

# **PERFORMANCE BOND POLICY**

**NO PBP [●]**

(the "Policy")

Issued by

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

Registration Number 2001/013128/06

FAIS Registration Number 30656

("the **Insurer**")

In favour of

**[Financial Institution]**

**(acting through its [●] Division)**

Registration Number [●]

("the **Insured**")

## TABLE OF CONTENTS

1	INTERPRETATION .....	1
2	PREAMBLE .....	6
3	SUSPENSIVE CONDITIONS .....	7
4	PERFORMANCE BOND .....	8
5	INSURANCE COVER .....	10
6	DURATION .....	11
7	THE EXPORT CONTRACT .....	11
8	THE SECURITY .....	13
9	PREMIUM .....	13
10	NOTIFICATION – MITIGATION OF LOSSES .....	14
11	CLAIMS .....	15
12	SETTLEMENT OF CLAIMS .....	18
13	REJECTION OR DISPUTE OF CLAIMS.....	19
14	CESSION AND SUBROGATION .....	20
15	RECOVERIES.....	21
16	REPRESENTATIONS .....	22
17	EXERCISING OF CARE.....	22
18	OTHER INSURANCE .....	23
19	COUNTERPARTS .....	23
20	FRAUDULENT OR FALSE CLAIMS .....	23
21	RECOURSE TO THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA ...	23
22	PUBLICATION.....	24
23	NOTICES AND DOMICILIA .....	24
24	GENERAL.....	26

## ANNEXURES

ANNEXURE "A" : PREMIUM

ANNEXURE "B" : FAIS

ANNEXURE "C" : SOUTH AFRICAN CONTENT

## 1 INTERPRETATION

1.1 In this Policy -

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

1.1.2 an expression which denotes -

1.1.2.1 any gender includes the other genders;

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

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

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

1.2.1 **"Acceptance Certificate"** means the certificate(s) of acceptance referred to as "Minutes of Receipt" to be signed by the Purchaser and the Exporter in terms of which it will be indicated that the Exporter has performed its delivery obligations in terms of article 8 of the Export Contract, being referred to as Minutes of Acceptance / Receipt in terms of the Lease Agreement, which includes Minutes of Acceptance signed off in Pretoria before the Goods are shipped, as well as Minutes of Receipt that are signed off in Lubumbashi upon Delivery in the Designated Country;

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

1.2.3 **"Authorised Officer"** means, in relation to the Insured its Chief Executive Officer or any other person nominated in writing by its Chief Executive Officer;

1.2.4 **"Business Day"** means any day which is not a Saturday, Sunday or a proclaimed public holiday in South Africa;

- 1.2.5 **"Claim"** means a request for indemnity made by the Insured in accordance with the terms of this Policy on the applicable claim form provided by the Insurer and signed by an Authorised Officer of the Insured;
- 1.2.6 **"Contract Price"** means an amount not exceeding US\$[●] ([●] US Dollars) (plus ECIC premium);
- 1.2.7 **"Defects Liability Period"** means the period during which the Purchaser can seek recourse against the Exporter in respect of defects pertaining to the Good or Services in terms of the Export Contract;
- 1.2.8 **"Delivery"** means delivery of Goods by the Exporter to the Purchaser;
- 1.2.9 **"Delivery Period"** means the period in which the Goods and Services will be delivered by the Exporter to the Purchaser as envisaged in the Export Contract, which period shall expire –
- 1.2.9.1 in respect of the period of the pre-delivery insurance risk cover on [●]; and
- 1.2.9.2 in respect of the post-delivery insurance risk cover on the expiry of the Export Contract,
- more specifically set out in clauses 4.3 and 4.4;
- 1.2.10 **"Designated Country"** means the [●];
- 1.2.11 **"Effective Date"** means the date that the suspensive conditions referred to in clause 3 are fulfilled and the Policy becomes effective pursuant to the issuing of the Effective Date Notice;
- 1.2.12 **"Export Contract"** means the Lease Agreement as well as the Sale Agreement;
- 1.2.13 **"Exporter"** means [●], a private company duly incorporated with the laws applicable in the Republic of South Africa, with registration number [●];

