

Agreement made the _____ day of _____
between the Export Credit Guarantee Corporation of India Limited a Company incorporated and registered under the Companies Act 1956 having its Registered Office at Express Towers, 10th floor, Nariman Point, Mumbai - 400 021, in the State of Maharashtra hereinafter called "the Insurer" (which expression shall, unless the context or subject otherwise requires, mean and include its successors and assigns) of the ONE PART and
whose registered office is situated at _____ and
who carries on business at _____
"the Investor") of the Other Part : (hereinafter called

WHEREAS :-

- (1) the Investor has made / is about to make / an investment (hereinafter called "the Investment") details of which are set out in schedule I hereto in
of
(hereinafter called "the Overseas Enterprise) for the purpose of
(hereinafter called "the Project") in
(hereinafter called "the Project Country")

- (2) the Investor has made an application to the Insurer in the form prescribed by the Insurer (hereinafter called "the Application") for such insurance in respect of the investment as is hereinafter in these presents provided.

NOW THEREFORE, in consideration of the premiums paid (receipt of which the Insurer hereby acknowledges) and to be paid by the Investor, the Insurer agrees to insure the Investment on the terms and conditions hereinafter appearing and to pay to the Investor per cent of the amount of any loss calculated in accordance with the provisions of Schedule II to this Agreement which the Investor may sustain in respect of the Investment by reason of Expropriation, War Damage or Restrictions on Remittances (as defined in Article 2 of the said Schedule) which occurs on or after the first date of Investment or the date of this Agreement, whichever of the two is the later.

1. The amount insured under this agreement in respect of Equity investment, including any additional investment which may be agreed to in writing by the Insurer, dividend and retained earnings, shall not exceed 150% (one hundred and fifty percent) of the original Equity Investment as defined in schedule I.

2. (a) The Investor shall take insurance cover in respect of the Investment for a minimum period of three years from the date of this Agreement. The Investor may thereafter at his option get the insurance cover extended from year to year upto the maximum period as provided for in paragraph 7 hereof.

- (b) The Investor may at the end of the said period of three years, terminate this agreement by three months' notice in writing given before the beginning of an Insurance year.

3. The full amount of Investment shall be eligible for cover hereunder during the first ten years from the date hereof. Thereafter the amount of investment eligible for cover shall stand reduced to ninety per cent, eighty per cent, seventy per cent, sixty per cent and fifty per cent during the 11th, 12th, 13th, 14th and 15th years respectively.

4. (i) The amounts to be insured and to be in force during the first three Insurance years (in Schedule II - Article 3.01 referred to as "The Current Insured Amount") shall be :-

- (a) for Equity Investment the sum of Rs. _____, comprised of
Rs. _____ investment in shares and Rs. _____ for
Earnings; and

- (b) for Loan Investment the sum of Rs. _____, comprised of
Rs. _____ for principal and Rs. _____ for interest.
making together in the aggregate the sum of Rs. _____

- (ii) The Investor shall, for subsequent Insurance years, before one month of the commencement of the Insurance year, notify to the Insurer the amount for which insurance is required, which will constitute the "Current Insured Amount" (as defined in Article 3.01 of Schedule II) for the particular year.

5. (a) The Investor agrees to pay premium at the rate of Rupee _____ per Rupees hundred of the Current Insured Amount for each full year (or any part thereof) for which cover is sought.

(b) The premium shall be payable one month in advance for each insurance year before the commencement of each such year.

PROVIDED THAT the premium for the first three insurance years shall be paid before the commencement of this Agreement.

