

FORM No. _____

Exports (Software Project) Policy

We, Export Credit Guarantee Corporation of India Limited have issued this Policy to you the Insured named in the Schedule to this Policy ('the Schedule').

You have completed a Proposal in writing and applied to us to indemnify you against a percentage of loss you may suffer in respect of your Contract specified in the Schedule ("**Insured Contract**") with your overseas Customer specified in the Schedule (the 'Insured Customer') for implementation of the software project more particularly identified and described in the Schedule (the '**insured project**') and we have agreed to give you such indemnity subject to all the terms and conditions contained in the Policy including due payment of premium and other charges specified in the Schedule (the Premium Schedule).

WE AGREE THAT WE WILL INDEMNIFY YOU –

- (a) Up to the **Insured Percentage** specified in the Schedule of the **Insured Loss** or upto the amount of the **Maximum Liability** specified in the Schedule whichever of the two amounts is lesser if the payment is not secured by a Letter Credit (LC) and you suffer a loss in respect of the **Insured Project** by reason of the **insured customer** failing to pay you any **insured debt** owing to any of the following **insured risks** (collectively referred to as 'Commercial Risks on Customer' or 'Customer Risks'), namely –
- (i) **Protracted Default** by the **Insured Customer**;
 - (ii) **Insolvency** of the **Insured Customer**; or
 - (iii) **Contract Repudiation** by the **Insured Customer**;

AND

- (b) Up to the **Insured Percentage** specified in the Schedule of the **insured loss** or up to the amount of **Maximum Liability** specified in the Schedule whichever of the two amounts is lesser if in respect of the **Insured Project** the payments are secured

by an irrevocable Letter of Credit (LC) and you suffer a loss by reason of the **Opening Bank** failing to pay you any **Insured Debt** owing to any of the following **insured risks** (collectively referred to as 'Commercial Risks on Banks' or 'Bank Risks'), namely –

- (i) **Insolvency** of the **Opening Bank**; or
- (ii) **Protracted Default** by the **Opening Bank**

AND

- (c) Up to the **Insured Percentage** specified in the Schedule of the **insured loss** or up to the amount of the **Maximum Liability** specified in the Schedule whichever of the two amounts is lesser if you suffer a loss in respect of the **Insured Project** by reason of the **Insured Customer** being prevented from paying to you any **insured debt** owing to any of the following **insured risks** (collectively referred to as 'Political Risks'), namely –

- (i) **Inconvertibility**;
- (ii) **Contract Frustration**;
- (iii) **Contract Cancellation**; or
- (iv) **Import Restriction**;

AND

- (d) Up to **Insured Percentage** of the **insured loss** or up to a maximum of TWENTY-FIVE PERCENTAGE of the amount of the **Maximum Liability** specified in the Schedule whichever of the two amounts is lesser if you suffer a loss in respect of the **Insured Project** by reason of the **Insured Customer** not being obliged to make good of the additional costs occasioned to you owing to the occurrence of any of the following **insured risks** (collectively referred to as the 'Miscellaneous Risks'), namely –

- (i) **Exchange Fluctuation**;
- (ii) **IP Right Infringement**;
- (iii) **Additional Tax**;
- (iv) **Detention and Restraint**, or
- (v) **Entry Restrictions**

Notes for interpretation:

- *Headings in the Policy are used for ease of reference only and are to be disregarded in construing the Policy;*
- *Definitions of the terms in **bold type** are given at the end of the Policy and those definitions only shall be relevant for the interpretation of those terms when used in the Policy;*
- *In the Policy the singular includes the plural and vice versa;*

- *The words “the Insured” and “the Corporation” when used in the Schedule or in any Endorsements forming part of the Policy shall have the same meaning as references in the Policy (other than in the Schedule or such Endorsements) to “you” or “your” and “we” or “us” or “our” respectively.*

I. TERMS AND CONDITIONS

The Policy is subject to the following terms and conditions and any failure or negligence on your part to comply with any of them may discharge us from our obligation to indemnify you.

1. YOUR PROPOSAL

- Both you and we have specifically accepted your Proposal as being the basis of the contract of insurance contained in the Policy and that the said Proposal forms part of the Policy. By signing the Proposal form and accepting the Policy you warrant that the statements made in the Proposal were true at the date of the Proposal and at the date when we agreed to issue the Policy;
- You also warrant that you will immediately notify us of any material change to the information supplied in the Proposal form or of any other material facts like any change in the terms and conditions of service placed by the customer with you affecting the Policy;
- These warranties do not limit any legal obligation or duty (at common law or otherwise) on you to disclose to us all material facts and circumstances and to act with the utmost good faith at all times;
- At the time of any amendment, change, variation and/ or addition to the Policy you must disclose to us all material facts and circumstances and your failure to do so will render the amendment, change, variation and/ or addition void ab initio.