- 1.2.14 **"FAIS"** means the Financial Advisory and Intermediary Services Act, No 37 of 2002;
- 1.2.15 **"Goods"** means –
- 1.2.15.1 [●];
- 1.2.15.2 [●]
- 1.2.15.3 [●];
- 1.2.16 **"Insured"** means [Financial Institution] (acting through its [●] division), a bank duly incorporated under the laws of the Republic of South Africa under registration number [●];
- 1.2.17 **"Insured Amount"** means an amount equal to [●]% ([●]) of the monetary amount under the Policy;
- 1.2.18 **"Insurer"** and **"ECIC"** means Export Credit Insurance Corporation of South Africa SOC Ltd., registration number 2001/013128/06, with FAIS registration number 30656. Specific attention is drawn to the provisions of the FAIS legislation attached hereto as **Annexure "B"**;
- 1.2.19 **"Lease Agreement"** means the Lease and Maintenance Agreement entered into between the Exporter and the Purchaser dated [●], as amended on [●];
- 1.2.20 **"Party"** or **"Parties"** means respectively, collectively both and individually each of the Parties to this Performance Bond;
- 1.2.21 **"Performance Bond"** means the performance bond to be issued by the Insured in favour of the Purchaser on behalf of the Exporter under the Lease Agreement in respect of the maintenance and repair obligations of the Exporter as envisaged in clause 9.7 of the Lease Agreement;
- 1.2.22 **"Purchaser"** [●], a company with limited liability registered and incorporated under the laws of the [●], registration number [●];

- 1.2.23 **"R"** and **"Rand"** means the lawful currency of the Republic of South Africa;
- 1.2.24 **"Recovery"** or **"Recoveries"** means any recovery in money or otherwise received by the Insured or to which the Insured is unconditionally entitled which is available for the purposes of reducing the amount of any liability of the Insured towards the Purchaser under the Performance Bond, whether practically or legally;
- 1.2.25 **"Rental Payment"** means each rental payment as contemplated in the Export Contract;
- 1.2.26 **"Sale Agreement"** means the [●] Agreement entered into between the Exporter and the Purchaser dated [●], as amended;
- 1.2.27 **"Security"** means such security obtained by the Insured with the consent of the Insurer pursuant to having issued the Performance Bond;
- 1.2.28 **"Services"** means the Delivery of Services by the Exporter to the Purchaser in terms of the Export Contract;
- 1.2.29 **"South Africa"** means the Republic of South Africa;
- 1.2.30 **"South African Content"** means South African Content as set out in **Annexure C**;
- 1.2.31 **"Specifications"** means the specifications that apply in respect of the Delivery of the Goods and the Services in terms of the Export Contract;
- 1.2.32 **"Termination Date"** means the date upon which this Policy terminates, being the later of expiry of the following periods –
- 1.2.32.1 Delivery Period;
- 1.2.32.2 Defects Liability Period,
- as envisaged in the Export Contract;

- 1.2.33 **"US\$" or "US Dollar(s)"** means the lawful currency of the United States of America;
- 1.2.34 **"VAT"** means value-added tax as levied in terms of the Value-Added Tax Act of 1991;
- 1.3 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;
- 1.4 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 Policy;
- 1.5 when any number of days is prescribed in this Policy, 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;
- 1.6 where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail;
- 1.7 expressions defined in this Policy shall bear the same meanings in schedules or annexures to this Policy which do not themselves contain their own definitions;
- 1.8 reference to day/s, month/s or year/s shall be construed as Gregorian calendar day/s, month/s or year/s;
- 1.9 the use of any expression in this Policy 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 Policy 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;
- 1.10 where any term is defined within the context of any particular clause in this

Policy, 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 Policy, notwithstanding that that term has not been defined in this interpretation clause;

- 1.11 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;
- 1.12 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;
- 1.13 any reference in this Policy to a party shall, if such party is liquidated or sequestrated, be applicable also to and binding upon that party's liquidator or trustee, as the case may be;
- 1.14 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;
- 1.15 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 Insurer and the Insured have agreed to facilitate the implementation of the Export Contract to be concluded by the Exporter and specifically that –
  - 2.1.1 the Insured shall issue the Performance Bond in a maximum amount of US\$[●] ([●] US Dollars) in favour of the Purchaser on behalf of the Exporter on the basis that it will represent [●]% ([●]) of the monetary value of the payments under the Lease Agreement;

2.1.2 the Performance Bond shall be issued on the basis that it shall lapse on the Termination Date;

2.1.3 the Insurer shall issue the Policy in favour of the Insured on the basis that it will cover [●]% ([●]) of the monetary value of the Performance Bond.

2.2 The Parties therefore agree 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 Export Contract has been entered into and has become unconditional in all respects, save to the extent that it may be conditional upon the entering into of this Policy;

3.1.2 the Security is registered in favour of the Insured;

3.1.3 the Insured has issued the Performance Bond on an on demand basis, save to the extent that it may be conditional upon the entering into of this Policy;

3.1.4 confirmation has been received by the Insurer that a first Rental Payment of 20% (twenty percent) in respect of the Export Contract has been paid by the Purchaser to the Exporter.

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

3.3 In the event that any of the suspensive conditions are not so fulfilled or waived by the date by which they must be fulfilled or waived and the date for fulfilment or

waiver of such conditions has not been extended in writing by the Insurer, this Policy shall not be of any force or effect and shall be *void ab initio*.