6. For the purpose of calculating the premium payable hereunder, the Rupee value of Equity Investment and loan Investment shall be determined as under :-
- (i) If cash remittance is made in Rupee in respect of the Investment, the amounts so remitted shall be taken as the amount of investment.
 - (ii) If the Investment is by way of plant and equipment, the Rupee value of such plant and equipment shall be calculated at the rate of exchange as on the date of investment.
 - (iii) If the rate of Exchange for calculating the Rupee value of the investment is mentioned in the agreement governing the investment in the project, the value of investment shall be calculated at that rate.
 - (iv) For the purpose of payment of premium, the Rupee value of any repatriable retained earnings and dividends shall be calculated at the rate of exchange as on the date on which annual insurance cover commences.
 - (v) The Rupee value of the equity investment in shares shall remain unaltered for the full period for which insurance cover is provided.
 - (vi) If the Investor has withdrawn or disposed of any of the shares in any manner, the value of the investment shall stand reduced proportionately.
 - (vii) In respect of Loan Investment, for the purpose of payment of premium, at the time of annual renewal of insurance, the Rupee value of the outstanding loan investment and interest receivable shall be calculated at the rate of exchange prevailing on the date on which such insurance cover commences.
7. This Agreement shall have Maximum period of validity of _____ years - commencing on the date hereof.
8. (a) This Agreement is entered into by the Insurer relying on the information furnished in the said Application, as explicitly supplemented or modified by any further information furnished by the investor in writing and if any information so furnished be untrue or incorrect in any respect, this agreement shall be voidable at the option of the Insurer or may be terminated by the Insurer, but the Insurer may retain all premium paid.
- (b) The accuracy of the information contained in the said Application as explicitly supplemented or modified by any further information furnished by the Investor in writing, certain items of which are incorporated in Schedule I hereto, shall be a condition precedent to any liability of the Insurer hereunder.
9. Without prejudice to any rule of law, this Agreement is made on condition that the Investor has disclosed and will at all time during its operation promptly disclose all facts in any way affecting the risks hereby Insured.
10. Due performance and observance of the terms hereof by the Investor shall be a condition precedent to any liability of the Insurer hereunder.
11. Notwithstanding anything contained in any prospectus, brochure, pamphlet, advertisement or any other document whatsoever, the terms and conditions contained in this Agreement shall be the only terms and conditions governing the insurance hereunder and nothing contained in any other document shall have any effect in construing the terms and conditions and provisions of this Agreement.
12. This Agreement shall be governed by and construed in accordance with the Indian Law.

Signed on behalf of the Insurer

Signed for the Investor

Witness to the signature of

Witness to the signature of

SCHEDULE - I

DETAILS OF THE INVESTMENT

(The headings listed below are illustrative. The actual schedule in each case will set out the relevant particulars of the investment of resources that is being insured. For example, special provision may be needed for investment in the form of convertible loan stock, preference shares etc. whose terms govern the investor's rights. The schedule may include ancillary arrangements if they constitute an investment of resources but otherwise they would be the subject of an export credit guarantee.)

SECTION I - THE EQUITY INVESTMENT

(a) The [proposed] equity investment is [estimated at]. Rs. [to
be] made in the form of :

(i) Cash	: Rs.
(ii) Machinery	:
equipment	: Rs.
Materials	:
(iii) Patents	:
processes	: Rs.
techniques	:
(iv) [others]	: Rs.

[which to the extent actually contributed by the Investor to the Overseas enterprise shall constitute the "Equity Investment"]

(b) The number and class of the shares acquired as a result of the Equity Investment, and the proportion they represent of the total of each class of shares issued by the Overseas Enterprise, are as follow:-

(c) The Equity Investment is being made in the following stages :-

(d) The share of repatriable retained earnings and the dividend anticipated is as follows:-

(i) Total retained earnings		
(ii) Proportionate share of the investor in (i) above		
(iii) Anticipated dividend per share		
(iv) Anticipated dividend on the total investment of the investor	Year -	Amount Rs.

SECTION 2 - THE LOAN INVESTMENT

(a) The [proposed] principle amount of the loan expressed in the currency in which it is to be repaid is [estimated at]
[which to the extent actually loaned by the Investor to the Overseas Enterprise shall constitute the "Loan Investment"]

(b) The estimated programme for disbursement of the loan is :-

(c) The rate of interest payable on the loan is :

(d) The amount of interest receivable on the loan is :

Year

Amount (Rs.)

(e) The terms of repayment of principal and payment of interest are :-

(f) Repayment of the loan may be accelerated in the event of :-

(g) The place of repayment of principal and payment of interest is :-

SCHEDULE II

PART A - GENERAL TERMS AND CONDITIONS

ARTICLE I - DEFINITIONS

For the purpose of this Agreement; unless the meaning or context otherwise requires, the following expressions shall have the meaning respectively assigned thereto :

- 1.01 "Associated Company" means any company controlling the Investor or under the control of any such company or of the Investor, whether any such control is direct or indirect.
- 1.02 "Date of Damage" means the date of the occurrence of the relevant War Damage.
- 1.03 "Date of Expropriatory Action" means the day during an insurance year on which a deprivation or prevention takes place and becomes Expropriation as defined in Article 2.01.
- 1.04 "Date of Investment" means each date on which the constituent elements of the Investment first come into the control or possession of the Overseas Enterprise.
- 1.05 "Insurance Year" means a period of twelve months within the maximum period specified in paragraph 7 of this Agreement and commencing on the date of this Agreement and thereafter on an anniversary of the date of this Agreement.
- 1.06 "Expropriation" has the meaning assigned to it in Article 2.01 of this Schedule.
- 1.07 "Financial Benefit" Means :-
- (i) any amount received by the Investor whether by way of compensation, indemnity or otherwise and by whatever name called as a result of the Expropriation or War Damage.
 - (ii) any money or the current market value of any assets or receivables belonging to the Overseas Enterprise, which can be used by the Investor by way of set-off pending a settlement relating to the Investment.
- 1.08 INVESTMENT
- (a) "Equity Investment" means that part of the Investment specified in section 1 of Schedule I hereto;
 - (b) "Loan Investment" means that part of the Investment specified in Section 2 of Schedule I;
 - (c) "Current Equity Investment" on any date shall mean the Equity Investment less any return of Capital and the Rupee value of any commercial losses (including capitalised losses) sustained by the Overseas Enterprise and attributable to the Investor's share in the Overseas Enterprise calculated at the Rate of exchange on that date plus the Rupee value of the net retained profits of the Overseas Enterprise (including realised capital gains and retained profits capitalised through the issue of bonus shares) attributable to the Investor's share in the Overseas Enterprise calculated at the rate of Exchange on that date.