2. YOUR OBLIGATIONS

- It is your duty to exercise reasonable care and prudence in granting credit to the **Insured Customer**;
- You will take all practicable measures available to you to prevent any loss arising (to you and/or us) and should any loss arise, to minimize it;
- After we have made a claim payment to you in respect of the **Insured Customer** you will continue to take all practicable measures to collect or realize **insured debt** and if required by us you will assign the relevant **insured debt** to us and we shall account to you for any uninsured proportion of any recoveries.

Note: Your strict compliance with the terms of Condition 2 is a condition precedent to our liability.

3. NOTIFICATION AND CONSULTATION

- (a) If you have reason to believe that the **Insured Customer** is unable to or is likely to be unable to perform or comply with his obligations to you under the **Insured Contract** which shall include non-payment of a bill of exchange or an invoice on due date you must notify us immediately either in writing or electronically (with our approval) but in any case not later than 30 days after you become aware of one or more of the circumstances mentioned above.
- (b) In the event of the occurrence of any **insured risk**, you must notify us in writing immediately but in any case by not later than 30 days after such occurrence.
- (c) In all the cases explained in (a) and (b) above you must –
- (i) continue to notify us every month in the format required by us until –
 - **Insolvency** has occurred; or
 - a claim has been submitted to us; or
 - the **insured debt** has been paid or realized;
 - (ii) provide us in writing without delay with any information which we may request following our receipt of notification in accordance with (a), or (b) above;
 - (iii) take all practicable measures available to you to prevent or minimize any loss in respect of the **Insured Customer**;
 - (iv) Continue to take all prudent and reasonable steps, which we may require, including institution of legal proceedings, in connection with any loss, which you may have incurred or may be likely to incur. If requested by us to do so you shall execute such documents and take such actions as we may require of you to enable us to intervene directly in any proceedings relating to the **insured debt**.

Your strict compliance with the terms of Condition 3 is a condition precedent to our liability.

4. EXTENDING DUE DATE OF PAYMENT

- (a) You must not agree to a postponement of the original **due date** for payment of any **Insured Debt** either in the **Insured Contract** or otherwise beyond a period of 180 days from the date of relevant Invoice except when –
- (i) the need for such extension arises prior to **due date** of payment and is being considered by you on an application from the **Insured Customer** received prior to such **due date**, and
 - (ii) extension of **due date** is not being implicitly accepted by you after the failure of an **Insured Customer** to pay on the **due date**, and
 - (iii) the extended credit period is in conformity with all the relevant and applicable regulatory requirements, and
 - (iv) you have obtained our written approval before granting such extension.

- (b) We will be entitled to decline to indemnify you of any loss unless the extension in due date of payment granted by you is in compliance with all of the above conditions.

5. LOSSES WHICH ARE NOT INSURED UNDER THE POLICY AND ENHANCEMENT OF MAXIMUM LIABILITY

- (a) The following sums are not insured under the Policy and it is warranted that those sums are not insured under any other Policy and remain at your own risk –
 - (i) so much of an **insured loss** as exceeds the **Insured Percentage**; and
 - (ii) so much of any **indebtedness** of the **Insured Customer** as exceeds the amount of **Maximum Liability** specified in the Schedule; and
- (b) So much of the aggregate loss suffered by you owing to the occurrence of any of the Miscellaneous Risks as is not exceeding three percent or is in excess of twenty-five percent of the aggregate amounts of **insured debt** covered under this Policy.
- (c) In the event of an increase in the total amount at your risk in respect of the **Insured Project** for any reason whatsoever, we shall not be liable to enhance the **Maximum Liability** under the Policy. However, we on receipt of your proposal in writing seeking an enhancement may consider enhancement of **Maximum Liability** and may agree for such enhancement subject to such conditions as we may stipulate.

6. ASSIGNMENT OF YOUR RIGHTS UNDER THE POLICY

- (a) You shall not assign the Policy or any benefits under the Policy except with our written consent and complying with any requirements we may make.
- (b) If you assign the Policy without first obtaining our consent then the Policy will be void from the date of such assignment.
- (c) If you assign any benefits under the Policy without first obtaining our consent then we shall not be bound by such assignment in respect of payment of any claim under the Policy.

7. CANCELLATION OF YOUR COVER

Cover under this Policy shall stand withdrawn and the Policy cancelled if after you have become aware of the occurrence of any of the **insured risks** you continue to render services to the **Insured Customer** in performance of your **Insured Contract** irrespective of whether or not you suffer a loss or prefer a claim under this Policy as a result of such occurrence save and except –

- where the occurrence is of no other **insured risk** than the **Exchange Fluctuation**;
or
- where you have kept us fully informed of such occurrence in writing and have obtained from us our approval in writing for such continuation of performance.

