

**BUYERS CREDIT COMPREHENSIVE RISKS/POLITICAL RISKS COVER**

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***BUYERS CREDIT COMPREHENSIVE RISKS/POLITICAL RISKS  
COVER***

This Buyers Credit Comprehensive Risks/Political Risks Cover (hereinafter referred to as “the Cover”) is issued by ECGC Ltd. (hereinafter referred to as “the Corporation”) to the Insured named in Schedule I on the date and at the place specified in the Schedule I.

WHEREAS the Insured has made a proposal in writing requesting the Corporation to indemnify the Insured from the non-payment of whole or any part of sums due to the Insured from the Borrower in terms of the Buyer’s Credit Agreement upto the Insured Percentage subject to the amount specified as Maximum Liability in Schedule I.

AND WHEREAS the Insured has agreed that the proposal shall be the basis of this Cover.

NOW THEREFORE, in consideration of the payment of Premiums specified in Schedule I, the Corporation hereby agrees to indemnify the Insured against the loss sustained by the Insured on account of non-payment of sums due from the Borrower in terms of the Buyer’s Credit Agreement, subject to and in accordance with the terms and conditions, limitations and exclusions herein contained, upto the Insured Percentage subject to the amount specified as Maximum Liability in Schedule I, on the occurrence of an Insured Risk contained in Clause (1) of the Cover.

Headings are for ease of reference only and are to be disregarded in construing the document.

In this Cover, unless repugnant to the meaning or context thereof, the singular shall include the plural and vice versa, the masculine shall include the feminine and neuter and vice versa and the following expressions shall have the meanings assigned to them below:

## ***Definitions***

**Agreement:** The Buyer's Credit Agreement indicated in Schedule I entered into between the Insured and the Borrower for the purpose of financing the performance of the obligations under the Contract.

**Borrower:** The entity indicated in Schedule I which undertakes to the obligation to repay any sums due in terms of the Agreement to the Insured.

**Business Day:** A day (other than Saturday or Sunday) on which Banks in Mumbai, India are open for general business.

**Buyer:** The foreign entity indicated in Schedule I which has entered into the Contract with the Exporter, and which may act simultaneously as Borrower.

**Collateral Security:** A mortgage, charge, pledge, lien or other security having a similar effect, which is provided by the Borrower or a third party for the benefit of the Borrower, for securing the Credit due to the Insured, more particularly specified in Schedule I.

**Contract:** The commercial contract indicated in Schedule I for supply of goods and/or services, entered into by the Buyer and the Exporter.

**Cover:** The Cover means the Buyers Credit Comprehensive Risks/Political Risks Cover issued by the Corporation to the Insured whose name and address is specified in Schedule I, and, unless repugnant to the context or meaning, will include its Schedules and the endorsements, proposal and other related documents.

**Credit:** Any sums due to the Insured from the Borrower as principal and/or interest, costs and other charges in terms of the Agreement.

**Disbursement:** Payment of amounts under the Agreement paid by the Insured to the Exporter following a Payment Authorisation in terms of the Agreement.

**Date of Disbursement:** The date on which the Insured shall pay or remit the amounts to the designated account of the Exporter under the Agreement.

**Default:** The event when the Borrower, in terms of the Agreement, fails to pay Credit or any part thereof on Due Date to the Insured or its agent.

**Due Date:** The date on which the Credit is due for payment by the Borrower to the Insured or its agent in terms of the Agreement and includes any extended or rescheduled dates duly agreed in writing between the Insured and the Borrower with the approval of the Corporation.

**Exchange Rate:** The exchange rate as mentioned in clause 11 (b) of the Schedule I to the Cover.

**Exporter:** An Indian company or entity, specified in the Schedule I, which exports goods and/or services in accordance with the terms of the Contract.

**Guarantee:** An obligation undertaken by the Guarantor on behalf of the Borrower, for securing the Credit due to the Insured, more particularly specified in Schedule I.

**Guarantor:** A person or an entity specified in the Schedule I, which is a third party with respect to this Cover and has undertaken the obligation to discharge the Credit in the event of Default under the Agreement on part of the Borrower.

**Insolvency:** The Borrower shall be deemed to be insolvent for the purpose of this Cover if:

- (a) the Borrower has been declared insolvent by the competent Court of Law; or
- (b) the Borrower has made a valid assignment, composition or other arrangement for the benefit of his creditors generally; or
- (c) a Receiver has been appointed to manage the Borrower's estate; or
- (d) the Borrower is an incorporated body and –
  - (i) an order has been made for compulsory winding up; or
  - (ii) an effective resolution has been made for voluntary winding up, **Provided That** such resolution is not merely for the purpose of reconstruction or amalgamation; or
- (e) an arrangement binding on all the creditors has been sanctioned by the Court; or
- (f) the Borrower is an incorporated or unincorporated body, such conditions exist as are substantially equivalent to any of the foregoing conditions.

**Insured Percentage:** Insured Percentage is the share of the Corporation in the loss suffered by the Insured and agreed to be indemnified by the Corporation pursuant to the provisions of this Cover and shall always be subject to the amount of maximum liability. The Insured Percentage applicable under this Cover is specified in Schedule I.

**Insured:** The Bank(s) or financial institution(s) specified in Schedule I, acting as lender(s) under the Agreement. Where there is a pool of lenders, such pool is represented by the lead manager Bank, which signs and accepts the Cover in the name and on behalf of all the Banks or financial institutions acting as lenders and participants in the pool.

**Loss:** The Credit which remains unpaid from the Borrower to the Insured or its agent for 120 business days after the Due Date, due to any one or more of the Insured Risks mentioned in clause (1) of this Cover.

**Loss Account:** The loss account to be maintained by the Insured in accordance with Clause (17) of this Cover.

**Maximum Liability:** The maximum amount upto which the Corporation will indemnify the Insured as specified in Schedule I, under this Cover.

