 13.2.1 set out in clause 13.1 are given on the Effective Date;
- 13.2.2 set out in clauses 13.1.1, 13.1.2, 13.1.3, 13.1.4, 13.1.5.2, 13.1.5.3, 13.1.10 and 13.1.11 shall be deemed to have been repeated on each date that a Drawing takes place;
- 13.2.3 set out in clauses 13.1.6 and 13.1.9 shall be deemed to have been repeated on each date that any payment is made by the Enterprise (but excluding any date on which an Event of Default occurs).

14 COVENANTS

14.1 The Parties agree that –

14.1.1 none of the provisions of the Project Agreements 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 Project Agreements;

14.1.2 the Insured shall inform the Insurer promptly when it become aware of any potential Event of Default;

14.1.3 the Insured shall not waive any right which it has under the Project Agreements unless the prior written consent of the Insurer has been obtained, especially with reference to financial completion under the Project Agreements.

14.2 Subject to the Insured being obliged to at all times exercise reasonable care and skill, forethought and prudence in relation to this Policy, the Insured shall –

14.2.1 promptly upon request (but in any event on a quarterly basis) provide the Insurer with all relevant details it is able to obtain of the Project Agreements and the implementation of this Policy;

14.2.2 promptly inform the Insurer of any default or potential Event of Default in terms of the Project Agreements or related documentation referred to herein after becoming aware of any default or potential default and within reasonable time, of any Event of Default;

14.2.3 not consent to any amendment to the terms and conditions of the Project Agreements without the prior written consent of the Insurer, (which

consent shall not be unreasonably withheld) save in relation to minor or technical issues which do not impact upon the cover provided in terms of this Policy;

- 14.2.4 promptly inform the Insurer of any possible Material Adverse Change upon becoming aware thereof;
- 14.2.5 promptly upon becoming aware of them, provide details of any litigation, arbitration or administrative proceedings concerning the Project Agreements;
- 14.2.6 promptly on request by the Insurer, supply the Insurer 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;
- 14.2.7 promptly inform the Insurer in writing when he becomes aware that any information provided to the Insurer is no longer correct or true;
- 14.2.8 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 Project Agreements 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 Project Agreements, except for any event due to a Political Cause of Loss beyond the control of the Insured;

- 14.2.9 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 Project Agreements and/or this Policy;
 - 14.2.10 at all times be a Resident;
 - 14.2.11 immediately exercise all rights and take all reasonable steps to cause that the Enterprise refrains from, in connection with the Investment, employing Harmful Child Labour and/or using Forced Labour;
 - 14.2.12 refrain from engaging in Corrupt Practices.
- 14.3 As a shareholder in the Enterprise, the Insured shall, through the necessary governance structures of the Enterprise, ensure that:
- 14.3.1 the Enterprise complies with all applicable laws and environmental regulations concerning health and safety rules of the Designated Country;
and
 - 14.3.2 the Enterprise shall maintain all necessary operational licences, approvals or consents in relation to the Investment.

15 **EVENTS OF DEFAULT**

- 15.1 Each of the events set out in this clause is an Event of Default, namely -
- 15.1.1 if 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;
 - 15.1.2 the Insured is unable or ceases for any reason whatsoever to conduct its normal line of business in the ordinary and regular manner.

- 15.2 Without derogating from the Insurer's rights to repudiate 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.
- 15.3 It is specifically recorded that the provisions of this clause 15 shall not relieve the Insured from proving any Insured Loss and the cause thereof in submitting any Claim under this Policy.
- 15.4 Subject to the provisions of clause 8, it is specifically recorded that, if any Premium or any part thereof is not paid, the cover provided by the Insurer in terms hereof shall lapse on notice to such effect from the Insurer to the Insured.

16 **REPUDIATION OF CLAIMS**

- 16.1 The Insured shall be advised in writing of any Claim lodged by the Insured for which the Insurer does not admit liability, within 12 (twelve) months after having received a Claim, failing which it shall be deemed that the Insurer has rejected the Claim, informing the Insured of the reasons of such repudiation, without prejudice to the Insurer's rights to review, amplify or add additional reasons for such repudiation subsequently depending on whether or not further information is provided or existing information is re-scrutinised. The Insured shall have a period of 3 (three) years from the Date of Loss to institute legal proceedings against the Insurer in respect of any Claim on the basis that such period shall be interrupted for the period during which the

Insurer considers any Claim. However, such interruption period shall only apply for a maximum period of 12 (twelve) months as indicated above.