- 3.4 It is specifically recorded that the suspensive conditions referred to in clause 3.1 above will not be deemed to have been satisfied unless the Insured has submitted written confirmation that the relevant conditions have been satisfied (and the Insured has supplied to the Insurer all supporting documentation on which it has relied in arriving at such conclusion) and such confirmation has been acknowledged in writing by the Insurer ("**Acknowledgment Letter**"). Once the Insurer has issued the Acknowledgment Letter, the Insurer will issue a letter to the Insured that those suspensive conditions which are to be satisfied in the discretion of the Insurer, have in fact been satisfied and that, relying on the written confirmation of the Insured, the Policy will be declared effective ("**Effective Date Notice**"). In the event that the information supplied by the Insured in relation to the suspensive conditions covered by the Acknowledgment Letter is materially false or misleading, the issuance of the Effective Date Notice shall not prejudice the Insurer's rights and remedies available to it in law pursuant to such misrepresentation, subject always to the provisions of clause 7.6 dealing with the documentation risk assumed by the Insured.

#### 4 **PERFORMANCE BOND**

- 4.1 The Insured shall issue the Performance Bond in favour of the Exporter. In particular –
- 4.1.1 the Performance Bond shall constitute an on demand obligation which obliges the Insured to make payment in terms of the Performance Bond of a cash amount against written demand that a cover event as set out in the Performance Bond has occurred;
- 4.1.2 the amount of the Performance Bond shall not exceed US\$[●] ([●] US Dollars);

4.1.3 the obligations of the Insurer in terms of this Policy is in aggregate equal to the maximum amount as set out in clause 2.1.3, ie [●]% ([●]) of an amount of US\$[●] ([●] US Dollars);

4.1.4 a cover event shall be either of the following circumstances –

4.1.4.1 poor performance by the Exporter resulting in the Exporter becoming liable for defects in the performance of the Exporter relating to the Goods and/or the Services;

4.1.4.2 non-performance by the Exporter on due date (after having failed to perform its obligations within the applicable grace period as set out in the Export Contract);

4.1.5 the maximum exposure of the Insured under the Performance Bond shall be equal to 10% (ten percent) of the monetary value of the rentals that are payable under the Lease Agreement and shall not include any other potential liability such as damages, expenses, costs, loss of profits or the like.

4.2 The Performance Bond shall be limited to the due performance by the Exporter of its maintenance and repair obligations under clause 9 of the Export Contract.

4.3 This Policy provides for both pre-delivery insurance risk cover as well as post-delivery insurance risk cover. In particular –

4.3.1 pre-delivery insurance risk cover relates to a scenario where the Goods have arrived in the Designated Country, but have not yet been Delivered in terms of the Lease Agreement at [●] in the Designated Country;

4.3.2 post-delivery insurance risk cover relates to a scenario where the goods have already been Delivered to the Purchaser at [●] in the Designated Country.

4.4 It is recorded that the duration of the cover provided in terms of this Policy is as follows –

4.4.1 in the context of pre-delivery insurance risk cover, from the date that the

Goods have arrived in the Designated Country until [●];

- 4.4.2 in the case of post-delivery insurance risk cover, from the date of the Date of the Delivery of the Goods in terms of the Lease Agreement until the expiry of the Delivery Period.

## 5 INSURANCE COVER

- 5.1 The Insurer hereby agrees to indemnify the Insured in respect of [●]% ([●]) of the amount that the Insured has to pay to the Purchaser in terms of the Performance Bond against the Insured's written demand that he has paid the stated amount under the Performance Bond and that the amount is payable to the Insured solely by reason of the Exporter failing to complete or mal-performing its obligations under the Lease Agreement.

- 5.2 The obligation of the Insurer to indemnify the Insured is subject to the following conditions –

- 5.2.1 the maximum liability of the Insurer to the Insured is equal to US\$[●] ([●] US Dollars );

- 5.2.2 the Insured shall make written demand to the Insurer within 10 (ten) Business Days after receiving written demand from the Purchaser under the Performance Bond and having paid such amount to the Purchaser;

- 5.2.3 the Insured shall provide all relevant documentation to the Insurer in making demand to the Insurer, including –

- 5.2.3.1 written demand from the Purchaser;

- 5.2.3.2 written proof of the payment by the Insured to the Purchaser;

- 5.2.3.3 application of a retention amount, if applicable.

- 5.3 This Policy is valid and shall remain in force for the Delivery Period.

- 5.4 This Policy is neither negotiable nor transferable.

## 6 DURATION

6.1 This Policy shall –

6.1.1 commence on the date that the Effective Date Notice has been given; and

6.1.2 shall terminate on the Termination Date.

6.1.3 The Insured shall procure that the Exporter shall inform the Insured and the Insurer in writing of the following events –

6.1.4 termination of the Delivery Period;

6.1.5 commencement of the Defects Liability Period;

6.1.6 termination of the Defects Liability Period.