**Negotiating Bank:** The Bank indicated in the Schedule I to this Cover, which upon a specific mandate given by the Insured, makes the payment due to the Exporter, on behalf of the Insured and acting with the responsibility of an agent, in accordance with the terms of the Agreement and verifies the formal correctness of the export documents provided for under the Contract, as well as any other document which may be requested by the Corporation.

**Payment Authorisation:** An authorisation in accordance with the terms of the Agreement issued by the Borrower requesting the Insured to make Disbursements.

**Premium:** The consideration payable by the Insured to the Corporation as a condition precedent for the Corporation to assume any liability under this Cover, more particularly specified in the Schedule I.

**Uninsured Portion:** the portion of uninsured Credit over which the Insured may not take any additional insurance or guarantee of any kind.

**(1) Insured Risks**

**Commercial Risks**

- a) Insolvency of the Borrower;
  - b) the default on the part of the Borrower, to make payment to the Insured of the whole or any part of the Credit in terms of the Agreement;
- Note: (The above two risks will not be available in case of political risks cover)

**Political Risks**

- c) a general moratorium decreed by the government of the Borrower's country, due to which payment of the Credit cannot be effected by the Borrower in terms of the Agreement;
- d) an embargo to transfer currency caused by political events or economic problems which have arisen in the Borrower's country, or by legislative or administrative measures adopted in that country which prevent or delay the transfer of the Credit in terms of the Agreement;
- e) the occurrence of war, civil war, revolutions, riots, civil unrest, acts of terrorism, rebellion, insurrection in the country of the Borrower thereby preventing or delaying the payment of the Credit by the Borrower in terms of the Agreement.

**(2) Exclusions**

Under this Cover, the Corporation shall not indemnify the Insured against losses arising directly or indirectly from the following circumstances:

- a) the performance, of any further agreements between the Insured and the Borrower, after signing of the Agreement, which obstruct or delay the repayment of the Credit, without prejudice to the provisions under Clause (8) hereof;
- b) a breach, by the Insured or a person acting on its behalf under a specific mandate (for example, the Negotiating Bank), of clauses or terms of the Agreement, save where such breach arises from the compliance with subsequent regulations or measures taken by authorities in the country of the Borrower or in India, which prevent the



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performance of the Agreement or the Contract.;

- c) failure on the part of the Insured or a person acting on its behalf under a specific mandate (for example, the Negotiating Bank) to comply, with legislative or regulatory provisions applicable to the Agreement and/or the Guarantee and/or the Collateral Security if any, provided however, such exclusion shall not apply if such failure to comply was due to any subsequent changes to the legal system in the country of Borrower or in India like consequences of legislative or regulatory provisions affecting the Agreement beyond the control of the Insured or the person acting on his behalf, which prevents the performance, in whole or in part, of the Agreement and/or the Guarantee and/or the Collateral Security, if any;
- d) Disbursement, which are not made in compliance with the terms and conditions provided for under the Agreement and for Disbursement made in relation to Payment Authorisations, which are not accompanied by the documentation referred to in Clause (16) below;
- e) Disbursement notified to the Corporation later than thirty (30) Business Days from the Date of Disbursement;
- f) any sums payable by the Borrower towards default interest following the maturity date of the Credit;
- g) disbursement(s) made on a date subsequent to the date on which the Insured should have suspended the performance of the Agreement in accordance with Clause (11) (a) of the Cover;
- h) further disbursement(s) made after the due date of any previous credit which remained unpaid by the Borrower, provided the same has not been made with a prior written approval of the Corporation;
- i) failure on the part of the Insured to take the prior approval of the Corporation for any amendment, variation in the terms of the Contract and such other





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terms which relate to the financial aspects of the Agreement which have a material bearing or adverse effect on the Insured Risks, including any extension in due dates/ re-schedulement of the Credit;

- j) if a claim in respect of any part of the Credit, is not made on the Corporation within a period of 12 months from the Due Date/ extended due date or the rescheduled due date of payment of such Credit, unless otherwise the above period of 12 months is further extended in writing by the Corporation before the expiry of the same.
- k) loss arising due to variation in the exchange rates between the foreign currency under the Agreement and Indian Rupees.

**(3) Subject-matter of Cover and Maximum Liability and Retention of the Uninsured Portion**

- a) The Corporation shall indemnify the Insured against non-payment of the Credit upto the extent of the Insured Percentage of loss subject to the amount specified as Maximum Liability in Schedule I.
- b) The Corporation shall cover the Credit (excluding interest) due from the Borrower, which was disbursed in compliance with the terms of the Agreement. The Corporation shall cover the interest portion only upon the request of the Insured.
- c) The Insured shall retain so much of the Loss as exceeds the Insured Percentage or the Maximum Liability whichever is higher of the two, as the case may be, to its own account and uninsured. Where the Insured is made of a pool of lenders, the Uninsured Portion must be maintained and divided pro rata to the amounts lent by each participating lender. If the Corporation is unaware of the exposure availed by each lender in the pool, the Corporation will indemnify that lender who has submitted the claim in terms of this Cover.
- d) In a case, if the lender has made Disbursements over and above the total Disbursements stipulated in the Agreement, the Corporation will indemnify the Insured for that amount which is derived at, after reducing the claim amount by deducting the overdrawn amount and applying the Insured Percentage subject to Maximum Liability.