- 16.2 Should legal proceedings not be instituted within the 3 (three) year period concerned 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.

17 FRAUDULENT OR FALSE CLAIMS

- 17.1 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.

- 17.2 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.

18 EXERCISING OF CARE

- 18.1 The Insured shall at all times exercise reasonable care and skill, forethought and prudence in performing its obligations under the Projects Agreements.
- 18.2 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 become aware thereof.

19 **REMITTANCES MADE BY THE ENTERPRISE**

All payments received by the Insured from the Enterprise relating to the Investment shall for the purposes of this Policy be deemed to be in reduction of the Current Insurance Amount unless the Insurer has agreed to the contrary in writing.

20 **VALUE ADDED TAX**

Any reference in the Policy to Premiums, legal fees and fees in respect of the mitigation of an Insured Loss, will always be quoted exclusive of VAT. VAT will be added to the amount so payable and calculated in accordance with the said act against receipt of a valid tax invoice.

21 **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.

22 CO-OPERATION

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

- 22.1 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 Enterprise and/or the Shareholder of the Insured to the extent that it may in any way be related or connected with this Policy;
- 22.2 the Insured shall within such reasonable time as may be specified by the Insurer, supply the Insurer with any information in their 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 or any transaction between the Insured and the Enterprise.

23 OTHER INSURANCE

- 23.1 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.
- 23.2 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.
- 23.3 Enterprise complies with all environmental obligations if imposed on, or voluntary accepted by, the Enterprise in relation to the Project, including under the environmental laws, rules, regulations, orders, customs, policies or

practices of the Designated Country which are or will be applicable to the Enterprise and/or the Project.

- 23.4 If the Enterprise defaults in compliance with any of its environmental obligations referred to in clause 23.3, the Insured must use its reasonable endeavours to ensure that the Enterprise takes all reasonable and practical steps to remedy the relevant default within 14 (fourteen) days of the first of the Enterprise and/or the Insured to become aware of the default or such longer period as the Insurer may agree in writing.

24 MAINTENANCE AND ACCESS TO INFORMATION

- 24.1 The Insured must ensure that the terms of the Project Agreements entitle the Insurer, at any time during normal business hours after the Insurer gives 48 (forty-eight) hours notice to the Insured to attend -

24.1.1 the Enterprise's premises to inspect and take copies of the business and financial records of the Enterprise relating to the Project; and

24.1.2 the Project site to inspect the Project; and

24.1.3 the Insured's premises to inspect and take copies of the Project Agreements and the Insured's business and financial records relating to the Enterprise and the Project.

24.2 'Business and financial records' include management accounts of the Enterprise 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.

24.3 The Insurer may exercise its rights under clause 24.1 through external auditors and other consultants engaged by it.

- 24.4 The Insured must co-operate, and ensure that the Enterprise co-operates, with the Insurer to exercise the rights under clause 24.1.
- 24.5 The Insured must provide to the Insurer, and use its best endeavours to obtain from the Enterprise and provide to the Insurer, within seven Business Days of the request -
- 24.5.1 any information and documents including business and financial records; and
- 24.5.2 the most recent annual audited financial statements of the Enterprise prepared in accordance with the accounting principles and practices required under the Shareholders' Agreement.

25 **DOCUMENTATION RISK**

- 25.1 It shall be the responsibility of the Insured to ensure that the conditions and provisions contained in the Finance Documents or any Security 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.
- 25.2 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 or any Security.
- 25.3 Should any third party or the Enterprise raise in defence whenever rights are to be enforced an argument that any term, clause and/or condition of the Finance Documents, any Security Document 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 11.1, 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.

- 25.4 In the circumstances envisaged in clause 25.3, 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.
- 25.5 If the Insurer is obliged to take the relevant legal steps as envisaged in clause 25.3, 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 Enterprise 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.
- 25.6 Notwithstanding any other right or remedy which may be available to the Insurer, including the enforcement of costs referred to in clause 25.5, 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 25.7 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.

25.7 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**") –

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

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

25.7.3 whose decision, except for manifest error, shall be final and binding on the Parties;

25.7.4 whose costs shall be borne by the Parties in equal shares;

25.7.5 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.

25.8 Should a court, arbitrator or arbitration panel find that the relevant document, term, clause or condition is invalid –

25.8.1 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);

25.8.2 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.