## 7 THE EXPORT CONTRACT

7.1 The Export Contract shall provide that –

7.1.1 Rental Payments shall be made from time to time on a quarterly basis during the term of the Export Contract;

7.1.2 Acceptance Certificates shall be signed by the Exporter and the Purchaser;

7.1.3 an Acceptance Certificate signed by the Purchaser shall be conclusive proof of the fact that performance has been made by the Exporter under the Export Contract.

7.2 Payment of the last Rental Payment shall be made by the Purchaser to the Exporter on issuance of the final invoice.

7.3 The final Acceptance Certificate shall specify that the Exporter has performed its obligations in terms of article 8 of the Export Contract.

7.4 The terms of the Performance Bond may not be amended without the prior

written consent of the Insurer.

- 7.5 The Insured shall not agree to any amendment of the Export Contract unless the prior written consent of the Insurer has been obtained.
- 7.6 Documentation risk shall be borne by the Insured.
- 7.7 The Insured shall inform the Insurer as soon as reasonably possible should it become aware of any potential liability under the Performance Bond.
- 7.8 The following provisions shall be incorporated or form part of the Export Contract –
- 7.8.1 the Exporter must achieve 50% (fifty percent) South African content of the South African Contract Price;
- 7.8.2 the Exporter must provide proof that its premises have been adequately insured with a business or risk policy and that the subject matter of the Exporter Contract has also been adequately insured.
- 7.9 The Insured shall use reasonable endeavours to obtain from the Exporter proof to the reasonable satisfaction of the Insurer that goods and services Delivered by the Exporter shall have a cumulative South African Content as set out in **Annexure C** of not less than 50% (fifty percent) of the total value of the Contract Price. The Insured shall use all reasonable endeavours to provide all relevant documentation pertaining to Delivery to the Insurer as soon as possible after a Rental Payment has been paid by the Purchaser, including such other documents as the Insurer may require from time to time. South African Content is to be calculated on a cumulative basis and the South African Content requirement does not apply with reference to each specific Rental Payment that is paid. The South African Content documentation supplied through the Insured by the Exporter will not necessarily be verified by the Insurer with every Rental Payment. The documentation so provided to the Insurer will be subjected to verification annually on a sample basis. Such verification may be done by the

Insurer through third parties, including external auditors, appointed by the Insurer. The cover provided by the Insurer to the Insured in terms of this Policy will not be impacted upon whether the Exporter achieves the South African Content or not.

## **8 THE SECURITY**

8.1 As security for the obligations of the Insured under the Performance Bond, the Insured shall obtain the Security. The rights of the Insured against the Exporter, including all of its rights, title and benefit in and under the Security shall be subrogated to the Insurer to the extent that the Insurer makes payment of an amount under the Policy.

8.2 The Security shall be registered by the Exporter in favour of the Insured prior to the issuing of the Performance Bond and the payment of the first Rental Payment.

8.3 The Insured shall be entitled to exercise its rights under the Security should it be required to make payment under the in favour of the Purchaser. All of these rights, including the right of subrogation of the Insured against the Exporter pursuant to payment under the Performance Bond shall be ceded and assigned to the Insurer against payment by the Insurer under the Policy.

## **9 PREMIUM**

9.1 The Premium shall be paid in US Dollars by the Insured to the Insurer upfront on the Effective Date (on basis that the VAT element shall be paid in South African Rand determined at the prevailing US Dollar/Rand exchange rate on the date of the relevant invoice issued by the Insurer).

9.2 The Premium is equal to 0,50% (zero comma five zero percent) of US\$[●] ([●] US Dollars) plus VAT.

9.3 Should the Premium be in arrears for the a period in excess of 15 (fifteen) Business Days after receipt of written notice from the Insurer to such effect, the

Insurer shall be entitled to terminate this Policy.

- 9.4 The Premium shall be paid in cleared funds by direct deposit into such bank account of the Insurer as may be designated from time to time by the Insurer to the Insured in writing.
- 9.5 The Insured shall pay the Premium directly to the Insurer on the basis that a VAT invoice shall be issued by the Insurer to the Insured.

## 10 NOTIFICATION – MITIGATION OF LOSSES

- 10.1 Should the Insured have made a payment under the Performance Bond or suspect that it will incur such a liability, the Insured shall immediately 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 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 the amount at risk and/or enable the Insurer to collect the whole or any part of the amount at risk by way of Recoveries.
- 10.2 Without derogating from the generality of the foregoing, once a notification has been given by the Insured to the Insurer in terms of 10.1, the Insured shall be obliged to report on a fortnightly basis to the Insurer of any further developments that may have taken place regarding the suspected loss of other relevant circumstances.
- 10.3 Without limiting the generality of 10.1, upon the occurrence of any event which is reasonably likely to result in a Claim under this Policy, the Insured shall –
- 10.3.1 promptly after becoming aware thereof at its cost provide the Insurer with full details (to the best of its knowledge and belief) in writing of the event in question;

- 10.3.2 promptly at its cost give the Insurer such proof, information and sworn declarations, subject to its best efforts, as the Insurer may require;
- 10.3.3 the Insured shall give written notice to and consult with the Insurer prior to exercising any rights which it may have against the Exporter or any security that it may have following the occurrence of any potential event of default or event of default or at any other time where the enforcement of a right under the Export Contract could reasonably be expected to be of a material concern to the Insurer or could result in a potential event of default or event of default as envisaged in the Export Contract.