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**(4) Execution, Effective date, Conditions of effectiveness of the Cover and Duration thereof**

- a) The Cover shall be deemed to have been executed on the date when it is duly signed and accepted by the Insured and received by the Corporation.
- b) The Cover shall be effective as from the date of Disbursement of the Credit and, in the event of several partial Disbursements of the Credit, from the date of first Disbursement.
- c) The Cover shall be effective and remain valid subject to:
  - i. the payment of the Premium in accordance with Clause (6) below;
  - ii. the satisfaction of the conditions precedent for Disbursements under the Agreement
  - iii. compliance of all the conditions of this Cover.
- d) The Cover shall be valid for the period specified in the Schedule I and shall be further extended to such period as may be mutually agreed upon.

**(5) Declarations of the Insured**

- a) This Cover is issued on the basis of the declarations made by the Insured in the proposal form. The Corporation reserves the right to seek supplementary documentation (such as the Agreement, any Guarantees, the Contract and any further documentation connected to the specific transaction) from the Insured. It is understood that delivery of the supplementary documentation does not entail acceptance thereof by the Corporation. In the event of a discrepancy between the supplementary documentation and declarations contained in the (i) request for cover or, (ii) in any correspondence forwarded by the Insured to the Corporation, subsequent to the proposal, but prior to the issuance of the Cover, any declarations made in the proposal and/or in any subsequent correspondence before the issuance of the Cover shall prevail.
- b) By signing the Cover, the Insured confirms that all the information supplied in the proposal for Cover or, in any



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subsequent correspondence but before the issuance of the Cover, in writing is true or coincides with the written declarations supplied by the Insured in its request for Cover and that nothing, which is relevant for ascertaining the assessment of the risk and of which the Insured was aware at the time of submitting the proposal or which the Insured became aware subsequently until the time of the signing of the Cover, has been withheld, omitted or distorted.

- c) The Insured declares that the Agreement contains provisions which enable the Insured to fully comply with the provisions of this Cover.

**(6) Premium:**

- a) Premium for the purposes of effecting this Cover shall be paid in accordance with Schedule I
- b) The Premium shall be paid in Indian Rupees at the rates and amounts mentioned in Schedule I.
- c) The Insured shall within 30 days from the receipt of the “In principal approval letter” deposit with the Corporation 25% of the premium on the principal portion and full annual premium on the interest portion (if requested by the Insured to be covered). After each Disbursement is made by the Insured, the premium shall be paid by the Insured on the principal portion not later than 3 Working Days from the date of the Disbursement. The advance premium held by the Corporation would be adjusted against the premium payable on the last Disbursement made. The Insured agrees and confirms that payment of premium due under the Cover is a primary condition to be complied with before any liability can be assumed by the Corporation.
- d) The Insured shall be entitled to a refund of the Premium - provided that no Loss has occurred and exclusively in the following events:
  - i. In absence of any Disbursement and termination of the Cover by mutual consent in accordance with Clause (19) below; and



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- ii. In cases where Disbursements are made by the Insured of a lesser amount, pro-rata premium to the extent of the difference between the Disbursement of a lesser amount and the total amount provided for under the Agreement will be refunded, subject to payment of commitment fee on the undrawn Disbursements.
- e) A fixed amount of 15% of the refundable amount as determined in accordance with Clause d mentioned above, shall be withheld by the Corporation.

**(7) Demand for early repayment of Credit from the Borrower**

If the Insured, in accordance with the terms of the Agreement, intends to exercise its right to demand early repayment of the sums financed, prior authorisation from the Corporation must be obtained. Where the Corporation authorises the Insured to exercise its right to demand early repayment of the sums financed, payment of the indemnification under the Cover shall remain scheduled on the basis of the maturity dates originally provided for, unless the Corporation exercises the option to pay such indemnification at an earlier date.

**(8) Amendments to the Agreement, the Guarantee and the Collateral Security**

- a) The Insured must promptly notify and obtain the Corporation's prior approval before amending (i) any clauses or terms and conditions of the Contract which relate to the financial aspect of the Agreement and/or (ii) any clauses or terms and conditions of the Agreement which may have any bearing on the Corporation's liability under the Cover issued and/or the related Guarantee and/or the Collateral Security, if any.
- b) Where the amendments approved by the Corporation involve an increase in risk, the Corporation shall be entitled to request a corresponding increase of the Premium.
- c) In the event of the Insured agrees to the amendments referred to in Clause (8) (a) above, notwithstanding the Corporation's refusal or where the Corporation has agreed to the amendments subject to payment of additional premium, as applicable, and the Insured fails



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to pay the increased amount of the Premium requested by the Corporation within a period of 3 Working Days days from the date of request, in accordance with Clause (8) (b) above, the requested and approved additional Cover shall be deemed to be withdrawn.

**(9) Variable Rate of Interest Transactions**

In the event of a variable interest rate payable by the Borrower on the Disbursement made under the Agreement, the Insured must notify the Corporation, within 30 Business Days of the date of each single Disbursement for the relevant period of pre-amortisation interest, if any, and subsequently within 30 Business Days of each payment date for the interest due under the Agreement, of the rate applicable for the calculation of interest for the immediately subsequent period and of the relevant amount of such interest.

**(10) Increase of the risk**

- a) The Insured must notify the Corporation in writing of any circumstance, that it may become aware of, which might increase the risk, including, but without limitation:
  - i. any amendment or event relating to the Contract which might affect the prompt repayment of the Credit by the Borrower;
  - ii. any requests from the Borrower to change the terms and conditions of payment of the Agreement or of the related Guarantee;
  - iii. any significant difficulties, which arise in connection with the issuing or delivering of credit instruments, if any, under the Agreement;
  - iv. any other significant difficulty, which arises in connection with the performance of the Agreement; and
  - v. any other circumstances, which may adversely and materially affect the proper performance of the Agreement and/or the proper repayment of the sums financed, including changes to the applicable regulatory framework, which governs the Agreement, the Guarantee or the Collateral

Security if any.