- 1.09 "Investment Earnings" means the amounts received or receivable by or for the Investor in respect of the Equity Investment as cash dividends or other distributions of profits (exclusive of any distributions made in connection with the reduction in the capital or the liquidation of the Overseas Enterprise).
- 1.10 "Investor's share" means, on any date, the proportion of the Overseas Enterprise owned by the Investor attributable to the Equity Investment.
- 1.11 "Local Currency" means the currency recognised by the government of the Project Country as the official currency of that country.
- 1.12 "Restrictions on Remittances" has the meaning assigned to it in article 2.03 of this schedule.
- 1.13 "Return of capital" means amounts received by or for the investor in respect of the Equity Investment by way of -
- a. Distributions made in connection with the reduction in the capital or the liquidation of the Overseas Enterprise; and /or
 - b. Proceeds in the Project Country of the sale of the Investor's right and titles acquired as a result of the Equity Investment.
- 1.14 "Tangible property" means the physical assets owned by the Overseas Enterprise or of which the Overseas Enterprise bears the risk of loss and which are used in connection with the project and are located in the Project Country on the Date of Damage, excluding Local Currency and foreign currency, documents or the tangible evidence of other property (tangible or intangible) including but not limited to accounts, bills, debentures, deeds, manuscripts and securities.
- 1.15 "Rupee" means the Indian Rupee.
- 1.16 "War Damage" has the meaning assigned to is in Article 2.02 of this Schedule.
- 1.17 "Rate of Exchange" means, on any date, the Bank Buying Rate applied by the Commercial Bank nominated by the investor for remitting the investment or for receiving the amounts due in respect of the investment as the case may be, in India, on that date for the purpose of purchase of the relevant foreign currency. Where a foreign currency is not quoted by the said commercial bank, the rupee value shall be ascertained by applying the cross rate of Exchange ruling in the London Money Market at the close of business on the previous working day.

ARTICLE 2 - The following are the "RISKS INSURED" under this Agreement:

- 2.01 EXPROPRIATION which for the purpose of this Agreement means any act or omission by the Government of the Project Country or any act or omission authorised, ratified or condoned by that Government which -
- (a) commences within the Maximum period, and
 - (b) has the effect of -
 - (i) depriving the investor of his rights in respect of or of his title to all or part of his ownership of the Overseas Enterprise acquired by reason of the Investment or of the proceeds thereof or preventing the effective exercise of such rights;

- (ii) depriving the Overseas Enterprise of the ownership of a substantial part of its property (whether tangible or intangible); or
- (iii) Preventing the Overseas Enterprise from exercising effective control over the use or disposition of a substantial part of its property (whether tangible or intangible) or from setting up or operating the Project;

and which deprivation or prevention, additionally in the case of Loan Investment, directly results in the failure of the Overseas Enterprise to pay to the investor within six months of the due date of payment any instalment of principal or interest or any other payments due in respect of the Loan Investment, and -

- (c) (i) directly or indirectly has the effect of nationalisation; or
- (ii) directly or indirectly has the effect of confiscation other than after due process of law; or
- (iii) is the direct consequence of any decision of the Government of the Project Country made with the intention of discriminating against the Investor or the Overseas Enterprise.

PROVIDED THAT -

- (a) no such deprivation or prevention which continues in effect for a period of less than one year shall be deemed to be expropriation.
- (b) the following shall be deemed not to be expropriation -
 - (i) any action by the Government of the Project Country through the exercise of its rights or powers as shareholder, director or manager of the Overseas Enterprise which is taken in its capacity as such; or
 - (ii) any abrogation, impairment, repudiation or breach by the Government of the Project Country of any agreement by it to invest in the Overseas Enterprise.
- (c) the Insurer shall have no liability -
 - (i) if the Investor, his agents or representatives or the Overseas Enterprise or any of his associates in the project provokes or contributes to or instigates Expropriation;
 - (ii) if the Investor, his agents or representatives or the Overseas Enterprise (to the extent within the Investor's control) fails to take all reasonable measures, including those available under administrative and judicial procedures in the Project Country to prevent or minimise the effect of expropriation;
 - (iii) for any act or omission to which the Investor, his agents or representatives or any of his associates in the project or the Overseas Enterprise agreed voluntarily;
 - (iv) for any loss attributable to the insolvency of the Investor or of any of his agents or representatives or any of his associates in the project or the Overseas Enterprise itself;
 - (v) for any loss attributable to the fact that control of the Investor is exercised directly or indirectly by a person or persons resident outside INDIA.