## 11 CLAIMS

- 11.1 All Claims shall be made in writing by the Purchaser to the Insured and by the Insured to the Insurer on or before the Termination Date.
- 11.2 Claims received after expiry of the Defects Liability Period will not be covered by this Policy and payment thereof will not be considered by the Insurer.
- 11.3 The Insurer shall not consider any Claim unless the Insured has confirmed in writing that it has made payment of the amount concerned to the Purchaser in terms of the Performance Bond.
- 11.4 Pursuant to Insured having made payment under the Performance Bond, the Insured shall be entitled to submit a Claim under the Policy personally (not through an agent) as soon as possible in the circumstances, but in any event within 3 (three) Months after the date of payment to the Purchaser.
- 11.5 In submitting a Claim, the Insured shall provide all relevant information to the Insurer to enable the Insurer to consider such Claim.
- 11.6 Upon receipt of a Claim, the Insurer shall within a reasonable period consider the merits of the Claim and it shall be entitled to request additional information in respect of the Claim and such other information as may not have been provided

by the Insured.

11.7 The Insurer shall inform the Insured in writing of the outcome of any Claim submitted by the Insured under the Policy within 3 (three) Months after the date of receipt of the Claim, but in any event within 10 (ten) days after taking any decision. In particular, the Insurer shall inform the Insured whether –

11.7.1 it accepted the Claim;

11.7.2 it repudiated the Claim; or

11.7.3 it requires additional information to consider the Claim.

11.8 Should the Insurer reject or dispute a Claim or the quantum of a Claim, the Insurer shall inform the Insured –

11.8.1 of the reasons for the decision;

11.8.2 that the Insured may within a period of no less than 90 (ninety) days after the date of receipt of the notice make representations to the Insurer in respect of the decision;

11.8.3 of the right to lodge a complaint under the Financial Services Ombud Schemes Act, 2004 (as amended) and the relevant provisions of the Short-Term Insurance Act, 1998 (as amended) relating to the lodging of any such complaint;

11.8.4 the time limitation provision for the institution of legal action and the implications thereof.

11.9 If the Insured makes representations to the Insurer, the Insurer shall within 45 (forty-five) days after receipt of the representation notify the Insured in writing of its decision to accept, reject or dispute the Claim or the quantum of the Claim.

11.10 In the event that the Claim has been rejected or disputed, the provisions of clause 13 apply. Should additional information be requested, the Insurer shall

inform the Insured within 3 (three) Months after receipt of the additional information as to the outcome of the Claim on the basis as set out above. In such instance the Insurer may also request additional information apart from rejecting, disputing or accepting the Claim.

11.11 In advising the Insured of the outcome of any Claim lodged by the Insured, the Insurer shall inform the Insured that –

11.11.1 the Claim has been accepted, whether partly or in its entirety; alternatively

11.11.2 the Insurer is repudiating the Claim,

and at the same time inform the Insured of the reasons of its decision, without prejudice to the Insurer's rights to review, amplify or add additional reasons for any potential repudiation subsequently depending on whether or not further information is provided or existing information is reconsidered.

11.12 The Insured shall provide any additional information reasonably requested by the Insurer to evaluate a Claim. A Claim will be deemed complete when the Insured has provided to the Insurer all additional information reasonably requested by the Insurer.

11.13 Any Claim and any additional information requested by the Insurer to evaluate the Claim must be in English. Any additional information, which is not in English, must be accompanied by an authenticated translation into English.

11.14 The Insurer shall be entitled to verify every aspect of a Claim, and the events relevant to a Claim, and the Insured must cooperate, and shall use its reasonable endeavours to cause the Exporter to cooperate with the Insurer in this regard.

11.15 Except for any action taken by the Insured in accordance with any consultation with or suggestion made or guidance given by the Insurer, the Insurer still has a right to reject any Claim submitted by the Insured for any amount paid to the Purchaser on any other lawful grounds.

- 11.16 The Insurer shall not be liable for any Claim which is not received by the Insurer and substantiated and proven in writing by the Insured, within a period which is the longer of –
- 11.16.1 12 (twelve) Months from the date of payment by the Insured to the Purchaser under the Performance Bond; and
- 11.16.2 where a Claim has been received within the time period stated in clause 11.16.1, and the Insurer has requested additional information in respect of the amount paid to the Purchaser under the Performance Bond and such information has not been provided by the Insured within 3 (three) Months after the date of last request by the Insurer for such additional information, or such further periods exceeding the time period stated in clause 11.16.1 as the Insurer may consent to in writing.