Such notification must be made by the Insured within 10 Business Days from:

- (a) with regard to the events referred to in sub-paragraph (i) and (v) above, the date on which the Insured became aware of the occurrence of such event or the failure to materialise, the non-existence of or any subsequent changes as essential factors for assessment of the risk;
- (b) with regard to the events referred to in sub-paragraphs (ii), (iii) and (iv), the date on which such event occurs;

In any event, withdrawal by the Corporation as a consequence of an increase of the risks, which is not attributable to the Insured and/or to persons acting on its behalf, shall not have any effect, on the Cover as regards the part covering the Credits, which have arisen in relation to Disbursements already made at the time of such withdrawal.

**(11) Materialisation of Insured Risk**

- a) In the event that any of the Insured Risks occurs the Insured must, as soon as it becomes aware thereof, notify the Corporation. Following notification of such event of a Insured Risk, the Corporation shall have the option to demand the Insured to suspend performance of the Agreement within 30 Business Days from the date of such notification, for non letter of credit (LC) transactions, however this shall not apply to payments required to be made under letters of credit issued prior to the notification.
- b) Where the current Insured Risk situation has ceased the Insured must notify the Corporation thereof and, following the Corporation's prior authorisation, which shall be given within 30 Business Days from the date of the said notification the Insured may resume performance of the Agreement, duly notifying the Corporation. This Clause will however not apply to Clause 1 (a) of the Insured Risk i.e. Insolvency of the Borrower.

**(12) Obligations of the Insured**

- a) The Insured, before making each Disbursement, shall
- (I) ensure that the following documents either as originals or certified copies are delivered to it:
    - (i) Payment Authorisation for each;
    - (ii) Bank Accounting Statements attesting the receipt of the cash portion provided for under the Contract and the crediting of the amounts so received to the Exporter's Account.
    - (iii) Commercial invoices or equivalent documents evidencing the sale of goods and/or the services, under the Contract duly certified by the Buyer or its authorised representative, any related bills of lading and certification attesting the exit of the goods from the country of origin in the manner provided for by the regulations in force
    - (iv) A Declaration from the Exporter specifying (i) the origin of the goods exported and (ii) all the amounts transferred abroad for any reason connected to the performance of the Contract; and
    - (v) Any further documents provided for under the Contract, which grant entitlement to the payment.
  - (II) examine the export documentation referred to in Clause (12) (a)(I) above, in compliance with the Uniform Customs and Practice for Documentary Credits (UCPDC, relevant) and/or the Uniform rules for collection (URC) as applicable to each document.
- b) Where the certification attesting the exit of the goods from the country of origin was not made available to the Insured at the time of the Disbursement, the Insured shall be under an obligation to obtain such certification within six months from such Disbursement under due intimation to the Corporation or where the Insured has failed to obtain such certification, notify the Corporation immediately of its inability to obtain the certification. In such case, the Corporation shall have the option to demand immediate suspension of further Disbursement

- by the Insured.
- c) The Insured must communicate to the Corporation the details for each Disbursement and the relevant repayment schedule within 30 Business Days from such Disbursement date.
  - d) The Insured will be under no obligation to maintain its recourse to the Exporter either during the performance of the Contract or the subsequent repayment period.
  - e) Where an Insured Risk arises, the Insured must:
    - i. Notify the Corporation within 30 Business Days from the maturity of the relevant Credit, of the total or partial non-payment of the sums due under the Agreement. Notify the claim along with the documents specified in Clause (16) of the Cover after expiry of 120 days from the due date and within a period of 12 months. The Insured shall be under an obligation to grant an irrevocable power of attorney stating that it shall not have any obligation to account for recovering the Credit, in the format given at Schedule II, if requested by the Corporation prior to payment of any indemnification.
    - ii. communicate, within 5 Business Days of receipt of any subsequent payment of the partial or full Credit amount referred to in Clause (12) (e) (I) above;
    - iii. take appropriate steps to obtain payment from the Borrower and/or the Guarantor of the Credit which are due and payable including legal proceedings and prevent or mitigate the loss and keep the Corporation informed thereof;
    - iv. after consultation and approval of the Corporation or upon the Corporation's request, commence legal recovery proceedings against the Borrower, or any third parties; and
    - v. in relation to the Uninsured Portion, accept the Corporation's decisions concerning procedures for recovery.

**(13) Payment of indemnification -**

- a) The indemnification shall be equal to the amount arrived





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at by applying the Insured Percentage to the balance of the Loss Account and in no case shall exceed the amount indicated as Maximum Liability in Schedule I.

- b) Payment of the indemnification shall be made subject to the terms of the Cover (i) upon request of the Insured, which must be submitted to the Corporation, following the expiry of the period for determination of loss specified in Clause (15) for the relevant Risk and (ii) the request of the Insured shall be verified by the Corporation on submission of the request along with all the documents specified in Clause (16) of this Cover by the Insured to the satisfaction of the Corporation, and on due performance of the obligations referred to in Clause (12) by the Insured.
- c) The Insured has to perform all its obligations as stated in Clause (13) (b) above within twelve months from the date repayment is due in terms of the Agreement to avail any benefit under this Cover.
- d) Where, for reason of fraud, mistake or misrepresentation, the indemnification made is found to be not payable, whether in whole or in part, the Insured shall be required to pay back the relevant amount to the Corporation, within a period of 30 days from such demand, together with interest at the rate of SBI Bank rate from the date of payment of the indemnification till refund.
- e) Payment of the indemnification shall be made in Indian Rupees irrespective of the currency of payment under the Agreement.

**(14) Costs, Fees and Charges**

- a) When the Insured makes Disbursements lesser than the total Disbursements agreed under the Agreement, the Corporation shall charge a commitment fee of 0.50% per annum on the undrawn amount being the difference between the actual Disbursement amount and total Disbursement amount.
- b) Standard collection fees (bank charges, etc.), any costs incurred to set up and maintain the Guarantee and/or Collateral Security, if any, premium payable to the Corporation for the insurance cover, commitment fee and protest charges shall be borne exclusively by the

Insured.