8. GIVING NOTICE

- (a) Any notice, which we may give to you under the Policy including any notice relating to **Maximum Liability** and/ or the reduction or cancellation of cover, may be given –
- by ordinary post or by recorded delivery through a reputed private courier service to your address as stated in the Schedule or to any other address of which we have been notified by you for this purpose; or
 - by facsimile or, by agreement, electronically.
- (b) Any notice sent by ordinary post or by courier service shall be deemed to be served on the third working day after posting or handing over to the courier or on your receipt, whichever is earlier. For the purpose of this condition a working day means any day other than a Saturday or Sunday or a public holiday in the place to which the notice is addressed;
- (c) Any notice sent electronically, including by facsimile, shall be deemed to be served on viewing by you or on the first working day after transmission, whichever is the earlier.

9. CURRENCIES

- (a) The currency of the Policy is Indian rupees;
- (b) The **Maximum Liability** specified in the Schedule is rupee limit and any amounts payable by us to you under the Policy is payable in rupees;
- (c) In respect of the **Insured Project**, you shall not raise an invoice on the **Insured Customer** in any foreign currency if that currency is not specified in the Schedule together with its equivalent value in Indian rupees;
- (d) When you raise an invoice on the **Insured Customer** in respect of the **Insured Project** in a currency other than rupee, the invoice value shall be converted into Indian rupee for the purpose of the Policy applying the corresponding rate of exchange specified for that currency in the Schedule;
- (e) For the purpose of payment of premium under the Policy and for arriving at the amounts of **insured debt** and **insured loss** and for payment of claim, losses suffered in a foreign currency shall be converted into India rupees applying the same rate of exchange as is specified in the Schedule corresponding to that foreign exchange;
- (f) Amounts realized in a foreign currency and credited to your account in India in rupees shall be applied at the actual rate of exchange at which the amount was converted into Indian rupee by the bank.

10. POLICY PERIOD, PREMIUMS AND CHARGES

- (a) This Policy shall be valid for the period specified in the Schedule as the Period of Cover;
- (b) Any extension of the period of cover shall be by an endorsement to the Policy and subject to your application seeking such an extension, our acceptance thereof after a fresh assessment of the risks obtaining as at that point of time and payment of additional premiums;
- (c) Neither you nor we shall have the right to terminate the Policy before the expiry of the Period of Cover including any extensions, except for a breach of condition of cover by the opposite party;
- (d) In the event that you wish to terminate the Policy before the end of the Period of Cover we shall be entitled to payment of the whole of the premium due under the Policy and if any part of the premium is remaining unpaid, the same shall become due and payable forthwith;
- (e) The amount of premium due and payable by you is as specified in the Schedule;
- (f) The entire amount of premium is payable in advance unless provided otherwise in the Schedule. If in your Proposal you have sought instalment facility for payment of premium, we may agree and provide in the Schedule the amount and time for payment of each instalment.
- (g) In the event of granting instalment facility for payment of premium, the first instalment shall in any case be paid before issue of the Policy. Thereafter, you shall ensure that further instalments are paid on or before the respective due dates specified in the Schedule for payment of each instalment. Any delay in payment of premium shall be a material breach of condition and may absolve us of all liability.
- (h) In the event of a claim under the Policy in respect of an **insured loss**, instalment facility for payment of premium allowed, if any, shall be inoperative and ineffective with immediate effect. Any part of the premium remaining unpaid shall become payable in full and you shall pay any such unpaid portion of premium forthwith.
- (i) In the event of us agreeing for an enhancement in the **Maximum Liability** under the **Policy**, you will pay such additional premium as we may specify and notify to you.

Payment of the premiums and other charges in accordance with provisions under Condition 11 is a condition precedent to our liability.

11. MONTHLY PROGRESS REPORT

- (a) You must submit to us on or before the 10th day of each calendar month a detailed report in the format prescribed by us furnishing detailed information as at the last day of the previous month relating to the progress in the execution of the **Insured Project** with regard to –
 - (i) Completion / delay in completion of specific modules/ milestones;

- (ii) Invoices raised and outstanding for payment;
 - (iii) Invoices outstanding and remaining unpaid after its **due date** of payment;
 - (iv) Invoices in respect of which payments are realized during the preceding month; and
 - (v) Work done for which invoices are yet to be raised.
- (b) It is a condition precedent to our liability that from the second month onwards of the Period of Cover, monthly reports in our form complete in all respects giving all the relevant information and data on the all abovementioned matters are submitted to us by not later than the 10th day of each calendar month.