## 12 SETTLEMENT OF CLAIMS

- 12.1 The Insurer shall pay a Claim within 30 (thirty) Business Days after the Insured has accepted the basis of settlement proposed by the Insurer. The payment obligations of the Insurer shall be suspended for the period between 15 December to 7 January (both days excluded) of every year and the obligation to consider any Claim or to pay any amount on the part of the Insurer shall be extended accordingly and furthermore, the Insurer shall not be obliged or liable to any penalty, interest or compensation to the Insured as a result of such suspension.
- 12.2 Except to the extent already taken into account in determining the amount payable to the Insured, any amount payable by the Insurer to the Insured under this Policy shall be reduced by the amount of actual Recoveries received and retained 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 the amount for which the Insured is covered in terms of this Policy and any Recovery is thereafter paid directly to the Insured, the Insured shall be obliged to pay such

Recovery forthwith to the Insurer, together with any interest actually received by the Insured in respect of that amount.

- 12.3 The amount of any Claim paid by the Insurer shall be made in US Dollars.
- 12.4 Indemnity payments by the Insurer in terms of this Policy shall be increased by the VAT element concerned against receipt of a valid VAT invoice by the Insured to such effect.
- 12.5 The Insurer shall not consider any Claims for payment or make payment during 15 December to 7 January (both days inclusive).
- 12.6 This Policy shall not cover any costs, expenses, loss of profits and/or damages that may arise pursuant to the issuing of the Performance Bond and is limited to the payment of Rental Payments by the Insured to the Purchaser in respect of the Rental Payments made by the Purchaser to the Exporter.

### **13 REJECTION OR DISPUTE OF CLAIMS**

- 13.1 The Insured shall have a period of 90 (ninety) days after the date of the decision of the Insurer to reject or dispute a Claim, to make representations to the Insurer in respect of any decision so made by the Insurer pursuant to the lodging of a Claim by the Insured.
- 13.2 The Insured shall have a period of 12 (twelve) Months (following the 90 (ninety) day period specified in clause 13.1) from the date of the Insurer's decision to reject or dispute a Claim to institute legal proceedings against the Insurer in respect of such Claim.
- 13.3 Should legal proceedings not be instituted within the 12 (twelve) Month period concerned (excluding the 90 (ninety) day period referred to in clause 13.1) in the High Court of South Africa (North Gauteng High Court – Pretoria) (or any successor to that division), the Insured's right to any further action in connection

with a Claim will be forfeited and the Insurer will be absolved from any and/or all liability in respect of the Claim concerned.

#### 14 **CESSION AND SUBROGATION**

14.1 Against acceptance of an obligation in terms of a Claim by the Insurer to the Insured (whether partly or in full), the Insured shall if so required by the Insurer –

14.1.1 cede and transfer to the Insurer its rights against the Purchaser and/or the Exporter, including the rights under the Security; and/or

14.1.2 deliver up to or otherwise transfer to the Insurer any negotiable instruments, guarantees or other securities relating to the rights of the Insured against the Purchaser and/or the Exporter; and/or

14.1.3 deliver to the Insurer whatever documents associated with the Claim from which the Insured may benefit pursuant to the realisation thereof; and/or

14.1.4 subrogate to the Insurer all rights which the Insured may have in terms of the Security, rights against the Purchaser and/or the Exporter and all other agreements to which the Insured is a party and which relates to the loss so suffered.

14.2 The Insured shall 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 pursuant to paying a Claim to the Insured whether such thing shall be required before or after such indemnification. In the absence of compliance with this obligation, any amount payable by the Insurer to the Insured shall be reduced proportionately with reference to the potential amount of the Recovery to which the Insurer would have become entitled and all related Security.

**15 RECOVERIES**

- 15.1 Upon collection by the Insured of any Recoveries after payment of a Claim by the Insurer, the net amount collected shall be paid over to the Insurer within a period of 10 (ten) Business Days of receipt of the amount concerned.
- 15.2 It is specifically recorded that the Insured shall be obliged to transfer, cede and/or pay any amount and/or benefit contained in the definition of "Recovery" should the Insurer have indicated its liability in terms of this Policy in respect of the Insured Debt and is paying such liability on the basis as set out in this Policy, which transfer, cession and/or passing back of the benefit will take place within 5 (five) Business Days after the date of such event.
- 15.3 Should it not be possible for the Insured to comply with its obligations in terms of clause 15.1 due to any circumstances agreed to beforehand by the Insurer, the Insured shall be obliged to continue pursuing its rights arising from such set of circumstances as instructed by the Insurer on the basis that any benefit so obtained subsequently will be part of Recoveries.
- 15.4 It shall always be in the discretion of the Insurer to retransfer any rights and/or security back to the Insured with a view to the Insured ensuring administering of same in circumstances where the Insurer deems appropriate on the basis that the Insured should accept such transfer.
- 15.5 Apart from the cession and subrogation of all rights which the Insured may have against the Exporter in favour of the Insurer should the Insurer make payment under the Policy, the Insured shall also cooperate with a view to recover any Recovery from the Exporter, including the recovery of the Goods in terms of the Security. The Insurer shall pay all reasonable costs incurred by the Insured in endeavouring to obtain such salvage.
- 15.6 Any Recovery shall be for the benefit of the Insurer.
- 15.7 Notwithstanding payment by the Insurer to the Insured, the Insured shall