- c) Costs incurred by the Insured to mitigate the loss and for recovering the Credit from the Borrower or the Guarantor shall be shared between the Corporation and the Insured in proportion to the Insured Percentage, provided that such costs are formally authorised by the Corporation.

**(15) Period for the Determination of the Loss/Waiting Period**

Subject to the submission by the Insured of a claim in the prescribed form duly supported by evidence which, in the opinion of the Corporation is sufficient for verification and ascertainment of the cause of loss, Corporation will pay to the Insured so much of the amount of loss as is hereby insured immediately after the loss has been ascertained. No amount in respect of any Claim shall become due and payable by Corporation under this Cover until and unless the loss has been ascertained. The time for ascertainment of loss will be –

- I. In the event referred to in Clause (1) (a) of this Cover where the loss arises from the insolvency of the Borrower, for all the Credit instalments, after the date of the judgment by competent court of Law of bankruptcy or of admission to the procedure of composition with creditors or of other action emanating from the competent judicial authority having similar effects, without prejudice to the Corporation's right referred to in Clause (13) above, but in any case immediately after expiry of 30 Business days from the date of occurrence of insolvency of the Borrower or 120 days after the due date of payment, whichever of the two dates is earlier.
- II. In the events referred to in Clause (1) (b), (c), (d) and (e) of the Cover (i) after 120 Business Days have elapsed from the date of maturity of each disbursement made under the Agreement.

**(16) Claim/Indemnification – Documentation**



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- a) The Insured must provide evidence of the existence/ occurrence of one or more of the Insured Risks indicated in Clause (1) of this Cover and that it acted promptly to recover the Credit and to avoid any detriment to the Corporation's subrogation right.
- I. In case of the occurrence of a Insured Risk referred to in Clause (1) a) of this Cover, where the default arises from Insolvency of the Borrower, the Insured must, where the Borrower is not sovereign entity, produce the application for admission in the bankruptcy proceedings or in the composition with creditors or demonstrate that it has carried out all the acts and has complied with all the obligations prescribed by the specific procedure and by the laws of the country governing the insolvency;
  - II. In case of the occurrence of a Risk Insured referred to in Clause (1) b) of this Cover, the Insured must demonstrate that it has carried out, promptly, all actions necessary to obtain payment of the Credit;
  - III. In cases of the occurrence of Insured Risks referred to in Clause (1) (d) of this Cover, the Insured must produce sufficient evidence having embargo being made. No such proof from the Insured shall be required where the Credit has been the subject of bilateral inter-governmental Agreements for the restructuring and/or the total or partial cancellation of the debt.
- b) Indemnification requests must be accompanied by the following documents, in the original or as certified true copies thereof, provided that such documents have not already been delivered to the Corporation during the preliminary stage:
- I. the Agreement, any relevant annexure and any subsequent amendments thereto;
  - II. the Contract, any relevant annexures and any subsequent amendments thereto;
  - III. the Guarantee and any Collateral Security, where provided for;
  - IV. Exporter's declaration, specifying (i) the origin of the



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- goods exported and (ii) all the amounts transferred abroad for any reason connected to the performance of the Contract;
- V. Payment Authorisations by the Borrower or his designated bank for all the Disbursements made;
  - VI. the bank account records evidencing the crediting of the amounts disbursed in favour of the Exporter to his account;
  - VII. the commercial invoices or any equivalent documents attesting the sale of goods and/or the provision of services and/or the performance of works duly certified by the Buyer, which are the subject-matter of the Contract; any relevant bills of lading and the certification attesting the exit of the goods from the country of origin, in the manner provided for by the legislation currently in force.
  - VIII. the requests for payment of the outstanding Credit and any reminders sent to the Borrower accompanied by evidence of despatch of such requests along with replies, if any, received from the Borrower and any other correspondence exchanged with the Borrower in this regard;
  - IX. documents attesting the enforcement of any Collateral Security;
  - X. any other documents provided for under the Contract, which grants entitlement to payment; and
  - XI. in cases where the applicant is a person other than the Insured, any documents which attest such person's right to receive any indemnification and to sign the receipt therefore.
- c) The Insured must deliver, within 30 Business Days from the date of receipt of a request from the Corporation, all further documents which supplement, integrate or explain the documents referred to in Clause (16) (b) above, where the Corporation deems that such documents are necessary to ascertain the existence of the Loss or for payment of the relevant indemnification.

## **(17) Loss Account**



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- a) The Loss Account must be drawn up as follows in the currency in which the Credit is expressed:
- I) debited to the Borrower's Account
    - i. the amount of each Credit instalment which has matured but has not been collected by the Insured, in whole or in part;
  - II) credited to the Borrower's Account: all the amounts collected by the Insured to cover the outstanding Credit instalment and, more precisely:
    - i. partial payments made for any reason by the Borrower and/or a third party in relation to the underlying Contract;
    - ii. the sums obtained following any enforcement of the Collateral Security, where provided for;
    - iii. the sums recognised by the Insured in favour of the Borrower allocated by way of compensation or any other benefit of the same kind;
    - iv. apportionment quotas in connection with bankruptcy proceedings or composition arrangements, which are paid to cover the Credit instalment or the sums obtained following the carrying out of execution orders.
- b) Where the Corporation exercises the option referred to in Clause (7) of this Cover and pays the indemnification at an earlier date and in the case of insolvency, the Insured must draw up the Loss Account in the following way:
- I) debited to the Borrower's Account: the aggregate amount of the Credit instalments, including any instalments indemnified by the Corporation, which have not been, collected by the Insured, in whole or in part,
  - II) credited to the Borrower's Account:
    - i. all the amounts collected by the Insured to cover all the outstanding Credit following the actions taken in terms of Clause (16) a) above.
    - ii. the amount of interest, at the rate referred to in Clause 9 (k) of Schedule I, which will mature between the date scheduled for payment of the indemnification according to the terms and conditions of this paragraph and the original



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- maturity dates for the Credit instalments;
- iii. any amounts paid by the Corporation for indemnifications prior to the ascertainment of insolvency and/or to the exercise of the option referred to in Clause (7) of this Cover.
  - c) If the sums indicated in sub clause II of the foregoing Clause (17) (a) and (b) have been settled in a currency other than the one in which the Credit is expressed, the conversion of such currencies shall be made at the Exchange Rate mentioned in Schedule I to this Cover or prevailing on the maturity date, whichever is higher.