2.02 "WAR DAMAGE" which for the purpose of this Agreement means -

- (a) damage to, or disappearance, destruction or seizure and retention of tangible property as direct result of War (as hereinafter defined in this Article) or as a direct result of action taken in hindering, combating or defending against war whether actual, pending or expected.
- (b) the inability of the Overseas Enterprise as a direct result of war to operate the Project for a period of twelve consecutive months from the first date on which such operation becomes impossible.
- (c) if it is possible to operate the Project, the inability of the Overseas Enterprise as a direct result of war (and not as a result of mismanagement or negligence) to operate it at a profit over a period of three consecutive years.
- (d) the failure of the Overseas Enterprise to pay to the Investor within six months from the due date any instalment of principal or interest or any other payments due in respect of the Loan Investment, being a failure to pay caused by reason of -
 - (i) any of the events referred to in (a) above; or
 - (ii) the inability of operation of the Overseas Enterprise as referred to in (b) above for the period therein mentioned; or
 - (iii) the inability of the Overseas Enterprise to operate at a profit as referred to in (c) above for the period therein mentioned;
- (e) the loss for a period of twelve consecutive months as direct result of war of the Investor's effective control of the Overseas Enterprise. If such effective control is proved to have been retained and exercised.

PROVIDED THAT the Insurer shall not be liable for any loss arising from any failure by the Investor or the Overseas Enterprise to take all reasonable steps including War Risk Insurance, whenever available to protect and preserve the Tangible Property from War Damage or to take all reasonable steps to repair and replace any such property which may be damaged and to operate the project.

"War". for the purposes of this Article, means any war in which the Government of the project Country is a participant and includes any armed revolution or insurrection occurring in the Project Country for the purpose of overthrowing the established Government but does not include a mere civil strife.

2.03 RESTRICTIONS ON REMITTANCES for the purpose of this Agreement means

- a. the frustration for a period of six consecutive months of the conversion of Local Currency received by or for or held to the order of the Investor in respect of his interest in the Overseas Enterprise or the process thereof into Rupee freely available in India to the Investor.

or

- b. the inability of the Investor for a period of six consecutive months to covert such Local Currency into Rupees freely available to him in India except on the basis of a rate of exchange less favourable to the Investor than the one currently available to other investors in respect of like transactions;

being a frustration or inability arising in circumstances outside the control of the Investor from the operation of any law, or of any order, decree notification or regulation having the force of law in the Project Country or from any other cause not occasioned by an act or omission on the part of the Investor, or the Overseas enterprise, as the case may be.

PROVIDED THAT the Insurer shall have no liability -

- (i) unless the Overseas Enterprise has made an irrevocable deposit in Local Currency for transfer to the Investor in a bank in the Project Country;
- (ii) unless and until all steps necessary to effect the conversion of such Local Currency into Rupees have been taken or attempted by the Investor, or the Overseas Enterprise, as the case may be;
- (iii) in respect of such Local Currency held by or for the Investor for more than six months prior to the commencement of action necessary by the Investor or the Overseas Enterprise, as the case may be, to effect its conversion into Rupees;
- (iv) in respect of any attempted conversion into Rupees of the proceeds of the voluntary sale or voluntary liquidation, initiated by the Investor within three years from the date of last investment of all or part of the rights and titles acquired by the Investor as a result of the Investment; or
- (v) for any loss arising from the insolvency of any agent of the Investor or of a collecting bank or from any act, neglect or default on the part of such agent or collecting bank.