12. WAITING PERIOD

We shall not be liable for any loss until the expiry of the relevant waiting period, which shall be:

- (a) In the case of **Protracted Default**, four months from the **due date** of payment;
- (b) In the case of **Insolvency**, four months from the **due date** of payment or one month after the occurrence of **Insolvency**, whichever of the two dates is the earlier;
- (c) In the case of **Contract Repudiation**, one month from the date on which the buyer wrongfully repudiated the contract;
- (d) In the case of **Inconvertibility**, one month from the date of occurrence of the event or four months from the **due date** of payment whichever is later;
- (e) In the case of **Miscellaneous Causes**, after completion of entire **insured project** in accordance with the **Insured Contract** or in the event of abandonment of project implementation, the date on which proof that is satisfactory to us for the occurrence of loss is furnished to us;
- (f) In all other cases, unless otherwise specified by us, four months from the date of occurrence of the event which is the cause of the loss.

13. CLAIMS

- (a) If you make any claim knowing it to be false or fraudulent in any way the Policy will be void and all claims under it will be forfeited. In addition you will immediately have to repay any sums that we have previously paid under the Policy. In such circumstances we shall be entitled to retain all the premiums paid by you under the Policy.
- (b) For a claim to be payable under the Policy you must submit a claim on our prescribed form, completed in all respects and duly endorsed by your banker involved in the project directly or indirectly or where there is no such banking arrangement, by a practising chartered accountant duly registered with Institute

of Chartered Accountants of India within one year from the **due date** of payment of the **Insured Debt** or within one year from the date of completion / termination of the contract whichever of the two is earlier in point of time.

- (c) Any amount payable to you under the Policy will be paid to you through your bank that handled your export documents and had undertaken collection of the export proceeds. You must irrevocably authorize your bank to accept such payments on your behalf and you agree that acceptance of payments from us under the Policy by your banker shall discharge us of our liability to you in respect of such payments or Where such banking arrangements are not made and declared to us at the time of submitting the proposal, the claim will be paid to your account directly.
- (d) We will pay to you the **Insured Percentage** of the **insured loss** or up to the amount of the **Maximum Liability** relevant to the cause of loss ('Risks Insured') whichever of the two amounts is lesser after we have ascertained the cause of loss and the amount of **insured loss**. We will not be liable to ascertain the cause of loss or the amount of loss and no claim shall become due for payment –
 - (i) Until the **insured contract** has been duly discharged either by performance or otherwise;
 - (ii) Until you have submitted to us a claim in our form, duly completed in all respects together with all such supporting documents as we will specify; or
 - (iii) Until you have submitted all the relevant information and documents that are necessary in our opinion for the purpose of establishing the occurrence of **insured risk** and for ascertainment of **insured loss**; or
 - (iv) When the cause of loss is **Protracted Default** and the **Insured Customer** claims that he is entitled to withhold payment of all or any part of the **insured debt** for any reason whatsoever (including but not limited to allegations relating to quality, quantity, etc., in respect of your present or past services) or raises a counterclaim or a claim for any set-off against you and we are satisfied that a dispute exists between you and the **Insured Customer**, then until the dispute is fully and finally resolved, if necessary by appropriate legal proceedings. It is clarified that the counterclaims or disputes raised or allegations made by the **Insured Customer** need not necessarily relate to an **insured debt**.

14. RECOVERIES AND ITS SHARING

- (a) After payment of a claim by us, you must take all steps that may be necessary or which we may require you to take to effect recoveries whether from the **Insured Customer** or from any other person from whom such recoveries may be made.
- (b) If, with reference to a claim payment, we require you to do any one or more of the following for the purpose of effecting recoveries, you must do so:
 - (i) Refer it to a debt-collecting agent on such terms as we may approve;
 - (ii) Appoint an advocate, solicitor or attorney to take legal proceedings against the **Insured Customer** or against his insolvent estate;

- (iii) Assign and transfer to us or to our nominee all your rights under the relevant **Insured Contract**, including your right to damages for any breach;
 - (iv) Deliver up to us or to our nominees documents relating thereto in respect of which a claim payment has been made and assign and transfer to us your right and interest in any such documents;
 - (v) Assign, deliver or otherwise transfer to us or to our nominee any negotiable instruments, guarantees or other securities relating to such goods or contracts.
- (c) All costs and expenses reasonably incurred either by us for the purpose of effecting recovery of an **insured debt** or by you as evidenced by invoices rendered to you by the debt collection agency or solicitors/ attorneys will be a prior charge on the amounts collected or recovered. However, your administrative and other miscellaneous costs will not be eligible to be a prior charge unless otherwise agreed to by us in writing.
- (d) The amounts recovered either by you or by us net of costs and expenses of recovery must be shared between you and us in the same proportion as the relevant losses were shared. This condition shall apply even when the amount of our share in the amounts recovered, because of exchange fluctuations or for any other reason, exceeds any amount previously paid by us to you under the indemnity provisions of this **Policy**. You must remit to us our share in all the sums so recovered forthwith upon its receipt by you. Until such payment is made to us you will be holding such sums in trust for us.