**(18) Subrogation - Recoveries - Allocation of sums collected**

- a) From the date of payment of the indemnification and to the extent of the amount paid, the Corporation shall be subrogated into all the rights and actions of the Insured under the Agreement. The Corporation may also confer a power of attorney on the Insured, which the Insured shall accept unless there are justifications to the contrary, to exercise the rights and actions arising from such subrogation. Following the granting of such power of attorney, the Insured shall undertake to keep the Corporation informed at all the stages of the judicial and extra judicial matters and procedures and to follow any instructions given by the Corporation and not to enter into any arrangements or give consents without the Corporation's prior written authorisation. The sums recovered, net of any costs incurred for effecting the recoveries, shall be shared between the Corporation and the Insured in proportion to the Percentage of insurance cover within 15 Business Days from the date of receipt of such recovery amounts. Where the sums recovered are in a currency which is different from the currency in which the indemnification was paid, for distribution purposes, the Banker's Buying Rate prevailing in Mumbai on the date of recovery of such sums will be applied.
- b) Through the consent of the Insured expressed under this Cover, the Corporation shall be irrevocably appointed



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as agent, with powers of representation and no obligation to account, for (i) the recovery of any Uninsured Portion of the indemnified Credit and for the management of any other right arising from or in any event in connection with the indemnified Credit; and (ii) the restructuring of the debt for any Credit instalments, which have not yet become due, following a commitment on the part of the Corporation to pay the indemnification on the basis of the originally scheduled due dates or in a single lump sum; (iii) the placing of credits, which are not yet due or not yet indemnified, on the lists annexed to any bilateral inter-governmental Agreements for the restructuring of the Borrower's country's debt, which may have been entered into by the Government of India.

- c) Where the Government of India has, in implementation of such bilateral inter-governmental Agreements, arranged for the total or partial cancellation of the Borrower's country's debt, the Corporation may acquire the portion of the Credit, which was not covered by the Insurance, by offering to the Insured an amount calculated by applying the discounted rates and/or the ratings regarding such Borrower's country recorded in International markets to the nominal value of the Credit. The Insured undertakes to provide the Corporation with all the co-operation necessary to exercise the powers granted under the mandate. The Corporation shall, upon request from the Insured, provide it with information regarding the progress of such recovery and upon its conclusion, inform the Insured of the outcome thereof. Where the Corporation confers a power of attorney on the Insured in accordance with Clause (18) a) above, it shall waive the power of attorney provided under the Cover in Clause 12(e)(i).
- d) The Insured must immediately pay back to the Corporation all the sums directly received by it, for any reason whatsoever, against the outstanding Credit indemnified by the Corporation within 7 Days following the date of receipt of such sums. For any delay beyond such date in refunding the amounts due to the Corporation, interest will accrue on such sums at the prevailing SBI Base Rate for successive monthly periods



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till the date of receipt by the Corporation. Where the sums recovered are in a currency, which is different from the currency in which the claim was paid, for sharing purposes, the Exchange Rate prevailing on the date of recovery of such sums by the Insured will be applied.

- e) For drawing up the Loss Account and distributing the sums recovered, following payment of claim, between the Insured and the Corporation, the sums received for any reason under the Agreement, the Guarantee or the Collateral Security, if any, shall be allocated proportionately for each single Credit instalment, in order of maturity, towards the outstanding instalments of principal that have become due and remained unpaid and interest that has accrued up to date of reporting overdue/default and remained unpaid.

**(19) Lapses, termination of and withdrawal from the Cover**

- a) It is hereby understood that, where the Insured makes no Disbursement in accordance with the terms of the Agreement within the time limit specified in the Schedule, the Cover shall automatically terminate, save where otherwise agreed between the parties.
- b) The Cover shall automatically terminate where the Insured breaches an obligation under Clause (8) (a) above.
- c) Where the Corporation exercises the option to withdraw from the Cover, such withdrawal shall be notified in writing to the Insured by registered mail or other appropriate mode of communication.

**(20) Transfer, pledge and granting of security over the rights under the Cover**

- a) The rights arising under the Cover may be, in whole or in part, transferred or, pledged or otherwise granted as security, by the Insured in favour of third parties, with



the approval of the Corporation.

- b) The Corporation will acknowledge this in a special endorsement, which shall be signed by the Corporation and, as applicable, by the transferor and the transferee, the pledgor and the pledgee, the party giving the security over the rights and the beneficiary thereof. The transferee/pledgee shall be bound by the terms of the Cover pursuant to the transfer/pledge.
- c) The same formalities must be complied with by the Insured and/or the Corporation to revoke the transfer, waive the pledge or release the security.