2.04 EXCLUSION FROM LIABILITY

In relation to Articles 2.01, 2.02 and 2.03 above the Insurer shall have no liability in respect of -

- (a) any loss arising from any requirement, restriction or constraint in force at the date of this Agreement or the first Date of Investment, whichever is the later, by virtue of any law, or of any order, decree, notification or regulation having the force of law in the Project Country; PROVIDED THAT this paragraph shall not apply where the Investor incurs any loss as a result of a change since such date in the manner of the operation of, or in the administrative procedure under, any such law, order, decree notification or regulation in effect in the Project Country at such date;
- (b) any risk which at the date of Investment is normally insured with commercial insurers;
- (c) the investment, if it is not made in compliance with the exchange control or export regulations of INDIA in force at the date of this agreement or the first Date of Investment, whichever is the later; or
- (d) any loss arising from any failure or inability of the Investor or his agents or representatives to obtain any authority in respect of the Investment where the authority is required at the date of this Agreement or the first date of Investment whichever is the later, or to satisfy any requirements of the Project Country in respect of the Investment where the requirement is in force at such date.
- (e) Any loss arising from failure of the Investor to comply with the laws of the Foreign Country or of the Investor's Country including but not limited to any environmental or public health laws orders decrees regulations or directives having jurisdiction over the Investor or the Foreign Enterprise.
- (f) Any loss arising from or as a consequence of the discharge of pollutants or contaminants including but not limited to solid liquid gaseous or thermal irritants, toxic contaminants or any other hazardous substance actually or potentially endangering the health or safety of any part of any population or the environment.
- (g) Any loss arising from war (whether before or after the outbreak of hostilities) between any of the following : People's Republic of China, France, United Kingdom, the Russian Federation and the United States of America.
- (h) Any loss or destruction of or damage to any property whatsoever or any loss or expense whatsoever resulting directly or indirectly caused by or contributed to by or arising from the radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.
- (i) Any loss arising from physical damage due to war on land in respect of goods in transit only.

ARTICLE 3 - DETERMINATION OF THE CURRENT INSURED AMOUNTS.

3.01 The Current Insured Amount for Equity Investment or Loan Investment, as the case may be, shall be -

- (a) for the first three Insurance years, the amounts specified in paragraph 4 of this Agreement.
- (b) for each subsequent Insurance year the amount that results from the following provisions;
 - (i) The insured amount for Equity Investment specified in writing by the investor before the commencement of the Insurance Year, which amount shall be the Current Equity Investment plus any additional amounts the Investor expects to have at risk being the amounts on account of or by way of repatriable retained earnings attributable to his share of investment and dividends earned and rapatriable, at any time during that year as a result of having made the Equity Investment and
 - (ii) The Insured amount for Loan Investment specified in writing by the Investor before the commencement of the Insurance Year, which amount shall not be less than the maximum amount due or which may become due and payable in that year in respect of such loan investment and
- (c) reduced if any claim is paid by the Insurer, by the amount of loss in respect of which that claim is paid with effect from as the case may be, the Date of Expropriatory Action, the Date of Damage, the date on which conversion of Local Currency was first attempted or the date the Local Currency was irrevocably deposited for transfer to the Investor in a bank in the Project Country;

3.02 Where a Current Insured Amount has been reduced in accordance with the provision of Article 3.01(c) above as a result of any payment made by the Insurer to the Investor in respect of Restrictions on Remittances and a partial or total recovery is subsequently received by the Insurer, the Insurer may in his absolute discretion at the Investor's request and upon payment of the appropriate premium increase the Current Insured Amount by the amount of such recovery.

ARTICLE 4 - CALCULATION OF LOSS (EQUITY INVESTMENT)

4.01 Subject to Article 4.05 where the cause of loss is EXPROPRIATION the amount of loss shall be the Current Equity Investment calculated as on the Date of Expropriatory Action.

4.02 (a) If the cause of loss is EXPROPRIATION and the Investor is deprived of a part and not all of his shareholding or equivalent rights in respect of or of his titles to ownership of the Overseas Enterprise, the amount of loss shall be the proportionate amount calculated as at the date of Expropriation action of the value of rights and titles of which the Investor has been deprived of.

(b) Unless otherwise agreed by the Insurer in writing, the Insurer shall have no further liability in respect of the Equity Investment after payment of a claim pursuant to (a) above.

PROVIDED THAT such cessation of liability in respect of the Equity Investment shall not discharge or affect any right, liability or obligation of either party under this Agreement which has accrued prior to the date of payment of such claim.

4.03 (a) Subject to Article 4.05, where the cause of loss is WAR DAMAGE the amount of loss shall be the lesser amount of

(i) the Investor's share of the original cost to the Overseas Enterprise less fair and reasonable depreciation of the Tangible Property affected by such WAR DAMAGE.

or

(ii) the Investor's share of the reasonable cost of repairing or replacing such Tangible Property with property of like kind and quality.

PROVIDED THAT :

(a) the Investor shall bear the first Rs. 15,000 and the amount of any loss so calculated, and

(b) the Insurer shall have no liability for the amount of any loss so calculated in excess of the Current Equity Investment calculated as at the Date of Damage.

(c) Subject to Article 4.05, where the cause of loss is that specified in Article 2.02(b), 2.02(c) or 2.02(e) of this Schedule (WAR DAMAGE) the amount of loss shall be the Current Equity Investment calculated as at the Date of Damage.