15. COLLECTION AND LEGAL COSTS

(a) When we require you to –

- refer the account of the **Insured Customer** to a debt collection agency, which we may nominate or
- appoint a solicitor / attorney whom we may nominate to take legal proceedings against the **Insured Customer** to obtain payment of any undisputed **indebtedness**,

you must do so. We may not contribute towards collection and legal costs, unless agreed otherwise in writing. In the event we agree to contribute towards your collection and legal costs, our contribution to collection and legal costs relating to the **insured debt** will not exceed the percentage we shall be entitled to as our share if and when the debt is collected or recovered. Where the **indebtedness** of the **Insured Customer** at the relevant time exceeds the **insured debt**, our contribution will not exceed such percentage share in the proportionate costs that is apportioned to the **insured debt**.

(b) We will not contribute towards:

- (i) Your administrative costs; or
- (ii) Legal costs incurred for the purpose of establishing the **Insured Customer's** liability in respect of any disputed indebtedness;

It is a condition precedent to our liability to contribute towards collection and legal costs that you have complied with all the terms and conditions of the Policy In respect of the Insured Debt to which the collection and legal costs relate.

16. INSPECTION OF DOCUMENTS

- (a) We may at any time inspect your documents and records and examine and take copies of any letters, accounts or other documents in your possession or control which relate to or are connected with the **Policy** or any transaction between you and the **Insured Customer**.
- (b) If we so request, you must supply us with any information in your possession and must also take all reasonable steps to obtain for us any information or the sight of any documents in the possession of any third party relating to or connected with the **Policy** or any transaction between you and the **Insured Customer**.
- (c) We may authorise any other professional agent/ agency to carry out inspection of documents as in (a) and (b) above for the purpose of determining your loss in case of a claim under the **Policy** and you expressly warrant that you shall render your cooperation to facilitate such an exercise to be carried out by our authorised agent/ agency.

17. LOCAL CURRENCY DEPOSIT AND APPLICATION FOR ALLOCATION OF FOREIGN EXCHANGE

- (a) If you experience delays or difficulties in obtaining payment from the customer's country due to restrictions on transfer of foreign exchange you shall require the **Insured Customer** concerned to pay to your account (or deposit irrevocably with a Bank in the **Insured Customer's** country for your account) at the **due date** of payment of the **Insured Debt** or as soon as you are aware of such delays or difficulties, the local currency equivalent of the invoice value due from the Insured Customer, unless we agree otherwise in writing;
- (b) Where we agree in writing that the **Insured Customer** need not make a local currency deposit, then you shall require the **Insured Customer** concerned to apply to the relevant authority for approval of the foreign exchange allocation in respect of the **insured debt**.

18. MAXIMUM LIABILITY

In respect of any **insured loss** suffered by you, our **Maximum Liability** to indemnify you shall be limited to the **Insured Percentage** of the **insured loss** ascertained in relation to the cause of loss or the amount of **Maximum Liability** specified in the Schedule whichever of the two amounts is lesser PROVIDED HOWEVER THAT in the event of the proximate cause of loss being any of '**Miscellaneous Risks**' our maximum liability to indemnify you shall not exceed one-fourth (25 percent) of the amount specified as 'Maximum Liability' in the Schedule.

19. CANCELLATION OF THE POLICY ON YOUR INSOLVENCY

Upon your Insolvency or the Insolvency of any party named in the Schedule as the Insured, we may terminate the Policy with effect from the date of such Insolvency. In the event of such termination by us, we shall be entitled to retain all premiums paid and to receive and retain all premiums due and payable up to and including the effective date of such Insolvency.

20. LAW AND JURISDICTION

The construction, validity and performance of this Policy and any disputes between you and us shall be interpreted in accordance with and governed in all respects by Indian Law. You agree that no other courts (which expression shall include tribunals and other judicial forums constituted under any special statute) than those either at Mumbai or at the Place of Issue specified in the Schedule shall have jurisdiction over any matter arising out of, concerning or relating to this Policy.