cooperate in recovering any salvage from the Exporter, including cession by the Insured of all rights which it may have against the Exporter, including all rights under the Bond.

## **16 REPRESENTATIONS**

- 16.1 The Insured represents in favour of the Insurer that, as at the Effective Date, –
- 16.1.1 it is a bank duly registered under the laws of South Africa and has the power to carry on its business;
  - 16.1.2 it has the power to execute, deliver and perform its obligations under the Performance Bond;
  - 16.1.3 the obligations expressed to be assumed by it in terms of the Export Contract and this Policy are legal and valid obligations on it;
  - 16.1.4 all necessary corporate, shareholder and other action has been taken to authorise the execution, delivery and performance of the contract and this Policy;
  - 16.1.5 the Exporter is not insolvent.

## **17 EXERCISING OF CARE**

- 17.1 The Insured shall at all times exercise reasonable care and skill, forethought and prudence in performing its obligations under the Performance Bond.
- 17.2 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 a claim under this Policy or which is likely to cause a significant deterioration in any risk covered by this Policy once it has become aware thereof.

**18 OTHER INSURANCE**

18.1 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 indemnity, the Insurer shall be entitled to set-off the whole or a portion of the indemnity recoverable from that insurer from the indemnity payable by the Insurer to such Insured under this Policy, in respect of such event.

18.2 The Insured shall inform and disclose to the Insurer the existence of any insurance/policy covering the same indemnity covered in terms of this Policy with any other insurer, including the terms and conditions thereof.

**19 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.

**20 FRAUDULENT OR FALSE CLAIMS**

20.1 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.

20.2 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.

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

21.1 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.

- 21.2 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.

## 22 PUBLICATION

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

- 22.1 the name of the financial institutions providing finance in terms of the Export Contract;
- 22.2 the identity of the Exporter;
- 22.3 a description of the transaction;
- 22.4 the economic impact of the transaction.

## 23 NOTICES AND DOMICILIA

- 23.1 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 Management and Workout Unit

<u>Name</u>	<u>Physical Address</u>	<u>Telefax</u>
the Insured:	[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 Party to that effect. Such change of address will be effective 5 (five) Business Days after receipt of the notice of the change.

- 23.2 All notices to be given in terms of this Policy will be given in writing, in English, and will –
- 23.2.1 if sent by courier in a correctly addressed envelope to it at its chosen address shall be deemed to have been received on the 3<sup>rd</sup> Business Day after sending (unless the contrary is proved);
- 23.2.2 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

- 23.2.3 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.
- 23.3 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.
- 23.4 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.

## 24 **GENERAL**

- 24.1 This Policy shall be subject to and governed by the laws of the Republic of South Africa. Any disputes which may arise out of or in connection with this Policy shall be adjudicated by the High Court of South Africa (North Gauteng High Court – Pretoria) (or any successor to that division), subject to appeal as provided for by laws.
- 24.2 This Policy constitutes the whole Policy between the Parties relating to the subject matter hereof.
- 24.3 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.
- 24.4 No amendment or consensual cancellation of this Policy or any provision or term

hereof or of any Policy, 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 Policy not to enforce or to suspend or postpone the enforcement of any of the provisions or terms of this Policy or of any Policy, 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.

- 24.5 No extension of time or waiver or relaxation of any of the provisions or terms of this Policy or any Policy, 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.
- 24.6 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.
- 24.7 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.
- 24.8 If at any time any term or provision of this Policy or the application thereof to any person or circumstance shall to any extent be or become illegal, invalid or unenforceable, the remainder of this Policy, or the application of such term or provision to persons or circumstances other than those as to which it is already illegal, invalid or unenforceable, shall not be affected or impaired thereby.

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  
**[Financial Institution](acting through  
its [●] Division)**

\_\_\_\_\_  
Signature

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

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

**PREMIUM**

Insured:	[Financial Institution] (a Division of [●]), Registration Number [●].
Policy No:	PBP [●]
Operating Condition:	Premium
9.1	The Premium shall be paid in US Dollars by the Insured to the Insurer upfront on the Effective Date (on basis that the VAT element shall be paid in South African Rand determined at the prevailing US Dollar/Rand exchange rate on the date of the relevant invoice issued by the Insurer).
9.2	The Premium is equal to 0,50% (zero comma five zero percent) of US\$[●] ([●] US Dollars) plus VAT.
9.3	Should the Premium be in arrears for the a period in excess of 15 (fifteen) Business Days after receipt of written notice from the Insurer to such effect, the Insurer shall be entitled to terminate this Policy.