4.04 Subject to Article 4.05 where the cause of loss is RESTRICTIONS ON REMITTANCES the amount of loss shall be the Rupee sum which would have been available to the Investor in respect of the Equity Investment had it been possible to convert the Local Currency received by or for him at the Rate of Exchange prevailing on the date on which conversion was first attempted.

4.05 In relation to Article 4.01, 4.02, 4.03, and 4.04 above the total amount of loss in respect of which the Insurer shall have liability shall not exceed the Current Insured Amount for Equity Investment in effect on the first day of the Insurance Year in which fell, as the case may be, the date of Expropriatory Action, the Date of Damage or the date on which conversion of Local Currency was first attempted.

Explanation :-

In arriving at the amount of loss, the audited accounts (certified by an independent accountant acceptable to the Insurer) as on the date of Expropriatory Action or War Damage as the case may be shall form the basis and such audited accounts shall be in accordance with normal accounting principles, practices and procedures.

ARTICLE 5- CALCULATION OF LOSS (LOAN INVESTMENT)

5.01 Subject to Article 5.03, where the cause of loss is EXPROPRIATION or WAR DAMAGE, the amount of loss shall be -

(a) where the Loan Investment is made in Indian Rupees, the amounts that have become due for payment on or subsequent to the Date of Expropriatory Action or Date of Damage as the case may be and have remained unpaid for more than six months and remain unpaid at the date of payment of the claim by the Insurer; or

(b) where the loan Investment is made in a currency other than the Indian Rupee, the Rupee value calculated at the rate of exchange prevailing on the due date of payment of any amounts that

have become due for payment on or subsequent to the Date of Expropriatory Action or Date of Damage as the case may be and have remained unpaid at the date of payment of the claim by the Insurer.

5.02 Subject to Article 5.03, where the cause of loss is RESTRICTION ON REMITTANCES the amount of loss shall be the Rupee value of the Local Currency received by or for the Investor in respect of Loan Investment calculated at the rate of Exchange prevailing on the date when such Local Currency was irrevocably deposited for transfer to the Investor in a bank in the Project Country.

5.03 For the purpose of this Article the amount of loss in respect of which the Insurer shall have liability shall be -

(a) Where the amount of loss ascertained in accordance with articles 5.01 and 5.02 does not exceed the Current Insured Amount for Loan Investment in effect on the first day of the Insurance Year in which the failure to pay occurred or the Local Currency was irrevocably deposited for transfer to the Investor in a bank in the Project Country, the amount of such loss reduced by the amount of any Financial Benefit which is attributable to the Loan Investment and in the possession of the Investor or any Associated Company at the date of payment of the claim by the Insurer.

(b) Where the amount of loss so ascertained exceeds the Current Insured Amount for Loan Investment in effect on the first day of the Insurance Year in which the failure to pay occurred or the Local Currency was irrevocably deposited for transfer to the Investor in a bank in the Project Country, the Current Insured Amount less such amount as results from reducing any such Financial Benefit in the proportion which the Current Insured Amount bears to the amount of loss ascertained in accordance with Articles 5.01 and 5.02

ARTICLE 6 TREATMENT OF AMOUNTS RECEIVED BY THE INVESTOR OR THE INSURER AFTER THE DATE OF EXPROPRIATION ACTION OR DATE OF DAMAGE (EQUITY INVESTMENT)

6.01 The amount of any Financial Benefit attributable to the Equity Investment received by the Investor or any Associated Company prior to or after the date of payment of a claim by the Insurer and any amounts (other than payments made but not received in Rupees prior to the date of Expropriatory Action or Date of Damage as Investment Earnings or Return of Capital) received in respect of the Equity Investment in Rupees in India by the Investor or the Insurer after the Date of Expropriatory Action or Date of Damage shall be divided without delay between the Investor and the Insurer in the proportions in which loss is borne by them respectively, whether or not such division results in the retention by the Insurer of a greater or lesser sum than the amount paid by the Insurer under this Agreement in connection with that amount of loss. The investor and the Insurer hereby acknowledge and declare that until such amounts have been so divided and paid, each receives and holds in trust for the other such amounts as are due to the other. If any such amount received by the Investor and due to the Insurer has not been paid over to the Insurer, the Insurer shall be entitled to set-off such amount against the amount of any claim payable.

ARTICLE 7 TREATMENT OF AMOUNTS RECEIVED BY THE INVESTOR OR THE INSURER AFTER PAYMENT OF A CLAIM (LOAN INVESTMENT)

7.01 Any amounts received by the Investor or the Insurer in respect of Loan Investment after payment by the Insurer to the Investor of a claim shall be divided without delay between the Investor and the Insurer in the proportion in which loss is borne by them respectively, whether or not such division

results in the retention by the Insurer of a greater or lesser sum than the amount paid by the Insurer under this Agreement in connection with that amount of loss. The Investor and the Insurer hereby acknowledge and declare that until such amounts have been divided and paid each receives and holds in trust for the other such amounts as are due to the other.