EXCLUSIONS

1. We shall not be liable for losses arising out of any of the Customer Risks where under your **Insured Contract**, payment of the invoice value of the goods sold by you is to be received under a documentary letter of credit (LC) and the LC opening bank has declined to make payment because of discrepancy in documents.
2. We shall not be liable for any losses where:
 - (a) The **Maximum Liability** specified by us on the **insured customer** prior to the commencement of your execution of the **insured project** is Nil;
 - (b) The customer is one of your subsidiary or associated companies or you have any direct or indirect interest in or connection with the customer, unless we have agreed otherwise in writing;
 - (c) There is an unresolved dispute between you and the **Insured Customer**, unless we have agreed otherwise in writing;
3. And we shall not be liable for any losses arising out of:
 - (a) Work done by you in execution of the **insured project** at a time when a debt or any part of a debt owed to you by the **insured customer** is in dispute remaining unpaid after its **due date** and in respect of which you had not submitted the monthly report in terms of Condition 11(a)
 - (b) Work done by you in execution of the **insured project** after we had advised you in writing for the purpose of minimising or arresting loss to

withhold or suspend further execution of the **insured project** in view of the occurrence of an risk insured or in the light of information indicating a preponderance of probability for the occurrence of an insured risk;

- (c) Your failure or the failure of any of your agents including a collecting bank or a carrier or any sub-contractor to fulfil any of their obligations to you relating to or in connection with your **Insured Contract**;
 - (d) Your failure or the failure of your agents or the **Insured Customer** to comply with local laws and regulations unless such failure was owing to being prevented by any law or order or decree or regulation in force in your country;
 - (e) Failure or inability of the **Insured Customer** to obtain any authority or permission necessary under any law or regulations of the **Insured Customer's** country for entering into the **Insured Contract** with you for implementation of the **Insured Project** or for your due performance of the **Insured Contract** or to pay you amounts that falls due to you under the terms of the said contract unless the relevant law or regulation requiring obtaining of such authority or permission was introduced subsequent to the conclusion of the **Insured Contract** or its performance, as the case may be;
 - (f) Any cause whatsoever that is attributable to the errors or omissions or commission in rendering the service;
4. And we shall not be liable for loss arising out the **indebtedness** of the **insured customer** that is not part of the **insured debt**, including any such **indebtedness** arising out of additional work done in performance of the **insured project** unless we have expressly agreed to enhance the scope of cover under the **Policy** and have made an endorsement to the **Policy** in that regard to cover debts arising out of such additional work.
5. And, we shall not be liable for any loss in respect of which you have not submitted to us within one year from the **due date** of payment of the relevant **insured debt** your claim in our prescribed form, complete in all respects and have submitted to us such information and documents as we may require of you to evidence the amount of insured loss and the cause of loss.

DEFINITIONS

1. DUE DATE

'Due date' shall mean the date on which an Insured Debt is due for payment by the Insured Customer and shall also include any extension of the original due date of payment agreed in writing between you and the Insured Customer with our approval. In the event of any extension being agreed which allows for payment in instalments the Due Date shall be the due date of the first instalment not duly paid.

2. INDEBTEDNESS

'Indebtedness' shall mean any and all the amounts owing by an Insured Customer to you whether payable now or at a future date and whether or not insured by us.

3. INSURED CONTRACT

'Insured Contract' means a contract made in writing between the Insured and the Insured Customer in accordance with all the relevant and applicable laws and regulations governing such contracts, the particulars of which are specified in the Schedule, and main objectives of which include implementation of the Insured Project.

4. INSURED CUSTOMER

'Insured Customer' is the customer specified in the Schedule and with whom you have concluded a contract for implementation of the insured project.

5. INSURED DEBT

'Insured Debt' is so much of any indebtedness of the Insured Customer as has arisen out of the invoices raised in accordance with the terms of your contract with the Insured Customer for implementation the insured project including any contractual interest payable up to the original due date for payment and included in the invoice and in respect of which you are not in breach of any of the conditions of cover under this Policy, including payment of the full premium due thereon.

6. INSURED LOSS

- (a) Where the cause of loss is Insolvency, 'insured Loss' shall be so much of any insured debt as shall not be in dispute and confirmed by the relevant appropriate authority (such as the Court, Liquidator, Receiver or Administrator) as being owed to you by the Insured Customer as at the date of Insolvency;
- (b) Where the cause of loss is Protracted Default, 'insured loss' shall be so much of any insured debt as shall not be in dispute less any interim payments and recoveries;
- (c) Where the cause of loss is Contract Repudiation, 'insured loss' shall be so much of the loss suffered or expenses incurred by you but not exceeding the amount that would have been due from the insured customer if the contract had not been repudiated;
- (d) Where the cause of loss is Inconvertibility, 'insured loss' shall be so much of any insured debt as shall equal the value of the local deposit made by the Insured