## FAIS LEGISLATION

<p><b>IMPORTANT – PLEASE READ CAREFULLY</b></p> <p>As a short-term insurance policyholder or prospective policyholder, you have the right to the following information:</p> <p><b>1 GENERAL INFORMATION</b></p> <p><b>Registered Name:</b> Export Credit Insurance Corporation of South Africa SOC Ltd. <b>Abbreviated Name:</b> ECIC</p> <p><b>Registration Number:</b> 2001/013128/06</p> <p><b>VAT Number:</b> 4170197125</p> <p><b>FSB License Number:</b> 30656</p> <p><b>FSB License Category:</b> Short Term Insurance, Commercial Lines, Financial Advisory Services and Financial Intermediary Services</p> <p><b>E-mail:</b> (<a href="mailto:www.info@ecic.co.za">www.info@ecic.co.za</a>) <b>Website:</b> <a href="http://www.ecic.co.za">www.ecic.co.za</a> <b>Telephone:</b> +27124713800 <b>Fax:</b> +2712 471 3850/51</p> <p><b>Office:</b> Block C7 &amp; C8 Eco Origins Office Park, 349 Witch Hazel Avenue, Highveld Ext 79, Centurion</p> <p>Any changes to the above information will be communicated to you in writing</p> <hr/> <p><b>2. COMPLIANCE DEPARTMENT</b></p> <p><b>Manager and Compliance Officer:</b> Mr Lesego Mosupye</p> <p><b>Telephone:</b> + 27 12 471 3817 <b>Fax:</b> + 27 471 3850/51 <b>Email:</b> <a href="mailto:LMosupye@ecic.co.za">LMosupye@ecic.co.za</a></p> <p><b>Delivered to our offices addressed to:</b> "The Compliance Officer"</p>	<p><b>3. OTHER MATTERS OF IMPORTANCE</b></p> <ul style="list-style-type: none"> <li>• ECIC issues policies on its behalf with the government as the ultimate insurer;</li> <li>• ECIC must give written reasons for repudiating your claim;</li> <li>• ECIC is obliged to notify you directly of the cancellation of your insurance contract; and</li> <li>• 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.</li> </ul> <hr/> <p><b>4. THE FAIS OMBUDSMAN</b></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><b>Address:</b> PO BOX 74571 Lynnridge 0040</p> <p><b>Email:</b> <a href="mailto:info@faisombud.co.za">info@faisombud.co.za</a> <b>Telephone:</b> +27 12 470 9080/0860 324 766 <b>Fax:</b> +27 12 348 3447</p> <hr/> <p><b>5. THE SHORT TERM INSURANCE OMBUDSMAN</b></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><b>Address:</b> P O Box 32334 Braamfontein 2017</p> <p><b>Website:</b> <a href="http://www.insuranceombudsman.co.za">www.insuranceombudsman.co.za</a> <b>Telephone:</b> + 27 11 726 8900 <b>Fax:</b> + 27 11 726 5501</p>
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**SOUTH AFRICAN CONTENT**

- 1 The following items shall be deemed to constitute South African Content –
  - 1.1 the costs of materials and manufactured Goods Delivered or Services obtained from the Exporter minus the value of any materials, goods or major components of manufactured goods which have been imported from sources outside South Africa;
  - 1.2 wages, salaries and other remuneration paid by the Exporter in South Africa to its employees and such portions of wages, salaries and other remuneration payable to the employees concerned who are performing work outside South Africa, and which is paid by the Exporter in South Africa;
  - 1.3 freight charges paid in respect of capital material and manufactured Goods shipped by a shipping company;
  - 1.4 insurance premiums paid to the Insurer in respect of a policy issued in South Africa;
  - 1.5 finance charges, excluding any interest for post-delivery finance, paid to any financial institution normally operating in South Africa;
  - 1.6 fees and charges paid for any other services performed in South Africa on the Exporter's behalf by South African resident organisations;
  - 1.7 fees and profits accruing to the Exporter to the extent that it is confirmed by external auditors and the Insurer has confirmed that they qualify as South African Content.
- 2 Attention is also drawn to the fact that the payment of freight charges to a company normally doing business in South Africa will not necessarily qualify as South African Content since the whole or part of such payment may relate to freight costs incurred in respect of a shipping line or vessel which in the Insurer's absolute opinion does not qualify as South African Content.
- 3 The minimum South African Content requirements will not be applicable if the Exporter qualifies as a BEE Exporter consistent with the requirements of the Department of Trade and Industry limited to projects on the African continent.