ARTICLE 8 - PREVENTION AND NOTICE OF LOSS

- 8.01 The Investor shall use all reasonable care, skill and forethought and take all practicable measures to prevent or minimise loss, including the preservation and pursuit of all available administrative and judicial remedies and other measures which may be required by the Insurer.
- 8.02 On becoming aware of any circumstances which is likely to cause loss or of the occurrence of any event liable to lead to a claim under this Agreement the Investor shall immediately notify the Insurer in writing of such circumstances or occurrence and thereafter take such action as the Insurer may after consultation with the Investor require for the purpose of avoiding, or effecting a settlement of, any dispute between the Investor and the Government of the Project Country arising out of such circumstance or occurrence.

ARTICLE 9 - CLAIMS PROCEDURE

- 9.01 The Investor shall notify the Insurer of his intention to make a claim under this Agreement within three months of the occurrence of a cause of loss insured under this Agreement. Any formal claim made by the Investor thereafter shall be in a form specified by the Insurer, shall contain such information and shall be submitted within such period as the Insurer may reasonably require.

ARTICLE 10 - POST-CLAIMS PROCEDURES

- 10.01 Upon payment by the Insurer of a claim where the cause of loss is EXPROPRIATION OR WAR DAMAGE the Investor shall as required by the Insurer -

- (a) take all steps to safeguard the value of his interest in the Overseas Enterprise;
- (b) assign and transfer to the Insurer :
 - (i) all his assignable rights, titles and interest (including any claims and causes of action);
 - (ii) all currency, negotiable instruments and other assets tangible or intangible, and;
 - (iii) all compensation received or the right to receive compensation;

which relate to that part of his interest in the Overseas Enterprise or proceeds thereof in respect of which loss was incurred, provided that any such assignment or transfer shall be without prejudice to any beneficial interest of the Investor in any amounts received by the Insurer under the provisions of article 6 or Article 7, as the case may be;

- (c) after completion of any assignment or transfer referred to in (b) above, co-operate to the fullest extent possible and cause the Overseas Enterprise to co-operate to the fullest extent possible with the Insurer in the administration of any property acquired by the Insurer under such assignment or transfer and in the institution or proceedings and preservation of remedies in

respect of any claims thereby assigned to the Insurer, and make available to the extent that they are within the power of the Investor -

- (i) technical and other information and qualified managerial and technical personnel necessary to the maintenance and operation of property so acquired and
 - (ii) any evidence necessary to the institution and conduct of proceedings in respect of claims so assigned.
- (d) continue to administer his interest in the Overseas Enterprise arising out of the Investment or, where such interest has been assigned to the Insurer under the provisions of article 10.01(b) above, continue to administer on the Insurer's behalf such interest so assigned but without any remuneration.
- (e) either as principal or as agent of the Insurer take all steps to effect recoveries.

10.02 Upon payment by the Insurer of claim where the cause of loss is RESTRICTIONS ON REMITTANCES the Investor shall as required by the Insurer -

- (a) transfer to or hold for the account of the Insurer in such manner as the Insurer may require, the Local Currency or any rights relating thereto in respect of which the claim payment was made, and
- (b) thereafter take all steps which the Insurer may require to effect a transfer of such Local Currency.

The amount of any such Local Currency received in India by the Investor or the Insurer and converted into Rupees shall be divided between the Investor and the Insurer without delay in the proportions in which loss is borne by them respectively, whether or not such division results in the retention by the Insurer of a greater or lesser sum than the amount paid by the Insurer under this agreement in connection with that amount of loss. The Investor and the Insurer hereby acknowledge and declare that until such amounts have been so divided and paid each received and holds in trust for the other such amounts as are due to the other.

10.03 Any costs incurred by the Investor in pursuance of the requirements of articles 10.01 and 10.02 above shall be borne by the Investor and the Insurer in the proportions in which loss is borne by them respectively.

10.04 If at any time during a period of five years from the date of payment by the Insurer of a claim in respect of which Financial Benefits have been taken into account in accordance with the provisions of Articles 5.03, 6.01 or 7.01 the Investor is required to reimburse to the Overseas Enterprise all or part of any such Financial Benefits the amount of loss in respect of which the relevant claim payment was made shall be recalculated without taking into account such Financial Benefits, any recoveries received after payment of the claim being taken into account for the purposes of determining the revised amount of claim payable.