Customer as at the date of deposit or at the date of completion of the necessary transfer formalities whichever is the later; or so much of any insured debt for which approval of the foreign exchange allocation has been refused by the Central Bank, which remains unpaid at the end of the relevant waiting period;

(e) Where the cause of loss is any of the Miscellaneous Risks, namely, Exchange Fluctuation, IP Rights Infringement, Additional Tax, Detention and Restraint or Entry Restrictions, insured loss shall be so much of the amount of loss suffered by the Insured as –

- is more than three percent or is not more than twenty-five percent of the aggregate amounts of **insured debt** covered under this policy; and
- is, in the opinion of the Corporation, not occasioned owing to any act of negligence or any deliberate act of omission or commission on the part of the Insured; and
- is directly arising out of implementation of the insured project; and
- is not due from the Insured Customer under the terms of the insured contract despite the insured exercising all due care and prudence normally expected of persons implementing similar software projects; and
- is, in the opinion of the Corporation, unavoidable in implementing the Insured Project.

(f) Where the cause of loss is any other Insured Risk than those mentioned at (a) to (e) above, the 'insured loss' shall be so much of the insured debt as is remaining unpaid, due and outstanding from the Insured Customer to the Insured as at the end of the relevant waiting period by reason of the occurrence of the that risk.

In all cases the amount of the Insured Loss will be calculated taking into account any savings or other recoveries accruing to the Insured in respect of the Insured Debt by reason of its non-realization.

6. INSURED PERCENTAGE

Insured Percentage means the maximum percentage-share of the Corporation in the insured loss suffered by the Insured and which is specified in the Schedule. In the event of a claim being admitted for indemnification in accordance with the terms and conditions of this Policy, the Corporation shall have no liability to indemnify the insured any part of the insured loss as is in excess of the Insured Percentage of the amount of insured loss or the relevant amount of Maximum Liability, whichever of the two is lesser.

7. INSURED PROJECT

'Insured Project' means the software project described in the Schedule and the implementation or execution of which is the main objective or is among the main

objectives of the Insured Contract concluded between the Insured and the Insured and brief particulars of which are specified in the Schedule.

8. INSURED RISKS

'Insured Risks' shall mean any of the following causes defined hereunder from (1) to (8), namely –

(1) PROTRACTED DEFAULT

There is 'Protracted Default' by a Insured Customer, if the payment in respect of an insured debt is not secured by a Letter of Credit and the Insured Customer having accepted the delivery of the goods and / or the service rendered, as the case may be, has failed to pay to you the whole of the relevant invoice amount due thereon for a period of 120 days after the due date; and

There is 'Protracted Default' by the Opening Bank where the payment in respect of an Insured Debt is secured by a Letter of Credit, if the Opening Bank having accepted for payment the relevant documents drawn under the Letter of Credit has failed to pay you the whole of the relevant amount due in respect of those documents for a period of 120 days after the due date.

(2) INSOLVENCY

There is "Insolvency" when –

- An Insured Customer or an Opening Bank, as the case may be, has commenced or has become the subject of any proceedings or case for being declared bankrupt or insolvent which is uncontested under local bankruptcy or insolvency legislation, or
- A Court appoints a Receiver, Liquidator, Trustee, or other similar official under local bankruptcy or insolvency legislation; or
- A composition by the Insured Customer or the Opening Bank is approved by the Court having jurisdiction or a compromise or arrangement is made binding by the Court on the Insured Customer / Opening Bank and all their respective creditors; or
- Such circumstances have come into existence as are in our opinion equivalent to any of the above.

(3) CONTRACT REPUDIATION

'Contract Repudiation' means the wrongful repudiation of the contract by the customer after you have incurred expenses for the performances of the contract for the implementation of the Insured Project;

(4) INCONVERTIBILITY

There is 'Inconvertibility' when events occur in the Insured Customer's country or legislative or administrative measures are taken in that country which prevent restrict or delay payment of the Insured Debt (or part of it) to you outside the country of the Insured Customer. Inconvertibility shall be deemed to occur either at the date when the local currency deposit is made and the necessary transfer formalities are completed by the Insured Customer or at the date on which any application made for currency is refused.

(5) CONTRACT FRUSTRATION

'Contract Frustration' means the direct prevention of the payment of an insured debt as a result of the occurrence of war, civil war, insurrection, rebellion and/ or revolution within the Insured Customer's country or as a result of the occurrence of war between India and the Insured Customer's country.

(6) CONTRACT CANCELLATION

'Contract Cancellation' means the cancellation of a legally valid contract between the insured and the Insured Customer by the Government of the Insured Customer's country after commencement of performance of the contract for the implementation of the Insured Project, which directly prevents payment of the insured debt.