**(21) The Corporation's power of control**

- a) The Corporation reserves the right to verify, during the Disbursement period, the genuineness and correctness of each Disbursement in relation to the value of the services under the Contract actually performed by the Exporter, as contained in the Proposal form seeking the insurance cover. Where there are particular technical requirements or in the case of requirements connected with the schedule of performance of services by the Exporter, the Insured shall duly explain the same to the Corporation. The verification of the genuineness and correctness of the Disbursement and the relevant parts thereof may be carried out with regard to the Disbursement as a whole and not with regard to a single Disbursement. In order to carry out such verifications, the Corporation may use an independent technical consultant of its choice, at its cost.
- b) Where the Corporation, directly or through a person acting on its behalf, notices a substantial disproportion between the Disbursement and the value of the services rendered by the Exporter, including with reference to the origin of the goods and the relevant components thereof, as contractually identified, the Corporation may order the Insured to suspend Disbursement. Upon verification of the factual position with regard to the due



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performance of the Contract and rendering of the services, within a period of 60 Business Days from such suspension, the Corporation may authorise the resumption of Disbursement or withdraw from the Cover. In case of withdrawal from the Cover by the Corporation, such withdrawal shall have no effect on the Cover with respect to the part relating to the Credit, which has arisen following the Disbursement already made at the time of the withdrawal.

**(22) Competent Court and Applicable Law governing the Cover:**

- a) The construction, validity and performance of this Cover and any dispute/action between the Insured and the Corporation shall be interpreted in accordance with and governed in all respects by Indian Law. The Insured agrees that no other Courts (which expression shall include Tribunals and other judicial forums constituted under any special statute) other than at Mumbai shall have jurisdiction over any matter arising out of, concerning or relating to this Cover.
- b) In the event of a transfer of the Cover and/or of the rights arising there under, such transfer shall not become effective until the transferee has explicitly accepted, for the benefit of the Corporation, the jurisdiction of the Courts in Mumbai.
- c) The Cover shall be governed by Indian Law.

Signed for and on behalf of:

<p><b>The ECGC Limited</b></p>     <p>Name : Designation: Place : Mumbai Date : / /2015</p>	<p>Accepted for and on behalf of ..... ..... (the Insured)</p>     <p>Name : Designation: Place : Date : / /2015</p>
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**Schedule I to Buyers Credit (Comprehensive Risks/Political Risks) Cover No:**

01	Name and Address of the Insured	
02	Name and Address of the Exporter	
03	Name and Address of the Borrower	
04	Name and Address of the Buyer	
05	Name and Address of the Negotiating Bank	
06	Borrower's Country	
07	Buyer's Country	
08	The Contract :	
	a) Contract description	
	b) Date of signing contract	
	c)Contract commencement date	
	d) Contract value in foreign currency	
	e) Contract value in Indian Rupees.	
	f) The Exchange rate applied	
	g) Contract execution period	
	h) Warranty period	
	i) Contract payment terms	
09	The Agreement : (Insured and Borrower)	
	a) Purpose of Credit	
	b) Date of Agreement	
	c) Effective date of Agreement	
	d) Amount of Credit :	
	e) Currency of Credit	
	f) Amount of Credit in Indian Rupees(IRs)/ Foreign currency	
	g) Exchange Rate	

	h) Period of Credit	
	)i) Tentative Disbursement Schedule for Principal	
	J) Tentative Repayment Schedule for Principal :	
	k) Interest rate	
	i) Repayment schedule for Interest	
10	Security/Guarantee for Credit :	
	a) Name and Address of Guarantor	
	b) Details of guarantee and /or collateral security.	
	c) Amount of Guarantee/ Collateral security.	
11	The Cover :	
	a) Amount Insured/Covered: i) Principal :	
	ii) Interest- :	
	b) Exchange rate agreed for cover.	
	c) Insured Percentage	
	d) Maximum Liability	
	e) Uninsured Percentage	
	f) Period and Place of Cover i) Date of commencement ii) Date of expiry iii) Maximum period of Cover iv) Place of Cover:	
	g) Country Insured	
	h) Risks not insured	
	i) Risks excluded, if any, Of Clause 1 of the Cover	
12	Premium :	

	<p>a) Premium rate :</p> <p>i) For Principal Amount</p> <p>ii) For Interest Amount</p>	
	<p>b) Amount of Premium Payable :</p> <p>i) For Principal Amount :</p> <p>ii) For Interest Amount :</p>	
	<p>a) Schedule of Premium Payment :</p>	
	<p>b) Interest Rate applicable for refund of indemnification by Insured in terms of Clause 13(e) of Cover</p>	

**SCHEDULE II**

**IRREVOCABLE POWER OF ATTORNEY**

**TO ALL TO WHOM THESE PRESENTS SHALL COME**

We, \_\_\_\_\_(hereinafter referred to as  
"Insured") having office at

\_\_\_\_\_  
SEND

GREETINGS:-

WHEREAS we have at the request of ECGC Ltd. in terms of Clause 12 (e) (i) of the Buyer's Credit Comprehensive Risks/Political Risks Cover agree to appoint ECGC Ltd. (hereinafter referred to as "Insurer"), to be our true and lawful Attorneys for and on our behalf to do the following

acts, deeds, matters and things as set out hereunder and any other acts, deeds, matters and things without limitation as may be necessary in their opinion to do.