26 **CONFLICT**

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

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

27.1 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.

27.2 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 they 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.

28 MAINTENANCE OF AND ACCESS TO INFORMATION

- 28.1 The Insured must co-operate, and use reasonable endeavours to procure that the Enterprise co-operates, with the Insurer to exercise the rights under clause 28.
- 28.2 The Insured must provide to the Insurer, and use its reasonable endeavours to obtain from the Enterprise and provide to the Insurer, within 7 (seven) 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 Investment.
- 28.3 'Business and financial records' include management accounts of the Enterprise which accurately and completely report the status and progress of the Investment, the nature and value of exports of Goods and Services from South Africa in connection with the Investment, and annual financial statements.
- 28.4 The Insurer may exercise its rights under clause 28 through external auditors and other consultants engaged by it.
- 28.5 The Insured will also ensure that the Enterprise consents to granting representatives of the Insurer access to the project site should the Insurer wish to visit same during the period of this Policy.

29 PUBLICATION

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

- 29.1 the name of the financial institutions providing finance to the Investment;
- 29.2 the Investment description;
- 29.3 the Designated Country where the Investment is implemented;
- 29.4 the value of the Investment and/or the amount insured by the Insurer in relation to the Investment; and
- 29.5 the economic impact of the Investment.

30 NOTICES AND DOMICILIA

- 30.1 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 Office Park 349 Witch Hazel Avenue Highveld Ext 79 Centurion	+27 12 471-3850

Marked for the attention of: Portfolio Administration Unit

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

Marked for the attention of: Head: Post Investment Monitoring Department

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.

- 30.2 All notices to be given in terms of this Policy will be given in writing, in English, and will –
- 30.2.1 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);
- 30.2.2 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
- 30.2.3 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.
- 30.3 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.
- 30.4 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.

31 **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.

32 **GENERAL**

32.1 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.

32.2 This Policy constitutes the whole agreement between the Parties relating to the subject matter hereof.

32.3 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.

32.4 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.

- 32.5 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.
- 32.6 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.
- 32.7 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.
- 32.8 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 of 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.

33 **CONFIDENTIALITY**

The Parties undertake to keep all information exchanged between them confidential provided that information shall not be confidential if it is -

- 33.1 publicly known or becomes publicly known through no unauthorised act of the party concerned;

- 33.2 lawfully received by such party from a third party;
- 33.3 disclosed by the disclosing party to a third party without similar restrictions;
- 33.4 required to be disclosed pursuant to a requirement of a governmental agency or any applicable law;
- 33.5 publicly disclosed with the disclosing party's written consent;
- 33.6 clearly marked as non-confidential.

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

[Facility Institution]

Signature

Name of Signatory

Designation of Signatory

SIGNED at _____ on _____ 2014

For and on behalf of _____
[Facility Institution]Signature

Name of Signatory

Designation of Signatory

SCHEDULE

Schedule Policy

No: IGP000 [●]

Section 1:	Name of Insured:	[Facility Institution]
	Address:	[●]
Section 2:	Maximum Insured	An amount not exceeding:
	Amount:	US\$ [●] in respect of Investment;
Section 3:	Insured Percentage:	90%
	Maximum Liability	The Insured accepts a 10% risk for its own account
Section 4:	Premium	
Section 5:	Premium Rate	2.23% in respect of Investment plus value added tax
Section 6	Insurance Period	Not more than 10 years in respect of Investment
Section 7	Approved Currencies	US Dollars
Section 8	Maturity Date	_____ [please complete]

PREMIUM SPLIT

The Insured hereby selects the following Current Insured Amount for the Insurance Year commencing _____ and ending _____.

Relevant part of the Current Insured Amount	US Dollar Amount	Investment Date
Shares	US\$	
Dividends	US\$	
Other	US\$	

SIGNED for and on behalf of the Insured this _____ day of _____

SIGNED for and on behalf of the Insured this _____ day of _____

CURRENT INSURED AMOUNT

FAIS LEGISLATION

<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 Limited Abbreviated Name: ECIC</p> <p>Registration Number: 2001/013128/06</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 Ave, 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> <ul style="list-style-type: none"> • ECIC issues policies on its behalf with the government as the ultimate insurer; • ECIC must give written reasons for repudiating your claim; • ECIC is obliged to notify you directly of the cancellation of your insurance contract; and • 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. <hr/> <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>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>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>