(7) IMPORT RESTRICTION

'Import Restriction' means the introduction by the Government of the Insured Customer's country of any law or regulation having the force of law after commencement of performance of the contract for the implementation of the Insured Project which prohibits or has the effect of effectively prohibiting further implementation of the Insured Project and which directly prevents payment of the Insured Debt.

(8) MISCELLANEOUS RISKS

Miscellaneous Risks mean any of the following five risks, namely –

(i) EXCHANGE FLUCTUATION

Exchange Fluctuation, that is appreciation in the value of Indian rupee vis-à-vis the foreign currency in which the cost of supplies and services are invoiced, resulting in the 'rupee yield' to the Insured on conversion into Indian rupee of the amount paid by the Insured Customer in respect of an invoice being lesser than the amount obtained on conversion of an equivalent amount of the foreign exchange into rupee applying the 'Reference Rate of Exchange', where —

- The 'Reference Rate of Exchange' referred to herein above shall be the rate specified in the Schedule as the Reference Rate of exchange;
- The 'Rupee yield' shall be the product obtained by multiplying the amount of the foreign exchange realised by the Insured with the rate of exchange as published by the Reserve Bank of India for conversion of the relevant foreign currency into Indian rupee as on the date on which the payment is received by the Insured Customer in his account.

(ii) IP RIGHT INFRINGEMENT

IP Rights Infringement, that is infringement of intellectual property rights, means the unauthorised but innocent use or infringement of an intellectual property right of a third party by the Insured where –

- such additional cost is directly attributable to the Insured Project and is not recoverable from the Insured Customer; and
- the Insured's act happened to be an infringement of a third party's intellectual property rights owing to developments that took place after the Insured had commenced implementation of the Insured Project and the Insured could not have anticipated the possibility of such a development to avoid infringement by exercising normal care and prudence; and
- the unauthorized use or infringement by the Insured happened innocently and without the knowledge that infringement of a legally valid provision governing intellectual property rights is happening; and
- the Corporation is satisfied that the Insured was not negligent and that the infringement happened in spite of exercising all care and prudence by the Insured.

It shall be mandatory to satisfy all of the above conditions.

(iii) ADDITIONAL TAX

Additional Tax that is, any increase in the rates of taxes or imposition of a new tax in the Insured Customer's country which increases the costs in respect of or reduces the net realization from the Insured Project where such increase in the rates of taxes or imposition of a new tax was after the commencement of the Insured Project and the consequent additional burden is not recoverable from the Insured Customer;

(iv) DETENTION and RESTRAINT

Detention and Restraint, that is, unjustified restraint on or detention of personnel of the Insured in a country outside India and the Corporation is satisfied that the person who is restrained or detained –

- is not guilty of or is not accused of disobedience of a law-enforcement authority;
- is not guilty of or is not accused of any criminal act under the extant laws of a country;
- is not guilty of or is not accused of having contravened or violated any of the relevant and applicable laws and regulations of that country governing entry and/ or stay of foreign personnel in that country; and
- had entered that country solely with the objective of performing any part of the insured project; and
- is not guilty of any act of omission or commission justifying such restraint or detention.

(v) ENTRY RESTRICTIONS

Entry Restriction, means refusal or denial of entry permit or the permission to enter or the entry visa to the insured or to any of its duly authorized employees into a country if the physical presence of the person who is denied or refused entry was inevitable in that country at the relevant point of time for the due implementation of any part of the Insured Project and provided that such refusal or denial of entry could not have been expected or anticipated at the time of concluding the insured contract or is not attributable to any act of omission or commission, deficiency, negligence or failure or anything of the sort that is attributable to the insured / or to any of his employees or representatives;

8. MAXIMUM LIABILITY

Maximum Liability means the maximum amount of indemnity that is payable in the aggregate by the Corporation under this Policy and which is specified in the Schedule. (If the proximate cause of loss is any of the Miscellaneous Risks insured, the amount of maximum liability shall not exceed twenty-five percentage of the amount of Maximum Liability specified in the Schedule).

9. OPENING BANK

Opening Bank means the bank that opens an Irrevocable Letter of Credit (ILC) to secure the payments due to the Insured from the Insured Customer under an Insured Contract and as on the date of issue of the Policy either is ranked within the top 25000 World Rank as per the latest edition of the Banker's Almanac or is a bank which has been approved by the Corporation as the Opening Bank against an application received in that regard from you in writing.

10. POLICY

Policy means the Customer Exposure Policy issued to you, the Insured specified in the Schedule, and includes its Schedule and the endorsements, if any, attached to it.