ARTICLE 11 - CONDITIONS

11.01 The liability of the Insurer under this Agreement shall cease if, without the Insurer's prior written consent

- (a) the Investor varies or agrees to any variation in the terms of the Investment as set out in this Agreement;
- (b) the assets acquired by the Overseas Enterprise as a result of the Investment are employed for a purpose other than that described in this Agreement as the project;
- (c) the Investor voluntarily enters into a compensation arrangement in respect of any of the causes of loss insured under this Agreement, with the Government of the Project Country or with any body authorised by that Government to enter into such an arrangement;
- (d) the Overseas Enterprise voluntarily disposes of the project but without prejudice to any liability of the Insurer in respect of any Return of Capital ensuing directly from such disposal;
- (e) the Investor assigns, mortgages, charges, pledges or in any other way disposes of the benefits of this Agreement or any part thereof; or
- (f) the Investor assigns, mortgages, charges, pledges or in any other way disposes of his interest in the Overseas Enterprise acquired as a result of the Investment, but without prejudice to
 - (i) any liability of the Insurer in respect of the Local Currency proceeds of such disposal in the Project Country; and
 - (ii) any right, liability or obligation of the Insurer or the Investor which has accrued prior to the date of disposal.

11.02 Where the Investment or parts thereof are made subsequent to the date of this Agreement the Investor shall immediately notify the Insurer in a form prescribed by the Insurer of the details of the Investment or parts thereof as they are made and shall provide such other information with regard thereto as the Insurer may require. The written consent of the Insurer for covering the additional Investment under the Agreement is essential to claim any benefits under this Agreement in respect of such additional investment.

11.03 The Investor shall during the currency of this Agreement and -

- (a) the next succeeding eighteen months, or
 - (b) during any period after the expiry of this Agreement in which the Investor has a claim pending under this Agreement and for five years after payment of any claim under this Agreement.
- whichever is the longer,
- (i) maintain in India in a place to be notified to the Insurer and readily accessible to Insurer or his duly authorised representatives, proper accounting records, statements and reports and such other information as the Insurer may require covering amount of the Equity Investment, the Loan Investment, Return of Capital, Investment Earnings and all other receipts, expenditures, transactions and credits in connection with the Investment;
 - (ii) within six months after the end of each financial year of the Overseas Enterprise falling wholly or partly within the Insured period and Investor shall obtain from the Overseas Enterprise and

deliver to the Insurer copies of its annual balance sheet, profit and loss account and such other information that the Insurer may require, audited by an independent accountant acceptable to the Insurer for the purpose of ascertaining whether the accounts show a true and fair view of the affairs of the Overseas Enterprise.

- (iii) produce, or cause to be produced to the Insurer or his duly authorised representatives at a place specified by the Insurer, the accounting records and documents referred to in subparagraphs (i) and (ii) above wherever they may be and shall provide an explanation of any of them and shall permit the Insurer or his duly authorised representatives to inspect, examine and audit them and take copies of them or extracts from them and inspect books accounts and properties of the Overseas Enterprise wherever located, the Investor giving every reasonable access thereto.

11.04 Within six months after the end of each Financial Year of the Investor falling wholly or partly within the Insured Period, the Investor shall furnish to the Insurer a report by an independent accountant acceptable to the Insurer to the effect that he has examined the accounting records and documents referred to in Article 11.03(i) above, whether in his opinion they form a complete and accurate record of the Investor's transactions with the Overseas Enterprise and, if not, in what respects they are deficient.

11.05 (a) If at any time the information furnished by the Investor in the Application as explicitly supplemented or modified by any further information furnished by the Investor in writing in reliance on which this Agreement was entered into shall become incorrect, the Investor shall forthwith notify the Insurer in writing and the Insurer may at his option terminate or amend this Agreement without prejudice to any rights or obligations of the Investor or the Insurer which may have accrued prior to such termination or amendment.

(b) If the Investor shall fail to comply with the terms and conditions of this Agreement or shall make any misrepresentation in making a claim on the Insurer under this Agreement, the Insurer may terminate this Agreement at any time and, with or without exercising such right of termination, may refuse payment of any claim hereunder and may retain any premium that has been paid and the Investor shall repay to the Insurer on demand any sums paid to him by the Insurer under this Agreement.

(c) If the Insurer has failed to exercise his rights given in Article 11.05 (a) and (b) above, such failure shall not be construed as a waiver of the right of the Insurer to terminate this Agreement or to refuse payment of any claim hereunder or to seek refund of the amount of claim paid to the Investor, unless such waiver is given in writing by the Insurer.

11.06 The terms, provisions and conditions of this Agreement may be modified, supplemented or otherwise altered only by mutual Agreement in writing between the Investor and the Insurer.

PART B

SPECIAL CONDITIONS :