**NOW KNOW YE ALL AND THESE PRESENTS WITNESSETH** that We do hereby nominate, constitute and appoint Insurer to be our true and lawful Attorneys to act for us and/or on our behalf and/or in our name and do all necessary acts, deeds, matters and things as set out hereunder and any other acts, deeds, matters and things without limitation as may be necessary in their opinion to do AND the powers given by us to them herein shall stand irrevocable in regard to the acts, deeds, matters and things carried out by them on our behalf and/or in our name:

1. **To ASK**, demand, sue, and/or recover and receive from the Borrower/Guarantor, any person(s) all sums of money(s), debts, effects and things of any nature or description whatsoever which are now or which shall or may at any time or times be or become due, owing, payable under the Buyer's Credit Agreement executed between the Insurer and the Borrower, which is also the subject matter of the Cover issued by Insurer to the Insured. The Insured vests absolute powers on the Insurer to recover the payments from the Borrower/Guarantor and the Insurer shall not be under any obligation to recover the unpaid Credit from the Borrower/Guarantor except with the approval of the Insured.
2. **TO RECEIVE**, collect and recover all debts, dividends, interest, goods, effects and profits from the Borrower/Guarantor which are now or hereafter may



become due, payable and owing to us in respect of amounts due and payable under the Buyer's Credit Agreement executed between the Insurer and the Borrower, which is also the subject matter of the Cover issued by Insurer to the Insured making all necessary allowances and deductions as may lawfully or reasonably be claimed or as may be thought expedient by the Insurer. Any amounts recovered by the Insurer from the Borrower/Guarantor shall be the Insurer's property and held in trust by the Insured.

3. **TO COMPROMISE** and compound with the Borrower/Guarantor, person or persons, firm, company or Corporation or Government for or in respect of any debt or debts due under the Buyer's Credit Agreement executed between the Insurer and the Borrower, which is also the subject matter of the Cover issued by Insurer of any sum or sums of money, goods, chattels, merchandise, property, credits, matters or things whatsoever which now is or shall or may at any time or times hereafter become due, owing and payable or belonging to us.
  
4. **TO ACCEPT** service of any writ or summons or legal processes and to appear for and represent us in all Courts or Tribunals whether Civil, Criminal, Original, Appellate or otherwise and to take all such steps and proceedings and do all such acts, matters and things as may be necessary or required.

5. **TO COMMENCE**, prosecute and enforce or to defend, answer or oppose all actions and other legal proceedings and demands whatsoever at present pending or hereafter instituted to recover the amounts due from Borrower/Guarantor under the Buyer's Credit Agreement executed between the Insurer and the Borrower, which is also the subject matter of the Cover issued by Insurer and to consent to such orders and to enter into, make and execute such bond, deeds, writings, agreements, releases and discharges as shall be necessary or expedient for the purpose of giving effect to such submission.
  
6. **TO SIGN**, verify and present all necessary Plaints, Petitions, Written Statements, Affidavits, Declarations, Memorandum of Appeals, Applications, Complaints and other proceedings for the commencement or continuation of proceedings to recover the amounts due from Borrower/Guarantor under the Buyer's Credit Agreement executed between the Insurer and the Borrower, which is also the subject matter of the Cover issued by Insurer.
  
7. **TO NOMINATE** and appoint Attorneys or Advocates and to sign Vakalatnamas or other necessary authorities, to prosecute or defend all proceedings concerned and necessary to recover the amounts due from Borrower/Guarantor under the Buyer's Credit Agreement executed between the Insurer and the Borrower, which is also the subject matter of the Cover issued by Insurer.

8. To assist, co-operate and concur in any actions or proceedings which the Insurer may deem expedient or necessary and to execute all deeds, assignments, and or documents, including any/all pleadings and release, which may be necessary thereof and generally to assist therein by all means in the Insured's power, if called upon by the Insurer.
9. To make any affidavit or proof of any debt or debts due or claimed to be due under the Agreement/Cover in any proceedings or application for admission in the bankruptcy proceedings to be taken by or against any person(s), firm(s) or company(s) under the any Act for the time being in force in relation to the Insolvency of the Borrower or winding up Borrower's company and to attend all meetings of creditors under any such proceedings. The Insured vest powers in the Insurer as the Attorneys to initiate all proceedings whether by way of insolvency or winding up or arrangement or composition which may be taken against the Borrower at their absolute discretion that they think fit.
10. To make and sign applications to be submitted to the appropriate Government departments, local authorities or other competent authority in the event of (i) a general moratorium decreed by the government of the Borrower's country or (ii) an embargo to transfer currency caused by political events or economic problems which have arisen in the Borrower's country or (iii) the occurrence of war, civil war, revolutions, riots, civil unrest, acts of terrorism, rebellion, insurrection in the country of the Borrower.

11. To enforce all covenants, conditions and stipulations and to exercise any power contained in any mortgage, charge, pledge, bank guarantee, letter of credit etc. given by the Borrower/ Guarantor under the Agreement and/or Cover. In addition, to commence and prosecute any action or other proceeding in any court of justice, to serve any notices and to realize any such security by way of sale of properties mortgaged, charged, pledge, etc. whether in exercise of any statutory or any other power with full power to complete such sale by conveyance or transfer and to enter into possession of the mortgaged or charged property.
12. The Insured grants unto the Insurer being the said Attorneys full power and authority to substitute and appoint in their place (on such terms and conditions as they shall think fit) one more Attorney or Attorneys to exercise any or all the powers and authorities hereby conferred and to revoke any such appointment from time to time and to substitute or appoint any other or others in place of such Attorney or Attorneys as the said Attorneys shall from time to time think fit.
13. The Insured declares that all and every acts, deeds, matters and things which shall be done by the Insurer in the capacity of their Attorney or their substitute as for the aforesaid purposes shall be as good and effectual to all interest and purpose whatsoever as if the same had been done, signed, sealed and delivered and given or made by the Insured.

14. All the powers, authorities and discretions hereby conferred upon the Insurer shall be available for exercise by them both during the absence and presence of the Insured.

15. The Insured ratifies and confirms all and whatsoever the Insurer shall lawfully do or cause to be done in or about by virtue of these presents.

IN WITNESS WHEREOF I have hereunto set and subscribed my hands on this \_\_\_ day of \_\_\_\_\_ 20\_\_.

SIGNED AND DELIVERED by the )  
within named )  
(i) )  
in the presence of )  
1. )  
2. )  
Accepted by us )  
ECGC Ltd. )  
in the presence of )  
1. )  
2. )

Before me,